

# DTCC Data Repository

## END-USER CLEARING EXCEPTION INSTRUCTIONS

### Rule

#### END-USER CLEARING EXCEPTION/EXEMPTION INSTRUCTIONS & FORM

Section 2(h)(7)(A) of the CEA and CFTC ~~Regulation §~~Regulations 50.50 and §50.51, as well as applicable CFTC ~~Staff No. Action Letters 14-144, 16-01 and 16-02,~~ provide for a number of exceptions and an ~~exception~~exemption from ~~required~~ clearing for swaps entered ~~into~~ by certain ~~End Users (non-financial end users, financial cooperatives, treasury affiliates, bank holding companies and savings and loan holding companies, and community development financial institutions (collectively, the “End-User Exception”).~~ ~~The reporting full requirements are listed in CFTC Regulation §50.50(a) through §50.50(d) and can be found at:~~ <http://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2012-17291>

~~Pursuant to CFTC Regulation §50.50(b), certain~~ Reporting obligations may be satisfied on either a swap-by-swap or annual basis. ~~To make required reporting easier,~~ Each counterparty claiming the End-User Exception (“Electing Counterparty”) ~~for~~from clearing swaps that are reported to the DTCC Data Repository (U.S.) LLC (“~~DDR~~”), may provide the required information on an annual form to ~~the~~DDR (“Annual End-User Clearing Exception ~~Form~~”). ~~This information may include, but is not limited to, confirmation that the swap is being utilized to hedge or mitigate risk, how the Electing Counterparty satisfies its financial obligations, as well as additional information if it is an issuer of securities (see Step 2 below).~~Exemption Form”).

The following elections and representations must be reported by the Reporting ~~Counterparty on a swap-by-swap basis (See Step 3 below);~~Entity, as defined in CFTC Regulation 49.2 (“Reporting Entity”), on each swap they submit ~~where the End-User Exception has been elected:~~

1. Notice of election of the End-User Exception;
2. The identity of the counterparty(s) making the election; ~~and~~
3. The type of clearing exception or exemption being claimed.

~~The Electing Counterparty must have~~ an Annual End-User Clearing Exception/Exemption Form ~~provided by the Electing Counterparty must be~~ on file with ~~the~~DDR whenever the Electing Counterparty elects the ~~swap-by-swap~~ exception ~~or exemption,~~ unless all required information is being reported by the Reporting ~~Counterparty~~Entity.

### STEP 1: ON-BOARDING

DDR does not require that Electing Counterparties ~~onboard~~complete the onboarding process prior to ~~the~~filing the Annual End-User Clearing Exception/Exemption Form; however, it is suggested that firms onboard ~~with~~DDR in order to take advantage of other ~~SDR~~DDR functionality including, viewing position reports and validating and

# DTCC Data Repository

disputing the information in swaps for which the Electing Counterparty is a counterparty (“alleged swaps”).

If the Electing Counterparty wants to onboard with the DDR ~~there are two different methods of onboarding. Both require the Electing Counterparty to~~ it must contact the DDR Onboarding team at [gtr-onboarding@dtcc.com](mailto:gtr-onboarding@dtcc.com).

- ~~1. The Electing Counterparty can complete a “light” read-only onboarding. This type of onboarding allows the Electing Counterparty to review alleged swaps; or~~
- ~~2. The Electing Counterparty can complete a “full” onboarding, which allows the Electing Counterparty access to reports and reporting connectivity.~~

~~However, if an Electing Counterparty is electing the relief provided to eligible treasury affiliates by CFTC Staff No Action Letter 14-144 (“Treasury Affiliate No Action Relief”),<sup>1</sup> then the Electing Counterparty must be onboarded to ensure compliance with the Reporting Conditions of the Treasury Affiliate No Action Relief.~~

## STEP 2: ANNUAL FORM – ELECTING COUNTERPARTY PROCESS

Prior to claiming the End-User Exception for a swap, each Electing Counterparty should complete and return an Annual End-User Clearing Exception/Exemption Form; otherwise, all required information must be reported by the Reporting CounterpartyEntity. The process for filing an Annual End-User Clearing Exception/Exemption Form is as follows:

