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Background

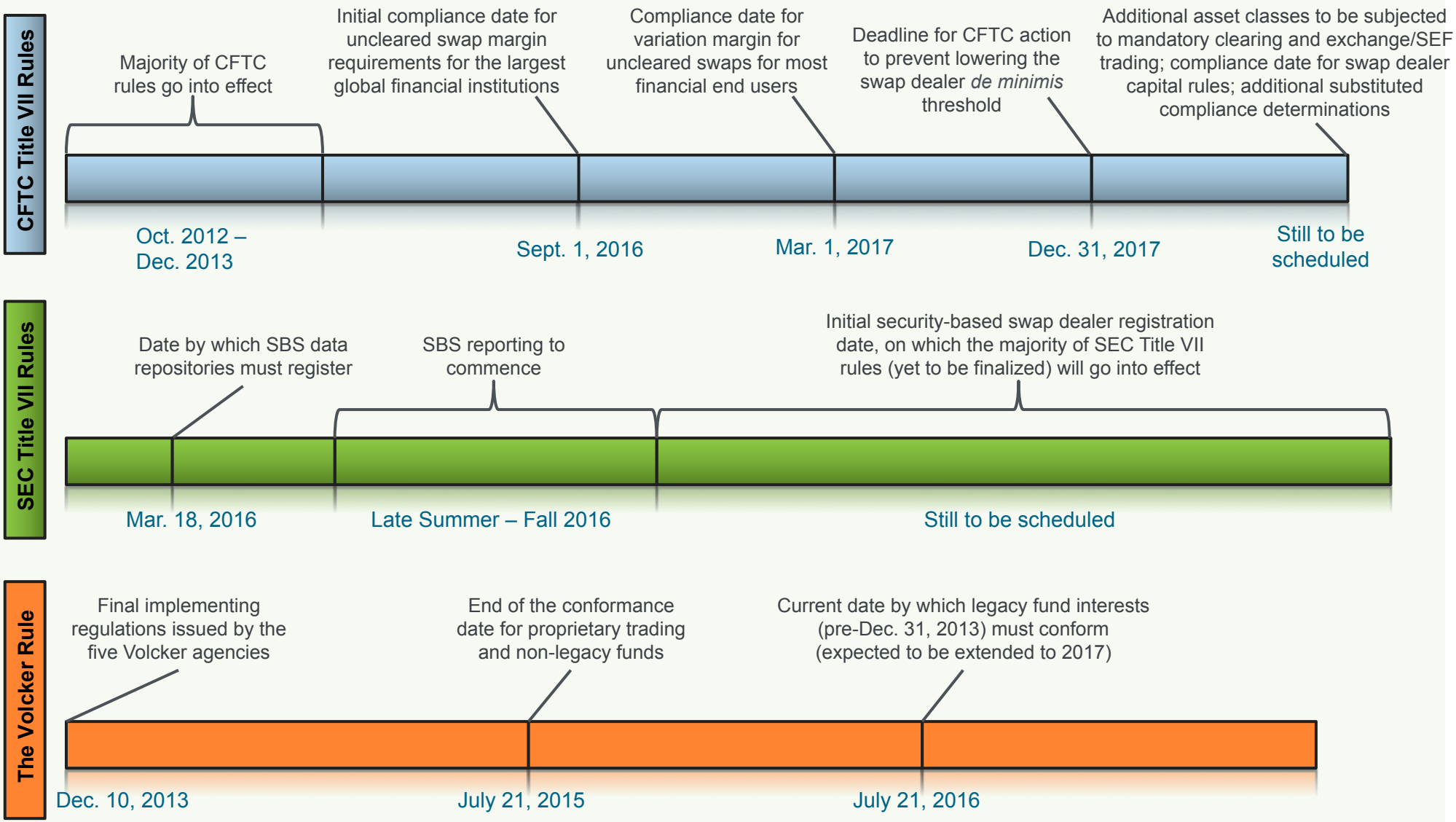
The Dodd-Frank Act

July 21, 2010: President Obama signs the Dodd-Frank Act into law

Areas Impacted By the Dodd-Frank Act

- Asset-Backed Securities Offerings
- Bank Breakup, Concentration and Growth Limits
- Broker-Dealer Regulation
- Capital Regulation
- Consumer Protection
- Credit Ratings Agencies
- Deposit Insurance Reforms
- **Title VII (OTC Derivatives Reform)**
- Executive Compensation/Corporate Governance
- Federal Reserve and Emergency Stabilization
- Government-Sponsored Enterprises
- Improving Access to Mainstream Financial Institutions
- Insurance
- Investor Protection
- Leverage and Risk-Based Capital
- Mortgage Reforms
- Municipal Securities
- Orderly Liquidation Authority
- Payment, Clearing and Settlement
- Person-to-Person Lending (Other Securities Market Regulation)
- Private Funds/Investment Advisers
- Reg D / Accredited Investors
- Regulation of Depository Institutions and their Holding Companies
- Systemic Risk Regulation
- TARP Authorization (Pay It Back Act)
- **Volcker Rule (Proprietary Trading and Private Funds Activities of banking organizations)**

