



**What the Buy-Side Needs to
Know About Dodd-Frank
CFTC U.S. Person Definition and
the Scope of EMIR: The Impact
on Hedge Fund Managers**

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Overview of Regulators

- **CFTC — swaps**
- **SEC — security-based swaps**
- **EMIR — ESMA**

Extraterritoriality

- **“Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations”**
 - CFTC guidance on extraterritoriality
- **Exemptive order**
 - Provides for a delay of the implementation of the CFTC guidance

Definition of “U.S. Person”

- **Key investment manager considerations**
 - Principal place of business
 - Majority owned by U.S. Persons

“Guidance”

VS.

“Rule”

EMIR and Regulatory Technical Standards (RTS)

- **Effective Aug. 16, 2012 across the EU**
- **Significant change in the way European fund managers manage their derivatives portfolios**

Counterparties Subject to EMIR

- **Financial counterparties (FC)**
- **Non-financial counterparties (NFC)**
- **“Third country” applicability**

SEC's Proposed Rule
Cross-Border Proposal of
Regulation of Security-Based
Swaps

CFTC-Provided Fact Patterns

- **Example 1**

U.S. manager and offshore fund

- **Example 2**

U.S. manager, offshore fund and non-U.S. fund investment manager

- **Example 3**

U.S. manager and U.S. and non-U.S. sub-advisers

Implications of CFTC U.S. Person Definition

- **Potential fund restructuring**
- **Investor representations**
- **Swap reporting obligations**
- **Inconsistent timing of compliance dates**
- **Subjective test**

Implications for Investment Funds

- **What does being a U.S. Person (or facing a U.S. swap dealer) or falling into the scope of EMIR mean for investment managers?**
 - Reporting
 - Clearing
 - Margin
 - Trading through SEFs
 - Portfolio reconciliation
 - Trade confirmations
 - Other obligations

Implications of Being Subject to EMIR

- **EMIR's three pillars**
 - Central clearing through CCPs
 - Reporting of all derivatives to TRs
 - Risk mitigation techniques for uncleared trades
- **Requires implementing RTS to fully operate**

Substituted Compliance

- **Outcome-based approach**
- **CFTC no-action relief for portfolio reconciliation if you fall under both EMIR and CFTC**

EMIR — Substituted Compliance

- **Lagging behind Dodd-Frank**
- **RTS on “third-country” applicability pending**
- **Sept. 3, 2013 ESMA advice to European Commission on “equivalence”**
- **RTS on “equivalence” pending**

ISDA Protocols



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