- ~~1. The Electing Counterparty contact goes to the form on pages 7-8 of this document. The Electing Counterparty contact can either print the PDF document or download the Adobe Professional Document.~~
1. The Electing Counterparty completes the Annual End-User Clearing Exception/Exemption Form (located at the end of this document) electronically (~~Adobe~~) or manually as a hard copy.
2. The Electing Counterparty submits the completed Annual End-User Clearing Exception/Exemption Form to [GTREndUserExemption@dtcc.com](mailto:GTREndUserExemption@dtcc.com) either as a hard copy file or electronically as an Adobe .pdf file [file:GTREndUserExemption@dtcc.com](mailto:GTREndUserExemption@dtcc.com).

~~The **ANNUAL END-USER CLEARING EXCEPTION/EXEMPTION FORM** provides information required by the CFTC, as well as contact information for the Electing Counterparty.~~

Until all required information is provided, the Annual End-User Clearing Exception/Exemption Form will not be considered complete.

The information requested on the Annual End-User Clearing Exception/Exemption Form is as follows:

### A) ENTITY INFORMATION

1. Full legal name of the Electing Counterparty;
2. DTCC Account Number – this is optional. If the Electing Counterparty has a DTCC Account Number, it should~~may~~ be provided; and
3. LEI/~~GMEI~~ - each Electing Counterparty must provide this number as a LEI/~~GMEI~~ is required pursuant to Part 45 of the CFTC’s regulations. If the Electing Counterparty is an individual Person, and ineligible to register for a LEI/~~GMEI~~, then “Individual” may be entered in this field.

# DTCC Data Repository

<sup>+</sup>Counterparties electing the relief from clearing for eligible treasury affiliates provided in CFTC Staff No Action Letter

14-144 will also use the Annual End User Clearing Exception Form. The full requirements for electing the treasury affiliate relief can be found at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-144.pdf>

## B) PRIMARY CONTACT INFORMATION

1. Name - the name of the person responsible for filing the Annual ~~form~~End-User Clearing Exception/Exemption Form. This information is needed so DDR can contact the person identified if there is an issue with the form, if information is not provided or if DDR has questions around/about the information that is provided.
2. Contact phone.
3. Contact e-mail.

## C) REQUIRED REGULATORY INFORMATION

1. **Financial Entity Status** – Pursuant to CFTC Regulation §50.50(b), the Electing Counterparty must disclose whether it is a Financial Entity and, if so, what type of Financial Entity. ~~The inclusion of an Eligible Treasury Affiliate section is provided pursuant to conditions of the Treasury Affiliate No Action Relief. The inclusion of an Exempt Cooperative section is also provided pursuant to conditions of the Exempt Cooperative No Action Relief. In particular, the form includes the following types of Financial Entities: an insured small bank, savings association, farm credit system institution or credit union; a captive finance company; an exempt cooperative; an eligible treasury affiliate; a bank holding company or savings and loan holding company; and a community development financial institution.~~

~~1.2.~~ **Hedge or Mitigate Commercial Risk** – This section is required to be checked when the selected Financial Entity Status is any other than Exempt Cooperative or Eligible Treasury Affiliate.

~~2.3.~~ **Eligible Treasury Affiliate Relief** - Consistent with ~~the CFTC requirements of CFTC Staff No Action Letter 14-144,~~ this section is required to be checked to indicate whether the Reporting Counterparty Entity has a reasonable basis to believe that the Electing Counterparty meets the ~~General~~ conditions contained in CFTC ~~Staff No Action Letter No.~~ 14-144.

~~3.4.~~ **Exempt Cooperative** - Consistent with the requirements of CFTC Regulation §50.51, this section is required to be checked to indicate whether the Reporting Counterparty Entity has a reasonable basis to believe that the Electing Counterparty will only elect the cooperative exemption for:

- ~~swaps entered into with a member of the exempt cooperative in connection with~~
- ~~originating a loan or loans for that member, which satisfies the requirements of CFTC Regulation §1.3(ggg)(5)(i)-(iii); or~~
- ~~swaps that hedge or mitigate commercial risk related to loans to or swaps with members (as such swaps are described above).~~

~~4.5.~~ **Financial Obligations** – Pursuant to CFTC Regulation §50.50(b), this section is required to be checked to indicate how the Electing Counterparty ~~must indicate how it~~ generally meets its financial obligations associated with entering into non-cleared swaps. At least one of the choices must be checked, but more than one choice may be checked. Additionally, the Electing Counterparty has the option of providing information regarding the “other” methods of meeting financial obligations.