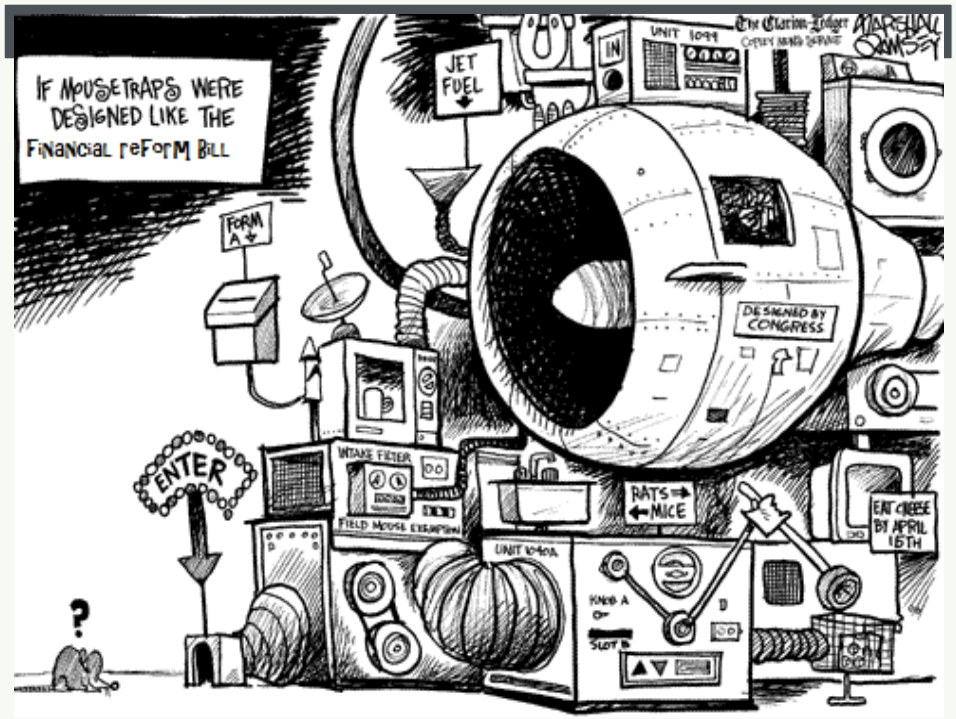
Implementation Timelines



Title VII: U.S. Regulation of The Swap Market

Key Elements of U.S. Derivatives Reform

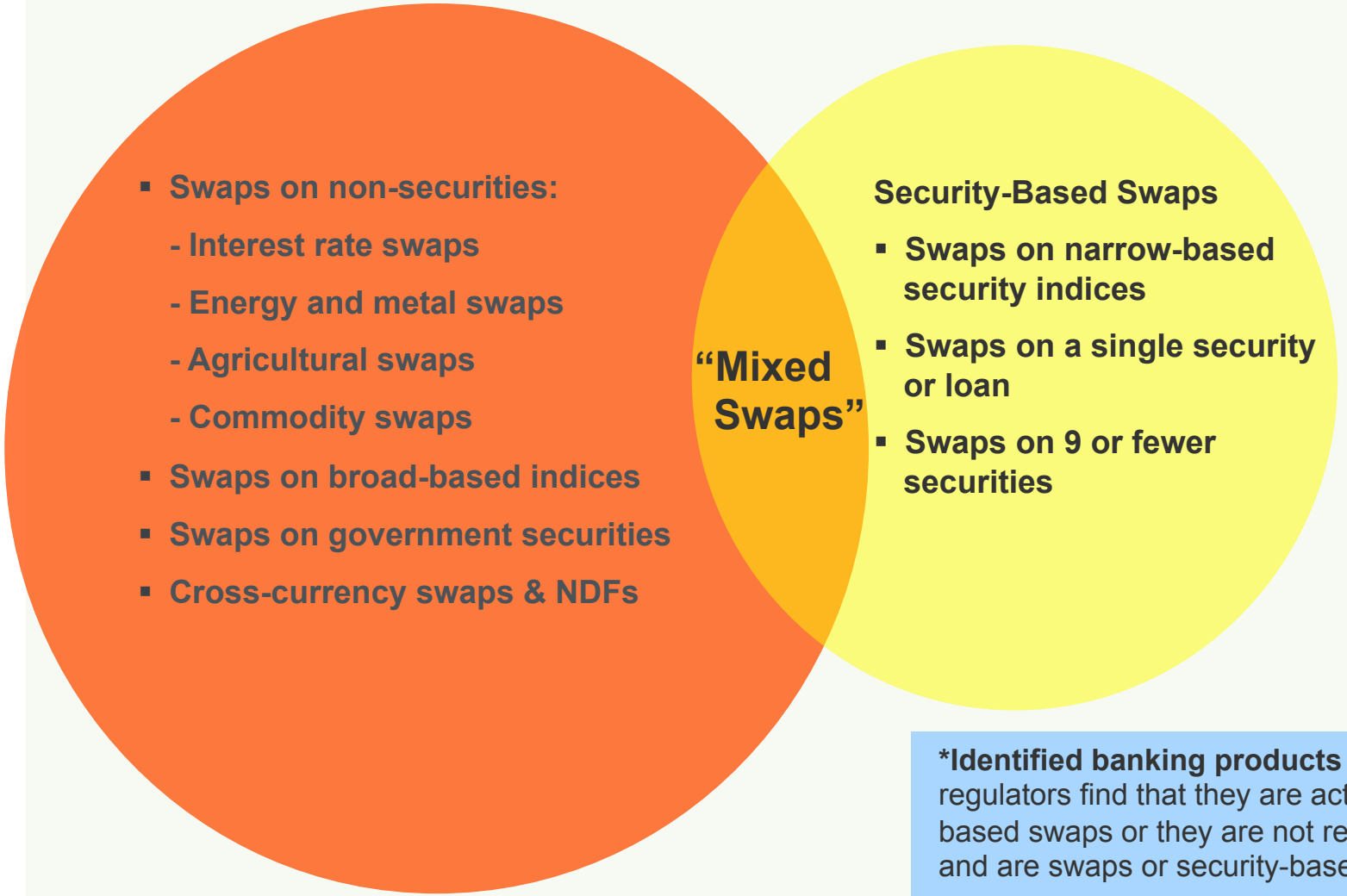
- Registration of dealers and major swap participants
- Margin and capital requirements
- Clearing and exchange/swap execution facility requirements
- Business conduct requirements
- Confirmation, reconciliation and compression requirements



- Trade reporting and public dissemination
- Trading documentation requirements
- Position limits
- Cross-Border regulation and harmonization
- Prohibition on off-exchange non-ECP transactions

Regulatory Status of Products

Split Jurisdiction of the Swap Market Between the CFTC and the SEC



Exclusions*

- Puts, calls, options on securities, indices of securities, CODs
- Contracts for purchase or sale of securities on a fixed basis or based on contingencies not related to creditworthiness
- Commodities contracts and security futures products traded on a contract market
- Sale of a nonfinancial commodity for deferred delivery, where physically settled
- FX forwards and swaps

***Identified banking products are excluded** *unless* bank regulators find that they are actually swaps or security-based swaps or they are not regulated by a bank regulator and are swaps or security-based swaps

Title VII Requirements by Market Participants

Requirements for All Swaps Market Participants

- Mandatory Clearing
- Mandatory Trade Execution
- Trade Reporting and Recordkeeping
- Position Limits and Large Trader Reporting
- Prohibition on Off-Exchange Swaps with non-ECPs

Additional Requirements for Swap Dealers and MSPs

- Registration
- Margin for uncleared swaps
- Capital
- Books and records
- Audit trail
- Business conduct standards
- Documentation standards
- Reporting of non-cleared swaps
- Other reporting
- Swaps pushout rule
- Conflict of interest procedures
- Reporting of non-cleared swaps
- Disclosure re: operations, practice, financial integrity of transaction and conditions of swaps
- No association with statutorily disqualified persons
- Initial margin segregation by swap dealers and MSPs at customer's request for noncleared swaps

**Many of these obligations require end users to provide representations and to satisfy requirements such as trade documentation and (in some cases) margin for uncleared swaps in order for their swap dealer counterparties to meet their regulatory obligations.

