

## Registration of Swap Entities

Title VII of Dodd-Frank<sup>1</sup> requires all swap dealers and major swap participants (“Swap Entities”) to register with the Commodity Futures Trading Commission (“CFTC”) and become members of the National Futures Association (“NFA”). Registration is required even for a Security-Based Swap Entity that is also required to register with the Securities and Exchange Commission.

### 1. The Registration Process

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The NFA administers the registration process for Swap Entities. Applicants must file Forms 7-R and 8-R with the NFA along with documentation demonstrating compliance with the Commodity Exchange Act (“CEA”) Section 4s Implementing Regulations,<sup>2</sup> governing (1) capital adequacy and margin requirements, (2) financial, transaction and position reporting and recordkeeping requirements, (3) daily trading records, (4) business conduct standards, (5) documentation standards, (6) designation of a chief compliance officer and related duties, and (7) collateral segregation requirements for uncleared swaps.<sup>3</sup>

### 2. Documentation

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Applications are filed electronically through the NFA’s Online Registration System (“ORS”). Supporting documentation, typically in the form of policies and procedures, is submitted via the NFA’s web-based Easy File Registration Documentation Submission System (“RDSS”). The NFA may request supplemental information from the applicant during the registration process, including organizational charts, a list of products traded, and information on the applicant’s chief compliance officer and senior risk management personnel.

For non-U.S. Swap Entities, the required documentation will vary depending upon whether substituted compliance is available.<sup>4</sup> A statement from the applicant that it is relying on substituted compliance and an affirmation that it has policies and procedures in place that comply with the regulations in the relevant jurisdiction will be required where the CFTC has determined that substituted compliance is available.

### 3. Timing and Approval

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Provisional registration is effective upon filing Form 7-R (and Form 8-R and a fingerprint card for each principal) and documentation for applicable Implementing Regulations.<sup>5</sup> The NFA will then evaluate the sufficiency of the compliance documentation provided. Registration does not become final until the NFA has confirmed the adequacy of documentation for *all* applicable Implementing Regulations.<sup>6</sup>

If the NFA finds that an application is deficient it must notify the applicant, at which time the firm must cease any new dealer activity and cure the deficiency within 90 days or withdraw its registration.<sup>7</sup> As a practical matter, the NFA has said that where it identifies areas of noncompliance, it intends to work with the applicant to resolve the discrepancies before issuing any formal deficiency notice.<sup>8</sup>

### 4. No Individual Registration Requirement

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The CEA does not require the registration of individuals who are associated persons of Swap Entities<sup>9</sup> and there are no NFA proficiency exam requirements. Nevertheless, a Form 8-R and fingerprint card

must be filed for each principal as part of the firm's registration application, subject to certain exemptions.<sup>10</sup> A Swap Entity is prohibited from permitting an associated person who is subject to a statutory disqualification from effecting swap transactions.<sup>11</sup> However, a firm may request a determination from the NFA regarding whether a person would have been allowed to register notwithstanding his or her statutory disqualification.

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<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act.

<sup>2</sup> Section 4s Implementing Regulations encompass the regulations issued by the CFTC implementing CEA Section 4s(e), (f), (g), (h), (i), (j), (k) and (l).

<sup>3</sup> See CFTC Regulation 3.10(a)(1)(i), (v)(A) and (v)(B). The filing of Form 7-R subjects the applicant to on-site inspection by the CFTC to determine compliance with the Section 4s Implementing Regulations.

<sup>4</sup> The CFTC's policy generally is that a non-U.S. Swap Entity may, in certain instances, comply with its home country's Swap Entity requirements in lieu of the CFTC's requirements in those jurisdictions where the CFTC has determined that the foreign regulation is comparable (although not necessarily identical). See Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292 at 45,340.

<sup>5</sup> See CFTC Regulation 3.2(c)(3)(i). A provisional registrant must supplement its application to provide documentation demonstrating compliance with all applicable Section 4s Implementing Regulations that become effective after notice of provisional registration is issued. See CFTC Regulation 3.2(c)(3)(ii).

<sup>6</sup> See CFTC Regulation 3.2(c)(3)(i).

<sup>7</sup> See CFTC Regulation 3.10(a)(1)(v)(D)(1). After 90 days an application with an uncured deficiency will be deemed to be withdrawn and the provisional registration will cease automatically.

<sup>8</sup> See "The Section 4s Review Process," NFA website at [www.nfa.futures.org](http://www.nfa.futures.org).

<sup>9</sup> Regulation 1.3aa under the CEA limits the term "associated person" to "any *natural person* who is associated with a swaps entity in any capacity that involves solicitation or supervision of any person or persons so engaged." (Emphasis supplied.)

<sup>10</sup> See CFTC Regulation 3.2(c)(3)(i). Exemptions are available from the fingerprinting requirement in certain cases. See CFTC Regulation 3.21.

<sup>11</sup> CEA Section 4s(b)(6) and Regulation 23.22(b).