# DTCC Data Repository

~~5.6. Issuer of Securities~~ – Consistent with CFTC requirements, this section is required to be checked to indicate whether the Electing Counterparty is an issuer of securities, yes or no. If the Electing Counterparty is an issuer of securities, then this section should also indicate whether the Electing ~~Counterparty must check the box to indicate that the~~ Counterparty's appropriate committee of the board of directors (or equivalent body) has reviewed and approved the decision to enter into swaps that are not cleared.

## D) SIGNATURE BLOCK

The following information about the person completing the Annual End-User Clearing Exception/Exemption Form is required:

1. Signature – ~~physical/wet or~~ electronic.
- ~~2.~~ 2. Name of the signatory.
- ~~3.~~ 2. Title of the signatory.
- ~~4.~~ 3. Date executed and submitted.

## E) ANNUAL FORM – DDR PROCESS

Once the Electing Counterparty has returned the annual form, DDR will perform the following processes:

1. Each submitted annual form will be reviewed for completeness. If any required field or question is left blank, DDR will communicate to the contact person that the form is incomplete and will need to be completed fully before processing.  
~~needs to be completed fully.~~
- ~~1. Once the annual form is complete, DDR will review the information provided and will discuss any questions with the contact person.~~
- ~~2. Once the review by DDR is completed, an e-mail will be sent to the contact person confirming that the form has been filed, and the date on which the filing was completed.~~
2. DDR will maintain a tracking spreadsheet showing the Reporting Entity name, the Electing Counterparty name, the LEI/GMEI, for each and the date on which the ~~verified~~completed annual form was filed.
3. DDR will create a report showing: 1) a#Reporting Entities and Electing Counterparties to swaps that have elected the End-User Exception, and 2) each Electing Counterparty ~~that has provided for which~~ a valid Annual End-User Clearing Exception/Exemption Form, or a Swap-by- Swap Form has been submitted. The report will be made available to the CFTC on a weekly basis.
- ~~3. DDR will track the date on which the Annual End-User Clearing Exception Form is completed, and notify the Electing Counterparty when the next Annual End-User Clearing Exception Form needs to be filed.~~

## STEP 3: SWAP-BY-SWAP ELECTIONS (FOR REPORTING COUNTERPARTIES ONLY)

CFTC Regulation §43.4(b) requires that ~~counterparties~~the Reporting Entity indicate on real time messages that the End-User Exception has been elected. There is no requirement to identify the party claiming exception or the type of exemption being claimed, on real time messages. A True/False flag is provided on the real time message for counterparties to indicate that the clearing exception is elected and the flag can exist on either party block.

*<!-- This indicates Clearing Exception has been invoked -->*

<endUserException>true</endUserException>

Applicable message types	Real-Time <del>RT PET*</del>
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# DTCC Data Repository

## RT-PET Confirm\*

\*If a true/false flag is used on combination messages, firms would need to update the position with the name of the party claiming clearing exception to be compliant with the CFTC rules. The recommendation is that this flag should only be set to "True" on Real Time messages.

CFTC Regulation ~~§50.504~~5.3 requires ~~indication of the~~ the Reporting Entity to the swap to report the election of the End-User Exception, the type of clearing exception and identification of the Electing Counterparty, which refers to the counterparty(s) making the election ~~on a swap by~~. The Reporting Entity to the swap basis. ~~This is done can~~ indicate the Electing Counterparty by including a related party reference with the role of 'ClearingExceptionParty', "ClearingExceptionParty", or "Cooperative" as well as one of the standard identifiers for the party claiming the exception or exemption.

DDR will accept the message from its clients and derive the "Clearing Exception Type" field based on the on the role provided for the related party reference below should as follows.