Registration and Regulation of Swap Dealers

Who Qualifies as a Swap Dealer?

- A swap dealer is an entity that:
  - Holds itself out as a dealer in swaps
  - Makes a market in swaps
  - Regularly enters into swaps with counterparties in the ordinary course of business
  - Engages in any activity causing the entity to be commonly known in the trade as a dealer or market maker in swaps
- Subject to certain exceptions and a *de minimis* exemption
- 103 (provisionally or pending) registered swap dealers as of December 1, 2015
  - Some are affiliated

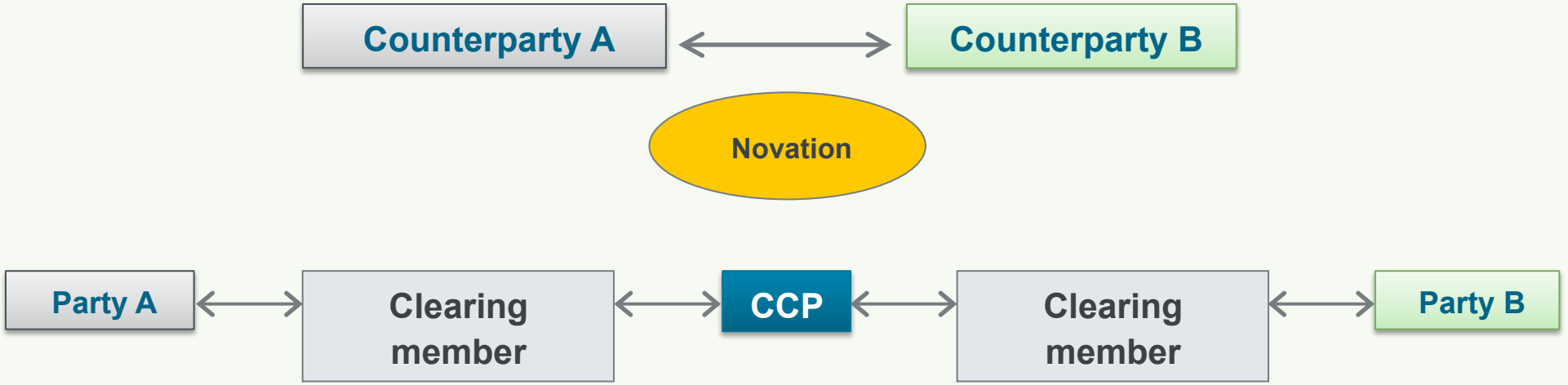
Who Qualifies as a Swap Dealer?

The *De Minimis* Exemption

- $8 billion in "notional amount" of swaps in a dealing capacity in the prior 12-month period
  - Threshold notional amount will reduce to $3 billion in December 2017, unless the CFTC takes action to change it
  - Different notional amounts apply to security-based swap dealing activities to determine whether an entity must register as a security-based swap dealer
  - Swaps not entered into in a dealing capacity, swaps between affiliates, and certain swaps connected to loans with customers not included
- Complex cross-border rules apply
  - U.S. entities must count all swaps; Non-U.S. entities must count swaps with U.S. persons and certain other counterparties with a U.S. nexus
  - As a result:
    - Many U.S. swap dealers have moved relationships with non-U.S. counterparties to offshore affiliates (e.g., CGML, GSI, JPMS)
    - Swap dealers will require representations as to counterparty status, including whether the counterparty is, or is guaranteed by, a U.S. person

Swap Clearing

Swap Clearing



- The CCP has direct relationships only with firms that are its members.
- Members with clearing privileges ("clearing members") guarantee performance by A and B, while the CCP in effect guarantees performance by the clearing members.
- Market participants that are not clearing members must establish arrangements with clearing members and post margin in accordance with clearing firm regulations and CCP rules.

Which Swaps Are Currently Required to Be Cleared?

- The CFTC has designated several specific classes of IRS and index CDS as subject to mandatory clearing.
  - CDS:
    - Specified tenors of recent series of the untranched CDX North American Investment Grade and High Yield indices and the untranched iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe HiVol indices.
  - IRS:
    - Specified tenors of fixed-to-floating, floating-to-floating, forward rate agreement and overnight indexed swaps denominated in U.S. dollars, euros, British pounds and (other than for overnight indexed swaps) Japanese yen.
- These swaps must be cleared only if a clearinghouse accepts them for clearing.
- The SEC has not yet made any clearing determinations.

Exclusions and Exemptions from the Clearing Requirement

The End-User Exception

- Available at the election of any swap counterparty that:
  - is not a **financial entity**;
  - is using the swap to hedge or mitigate commercial risk; and
  - notifies the CFTC or SEC how it generally meets its financial obligations associated with entering into non-cleared swaps.
- Requires board approval by entities issuing securities registered under the Securities Act or reporting under the Exchange Act.
- Notice of election is typically provided via Protocol 2.0, with reporting requirements satisfied on an annual basis by either the electing entity or the swap dealer

Inter-Affiliate Exemption

- Subject to several technical and burdensome conditions

Relief for Treasury Affiliates

- CFTC Staff relief for entities that are financial in nature but are affiliated with commercial end users

Exchange / SEF Trading of Swaps

Exchange / SEF Trading of Swaps

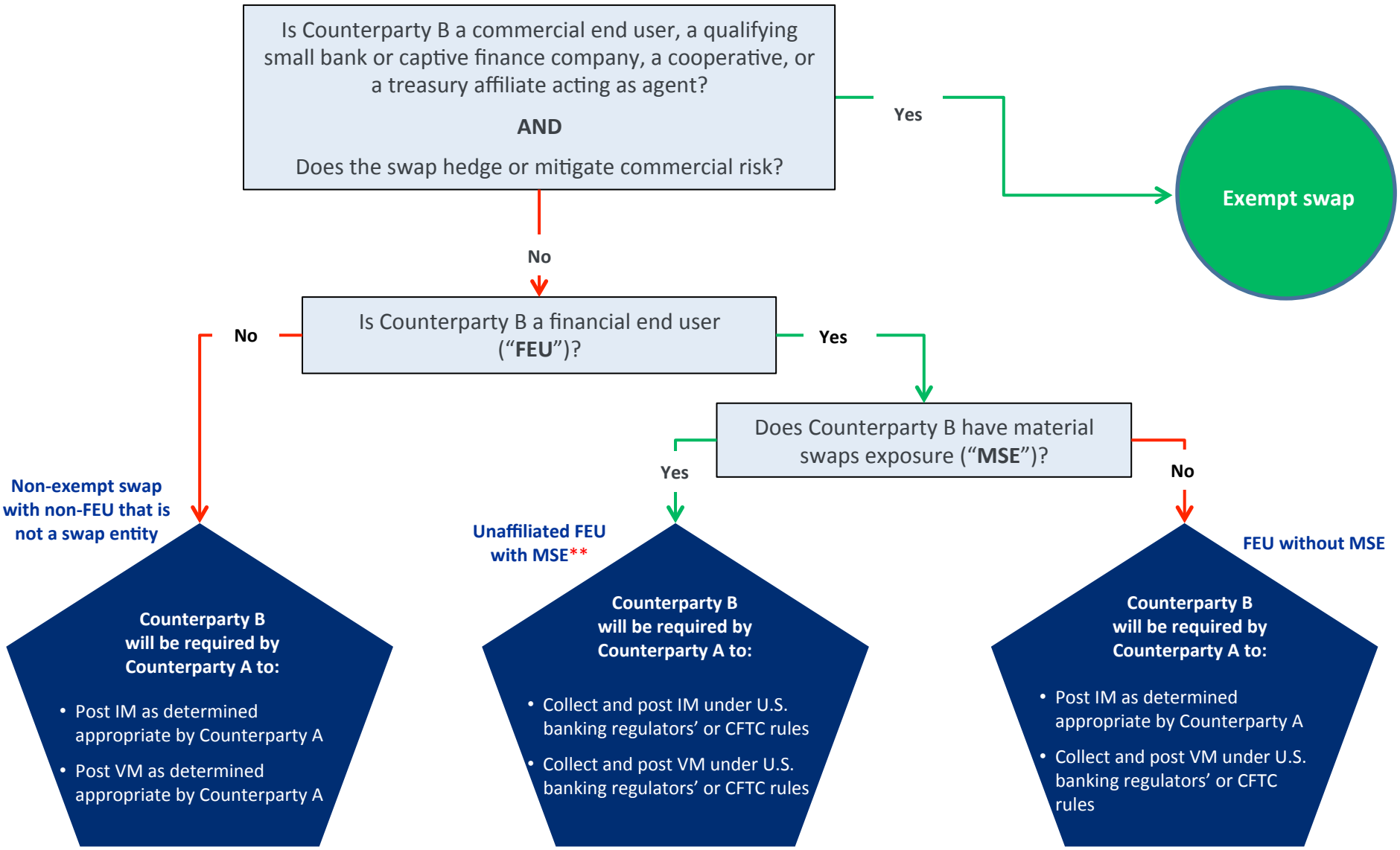
- "Made Available to Trade" Determinations
  - Swaps that are subject to mandatory clearing and that are "made available to trade" on a SEF or DCM must be executed on a SEF or DCM
- Swap trading for the most liquid / standardized swaps will not be bilateral.
- Market participants will need to obtain access to DCMs and SEFs, including submission to the jurisdiction and operating rules of the platform.

Uncleared Swap Margin

Application of the U.S. Banking Regulators' and CFTC's Margin Rules

FEU: financial end user
IM: initial margin
MSE: material swaps exposure
VM: variation margin

This flowchart describes the margin rules that may apply to Counterparty B, an end user, when transacting in uncleared swaps with Counterparty A, a swap dealer.*



* These rules apply directly to covered swap entities and only indirectly to their counterparties that are end users.

** If Counterparty B is affiliated with Counterparty A, special rules apply.

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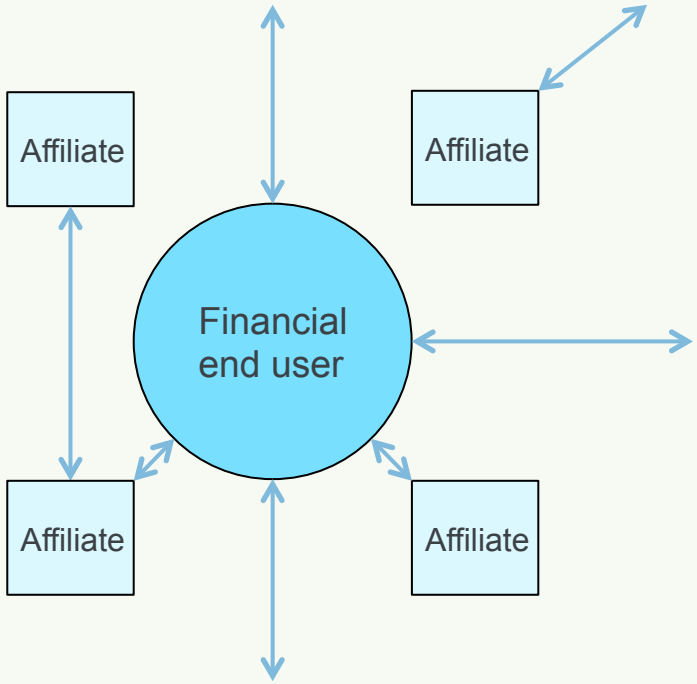
Material Swaps Exposure Calculation

Material Swaps Exposure if > $8 billion



Material swaps exposure is measured as: the average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, FX swaps and FX forwards for each business day in June, July and August of the previous year of an FEU and all affiliates to all counterparties, not including exempt swaps.

Uncleared swaps, uncleared security-based swaps, FX swaps and FX forwards: ⟷

- A covered swap entity may reasonably rely on a representation from its counterparty as to whether the counterparty has material swaps exposure.
- FX swaps and FX forwards, although included in the material swaps exposure calculation, are not subject to the margin requirements under the U.S. banking regulators' or CFTC rules.