- a. The "Clearing Exception Type" field will be populated on the related party block of the non-claiming party, and reference the Electing Counterparty as the related party, with a value of "End-User" when:

~~//partyTradeInformation/relatedParty[role="ClearingExceptionParty"]~~

OR

~~//tradeHeader/partyTradeInformation/endUserException/text() - has a value of 'true'~~

Please note that the Part 43 real time message with the *enduserexception* flag set to true only indicates that the exemption is being elected, without identifying the counterparty making the election. In order to satisfy the Part 45 requirement that the reporting entity must identify the counterparty that is electing the end user exemption, the reporting entity must also send in a PET message identifying the counterparty electing the end user exception.

- b. The "Clearing Exception Type" field will be populated with a value of "Cooperative" when:  
~~//partyTradeInformation/relatedParty[role="Cooperative"]~~

## A) FpML

~~For example, if the non-Reporting Party is~~ The related party reference below should be populated on the related party block of the Reporting Entity, and reference the Electing Counterparty ~~claiming the~~ as the related party.

The role should be specified as "ClearingExceptionParty" if the clearing exception type is "End-User"; or "Cooperative" if the clearing exception type is "Cooperative".

### Example 1:

Counterparty A claiming an *End-User* exception:

For example, if the non-Reporting Entity is the Electing Counterparty, then the party reference should be included on the Reporting Party's Entity's related party block with reference to the non-Reporting Party Entity.

*<!-- This indicates Clearing Exception has been invoked for Counterparty A-->*

<relatedParty>

## DTCC Data Repository

<partyReference href="CounterpartyA"/>

<role>ClearingExceptionParty</role>

*<!--This role indicates the value of "End-user" should be auto-populated by DDR into the clearing exception type field-->*

</relatedParty>

*<!-- Prefix and Value for Counterparty A -->*

<party id="CounterpartyA">

<partyId partyIdScheme="<http://www.dtcc.com/coding-scheme/party-id>">00001111</partyId>

## Example 2:

CounterParty A claiming a Cooperative exemption:

<!-- This indicates Clearing Exception has been invoked for Counterparty A-->

<relatedParty>

<partyReference href="CounterpartyA"/>

<role>Cooperative</role>

<!--This role indicates the value of "Cooperative" should be auto-populated by DDR into the clearing exception type field-->

</relatedParty>

<!-- Prefix and Value for Counterparty A -->

<party id="CounterpartyA">

<partyId partyIdScheme="http://www.dtcc.com/coding-scheme/party-id">00001111</partyId>

Applicable Message Types	RT* PET RT-PET* Confirm PET-Confirm RT-PET-Confirm* Snapshot
*If the RT message or any of the RT combination messages are sent in with the indication of the party claiming exception as opposed to the true/false flag described above, <del>the</del> DDR will still disseminate a true/false indicator publicly.	

## **B) -CSV**

Clearing Exception <u>or Exemption</u> Party Prefix	(Conditional) Prefix of the party claiming End-User Exception
Clearing Exception <u>or Exemption</u> Party Value	“true” or “false” or Party ID Value of the party claiming End-User Exception. The Clearing Exception Party Prefix will be applicable only when Party ID value is provided.
<u>Clearing Exception or Exemption Type</u>	<u>“End-User” or</u> <u>“Cooperative”</u>

While the Clearing Exception Type field is auto-populated by DDR for FpML submissions based on the role provided in the FpML message, participants should submit the clearing exception or exemption type field with one of the appropriate values selected when submitting using CSV.

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In case of both CSV and FPML – if the submission is done on behalf of one party – the Clearing Exception party information will be applied only on that side of the position.

If the submission is done on behalf of both parties – the Clearing Exception party information will be applied on both sides of the position.

# DTCC Data Repository

## **ANNUAL END-USER CLEARING EXCEPTION / EXEMPTION FORM**

This form is being provided to satisfy the Electing Counterparty's annual reporting requirements under CFTC Regulations 50.50(b), 50.51(c) or applicable CFTC ~~Staff No Action~~ Letters ~~14-144, 16-01 and 16-02~~.