Initial and Variation Margin

- Other than for exempt swaps, initial and variation margin will need to be posted and collected by a covered swap entity based upon the counterparty's classification and the result of the material swaps exposure calculation, as follows:

Counterparty B	Initial Margin Requirement	Variation Margin Requirement
Swap Entity	CSE must **collect*** from Counterparty B	CSE must **collect** from and **post** to Counterparty B
FEU *with* MSE	CSE must **collect** from and **post** to Counterparty B**	CSE must **collect** from and **post** to Counterparty B
FEU *without* MSE	CSE must **collect** from Counterparty B as determined appropriate by the CSE	CSE must **collect** from and **post** to Counterparty B
Other counterparty***	CSE must **collect** from Counterparty B as determined appropriate by the CSE	CSE must **collect** from Counterparty B as determined appropriate by the CSE

- **$50 million initial margin threshold**. A covered swap entity may adopt a maximum initial margin threshold amount of $50 million, below which it need not collect or post initial margin.**
  - The threshold amount applies on a consolidated basis, both to the consolidated covered swap entity group and the consolidated counterparty group.

* As a practical matter, swaps between two covered swap entities will require bilateral collecting and posting of initial margin. The amount that a covered swap entity must post is determined by the margin rules applicable to its counterparty. For example, a PR CSE transacting with a CFTC CSE must post the amount its CFTC CSE counterparty is required to collect under the CFTC rules.

** Special rules apply to swaps with affiliates.

*** Only relevant if the CSE is regulated by a U.S. prudential regulator.

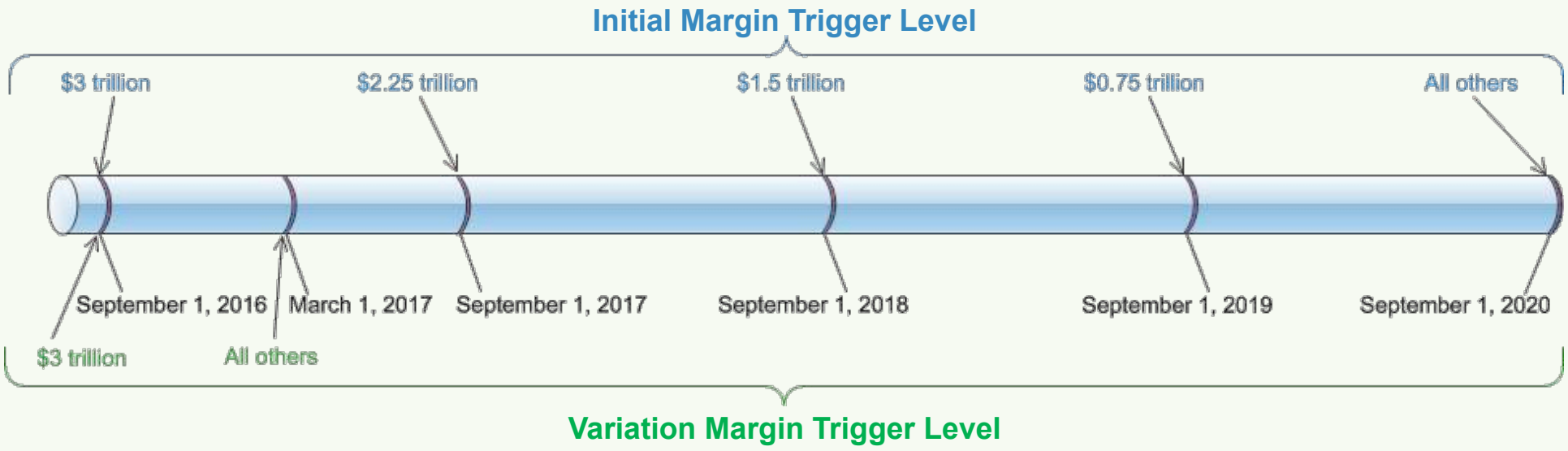
Margin Documentation Requirements

- Covered swap entities will require their financial end user counterparties to execute trading documentation regarding credit support arrangements, provided that the credit support arrangements:
  - provide the parties with right to collect and post as required by the applicable rules;
  - specify the methods for determining the value of each swap for calculating VM;
  - specify the dispute resolution procedures; and
  - describe the methods used to calculate IM.

Margin Compliance Timing

PHASED-IN COMPLIANCE SCHEDULE

- Once the Margin Calculation Amounts, as defined below, for **both** the end user and its covered swap entity counterparty exceed the relevant Margin Trigger Level, the counterparties must comply with the relevant margin requirement no later than the compliance date specified below for swaps entered into on or after that date.
  - The Margin Calculation Amount for an entity equals the combined average daily aggregate notional amount of uncleared swaps (including FX swaps and FX forwards) and uncleared security-based swaps for each business day in March, April and May, of the entity and its affiliates.
    - Exempt swaps are not included.
- Swaps entered into before the relevant compliance date can be excluded from the margin requirements if they are restricted to EMNAs or separate netting portfolios within EMNAs that do not include post-compliance date swaps.



Swap Reporting

Swap Reporting

Swap Counterparty

Swap Dealer

Data Not Subject to Public Dissemination for Regulatory Purposes

Data Subject to Public Dissemination

Swap Data Repository

The swap dealer (or a U.S. financial entity counterparty that is not a swap dealer) will typically be the reporting party. For cleared swaps, data will be reported by the clearing organization as well as the reporting party.

Reporting parties must report "Continuation Data," including any corporate event of either party or any novation or termination of the swap. This places ongoing obligations on the non-reporting party to notify the reporting party of any change that is required to be reported.

Data Subject to Public Dissemination

- Anonymous trade data does not include identifying information
- Capped notionals for large swaps
- Potential delay for block trades and large notional off-facility swaps

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Swap Dealer Business Conduct Standards

Indirect Obligations on End Users

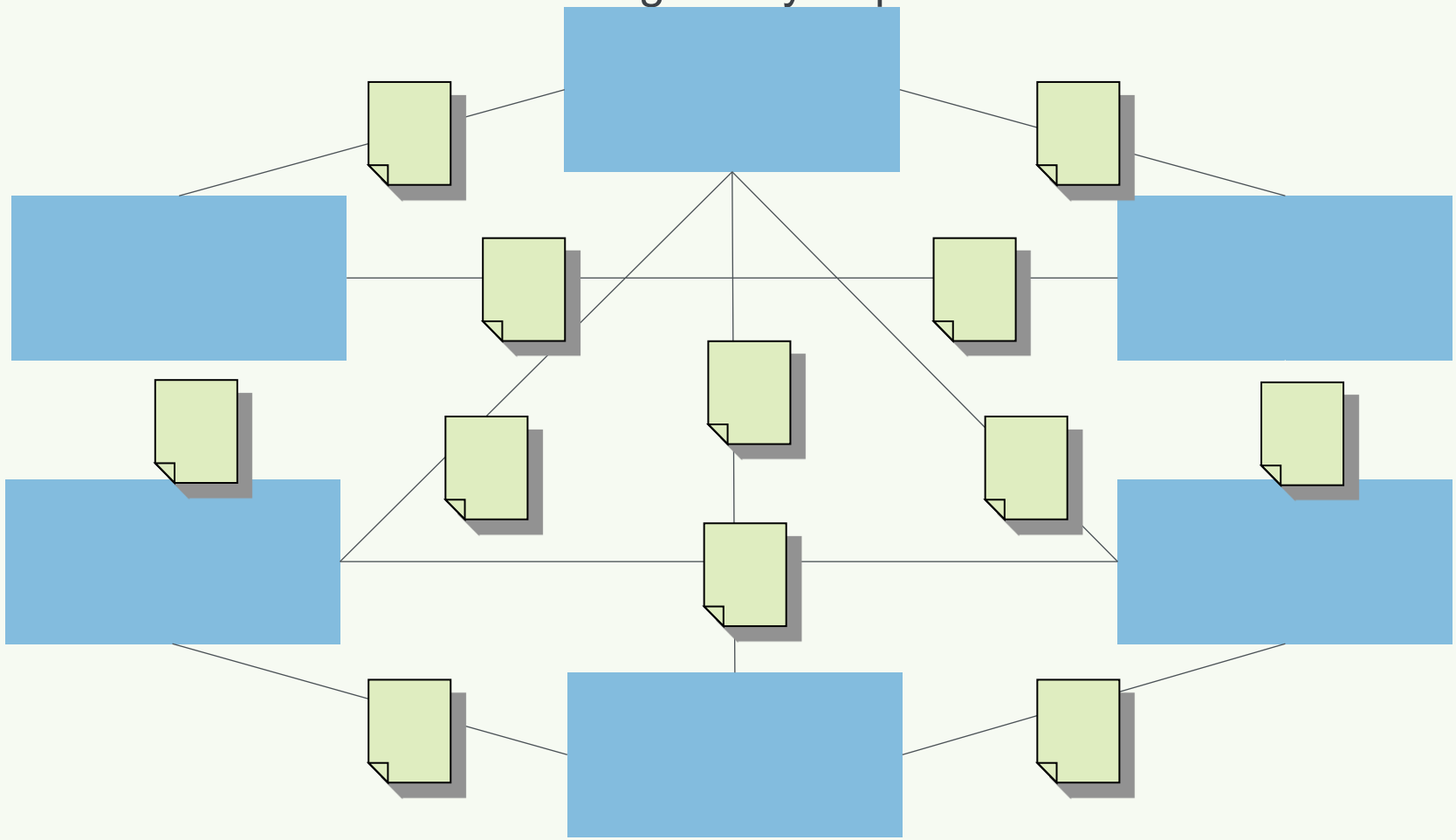
Swap dealers, among other things, are required to:

1. Obtain KYC information from, and comply with conduct standards when interacting with, counterparties, including confirmation that counterparties are eligible contract participants
2. Disclose key information (pre-trade mark, material characteristics and conflicts) to counterparties
3. Enter into trading relationship documentation with counterparties
4. Confirm all swaps in writing and engage in portfolio reconciliation and compression exercises

These requirements effectively result in **"indirect" obligations** on end-user counterparties, since swap dealers must obtain certain representations, information and agreements from counterparties to comply with their regulatory requirements.

Industry Challenge

How do you efficiently and effectively update documentation to meet new regulatory requirements?



The ISDA Dodd-Frank Protocols

- ISDA has developed two Protocols to address new Title VII requirements.
  - The August 2012 DF Protocol (Protocol 1.0)
    - Covers, among other things: ECP status representation, agreement on method of disclosures, reporting waivers and institutional suitability representation.
  - The March 2013 DF Protocol (Protocol 2.0)
    - Covers, among other things: election of the end-user exception to clearing and other clearing-related notices, calculation of risk valuations and dispute resolution, and election to and method of portfolio reconciliation.
- A Protocol is a multilateral contractual amendment mechanism that allows for standardized amendments to be made to the swap agreements between adhering parties
- The Protocols are entered into using an online platform (ISDA Amend) created by Markit.
- Adhering to the Protocols is a multi-step process that requires at least a basic understanding of the rules in order to make accurate and appropriate elections.