### ELECTING COUNTERPARTY INFORMATION

Full Legal Name: \_\_\_\_\_

DTCC Account Number (if applicable): \_\_\_\_\_

LEI/GMEI: \_\_\_\_\_

### **PRIMARY CONTACT INFORMATION**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

### **FINANCIAL ENTITY STATUS**

The Electing Counterparty is: (one must be checked)

Not a Financial Entity, as defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act  
~~A Person~~

An Insured Small Bank, Savings Association, Farm Credit System Institution or Entity Credit Union exempted under CFTC Regulation 50.50(d)<sup>+</sup>, ~~or CFTC Staff No Action Letters 16-01 or 16-02<sup>2</sup>~~.

A Captive Finance Company excepted under Section 2(h)(7)(C)(iii) of the Commodity Exchange Act

An Eligible Treasury Affiliate ~~Agent Entity~~ excepted under Section 2(h)(7)(D) of the Commodity Exchange Act

A Cooperative exempted under CFTC Regulation §50.51(a)

An Eligible Treasury Affiliate meeting the conditions of ~~the No Action Relief issued by the CFTC's Division of Clearing~~ CFTC Letter No. 14-144

A Bank Holding Company or Savings and Risk on November 26, 2014 (CFTC Letter No. 14-144) Loan Holding Company meeting the conditions of CFTC Letter No. 16-01

~~Consistent with the requirements of Section 2(h)(7)(A)(ii) of the Commodity Exchange Act and CFTC Regulation 50.50(e),~~  A Community Development Financial Institution meeting the conditions of CFTC Letter No. 16-02

### **HEDGE OR MITIGATE COMMERCIAL RISK**

*(does not apply to Cooperative Exemption or Eligible Treasury Affiliate Relief)*

## DTCC Data Repository

- I certify that the Electing Counterparty will only elect the end-user exception for swaps that hedge or mitigate commercial risk, ~~as described in Section 2(h)(7)(A)(ii) of the Commodity Exchange Act and CFTC Regulation 50.50(c).~~

~~Consistent with the requirements of CFTC Staff No. Action Letter 14-144,~~

### ELIGIBLE TREASURY AFFILIATE RELIEF

- I certify that the Electing Counterparty meets the ~~General~~ conditions contained in CFTC ~~Staff No. Action~~ Letter No. 14-144.

~~<sup>1</sup>An Insured Small Bank, Savings Association, Farm Credit System Institution or Credit Union which meets the requirements of CFTC Regulation 50.50(d) shall be exempt from the definition of "financial entity".~~

~~<sup>2</sup>CFTC Staff No. Action Letters 16-01 and 16-02 were issued by the CFTC's Division of Clearing and Risk on January 8, 2016. CFTC~~

~~Letter No. 16-01 provides relief from the swap clearing requirement for certain bank holding companies and savings and loan holding companies. CFTC Letter No. 16-02 provides relief from the swap clearing requirement for certain community development financial institutions.~~

~~Consistent with the requirements of CFTC Regulation §50.51(b)(1),~~ EXEMPT COOPERATIVE

- I certify that the Electing Counterparty will only elect the cooperative exemption form for:
- swaps entered into with a member of the exempt cooperative in connection with originating a loan or loans for that member, which satisfies the requirements of CFTC Regulation §1.3(ggg)(5)(i)-(iii); or
  - swaps that hedge or mitigate commercial risk related to loans to or swaps with members (as such swaps are described above).

## FINANCIAL OBLIGATIONS

How does the Electing Counterparty generally meet its financial obligations associated with entering into non-cleared swaps? (Check all that apply. *At least one must be checked.*)

- A written credit support agreement \_\_\_\_\_
- Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise)
- A written guarantee from another party
- The electing counterparty's available financial resources
- Means other than those described above (optional description of other means may be provided below)

## ISSUER OF SECURITIES

Is the Electing Counterparty an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934? ~~Yes~~

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YES

NO

If YES, please provide the required information below:

SEC Central Index Key Number: \_\_\_\_\_

The appropriate committee of the board of directors (or equivalent body) has reviewed and approved the decision to enter into swaps that are exempt from the clearing requirement of section 2(h)(1), and section 2(h)(8) of the Commodity Exchange Act.

I hereby certify that the information contained in this Annual End-User Clearing Exception / [Exemption](#) Form is true and accurate to the best of my knowledge.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Title: Name: \_\_\_\_\_

Title: \_\_\_\_\_