ISDA Safe, Efficient Markets

markit

Protocol 1.0:
17,393 adhering parties as of December 21, 2015

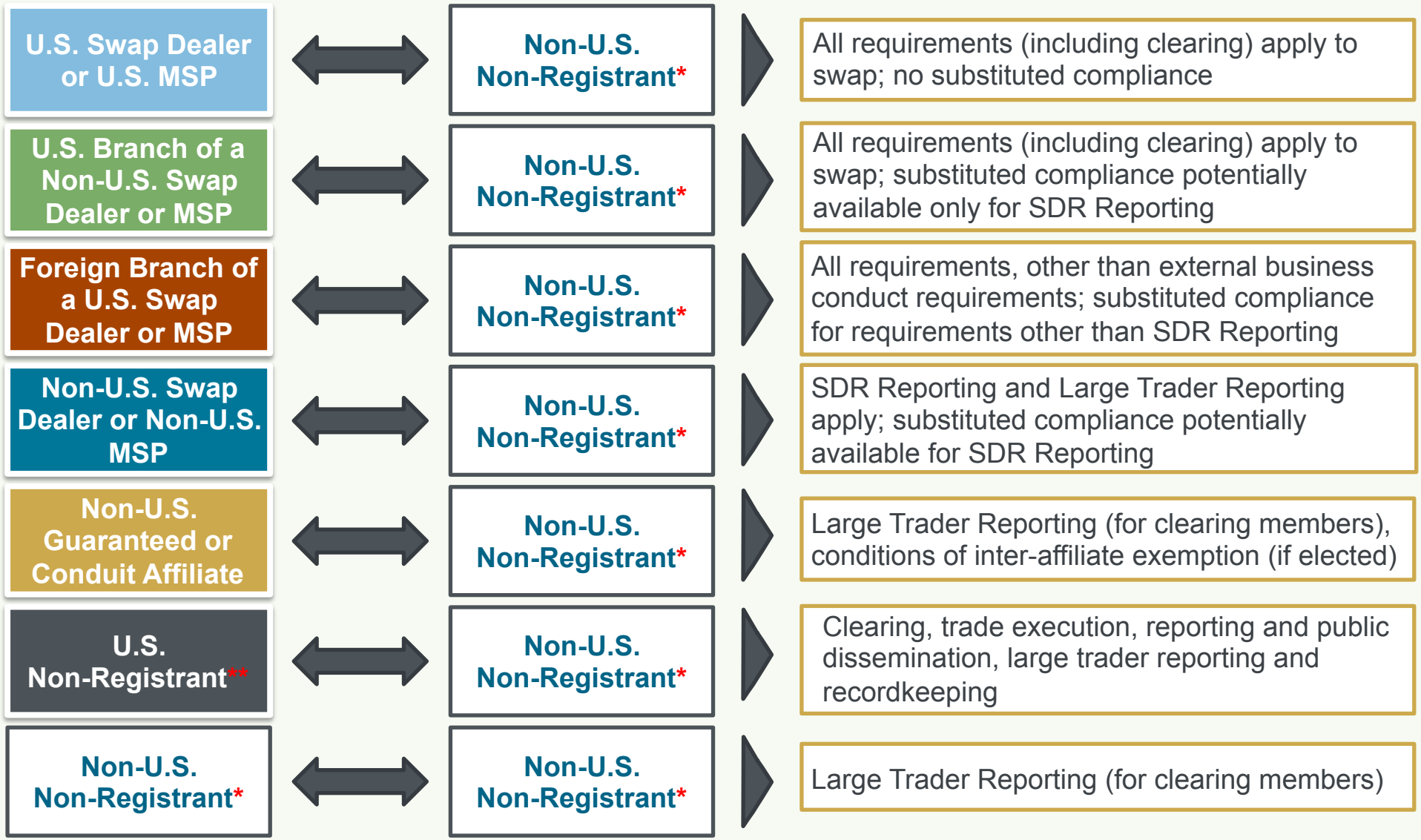
Protocol 2.0:
16,703 adhering parties as of December 21, 2015

Cross-Border Application of Title VII

Application of Title VII to Activities Outside the United States

- Certain rules do not apply to transactions taking place outside the United States where the parties have no U.S. nexus. For example, "transaction-level requirements" (including clearing, trade execution, uncleared swap margin, public dissemination and documentation) do not apply to a swap between a non-U.S. registered swap dealer and a non-U.S. counterparty, provided neither is guaranteed by a U.S. person.
  - In some cases, applicability of rules depends on the "U.S. Person" status of the parties. The definition of U.S. person is complicated and varies depending on the regulator and the particular regulation.
  - The CFTC may, in the future, impose transaction-level requirements on transactions that are regularly "arranged, negotiated or executed" by personnel of a non-U.S. swap dealer located in the United States. The CFTC is expected to provide further guidance on this point.
- U.S. regulators recognize that other jurisdictions are implementing similar regulatory regimes for derivatives and that compliance by firms transacting across borders could be subject to regulatory conflicts and redundant regulation without a system of substituted compliance.
  - To date, the CFTC has approved comparability determinations for ***certain*** swap requirements in Australia, Canada, the EU, Hong Kong, Japan and Switzerland.

Summary of Application of CFTC Title VII Requirements to Transactions of Non-U.S. Non-Registrants



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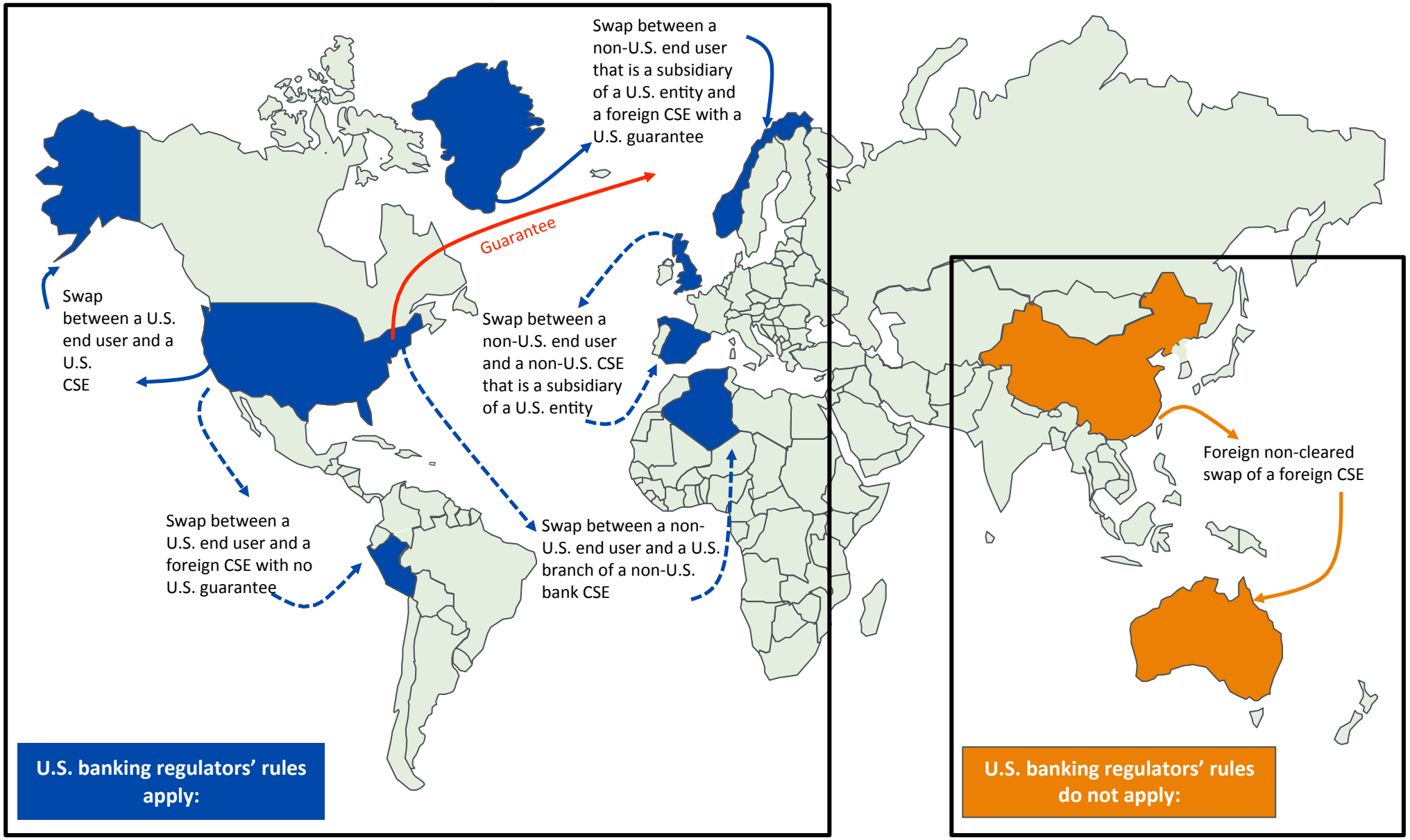
* Assumes the Non-Registrant is not a Guaranteed or Conduit Affiliate

** Where a swap is executed anonymously on a DCM, SEF or FBOT and cleared by a DCO, neither party is required to comply with Non-Registrant Requirements, with the exception of Large Trader Reporting, SDR Reporting and swap data recordkeeping

Examples of Application of the U.S. Banking Regulators' Uncleared Swap Margin Rules*



* The CFTC finalized its substantive uncleared swap margin rules on Dec. 16, 2015, but has not yet finalized its rules addressing the cross-border application of those margin rules.

Substituted compliance may be available.

Substituted compliance not available.

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Interaction With Non-U.S. Regimes

European Market Infrastructure Regulations ("EMIR")

- The European Market Infrastructure Regulation ("**EMIR**") went into force in August, 2012.
  - Product Scope: Applies to options, futures, swaps and forwards that are related to securities, commodities (whether cash or physically settled) or that are for credit risk transfer purposes, or other similar products. Broader than Title VII.
  - Scope of Requirements: Generally, EMIR requires trade reporting, valuation and dispute resolution, portfolio reconciliation, and will, in the future, require clearing and exchange trading for particular standardized products and margin for uncleared transactions. Title VII is broader in the scope of requirements, including risk and conflict disclosure requirements and additional fair dealing and business conduct standards, and the prohibition on transacting with non-ECPs off exchange.
- The European Securities and Markets Authority ("**ESMA**") subsequently issued a series of "regulatory technical standards" and "implementing technical standards."
- As of January 2016, transactions that are in scope for EMIR are subject to the trade reporting requirements and "risk-mitigation techniques," including mark-to-market valuation, dispute resolution, compression and portfolio reconciliation.
- In December, ESMA announced that mandatory clearing will begin in June 2016 for designated classes of interest rate swaps.
- Margin requirements for uncleared derivatives are expected to be implemented on a timeline similar to that of the U.S. regulators.

Cross-Border Regulation of Financial Markets

EUROPEAN MARKET INFRASTRUCTURE REGULATION

EMIR applies to:

- OTC derivatives transactions where at least one counterparty is established in the EU;
- OTC derivatives transactions between EU branches of third-country entities (e.g., transaction between London branches of U.S. swap dealers); and
- OTC derivatives transactions between third-country entities, where at least one is guaranteed by an EU entity, subject to conditions and thresholds for the guarantor.

The EMIR Protocol

- ISDA has developed a protocol (the "**EMIR Protocol**") to address trade reporting consent and elections related to the EMIR risk mitigation techniques.
- As of December 21, 2015, there were 13,218 adhering parties.

The vast majority of requirements that apply to a swap subject to one or the other of CFTC requirements and EMIR are largely similar from the end user's point of view, though the documentation requirements differ.

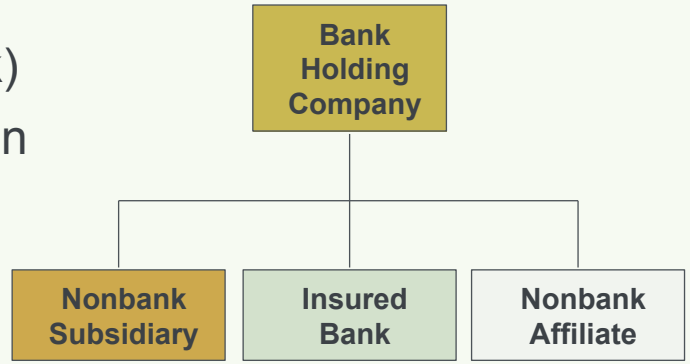
The Volcker Rule

The Volcker Rule's General Prohibition

- The Volcker Rule prohibits banking entities from:
  - engaging in **proprietary trading** or
  - acquiring or retaining an **ownership interest** in, **sponsoring** or having certain other relationships with **covered funds**,

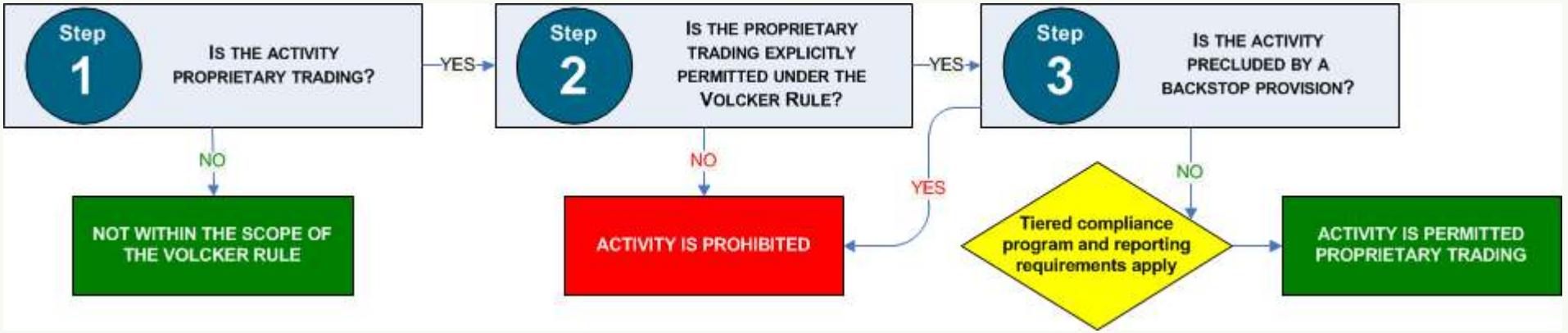
  unless specifically excluded or permitted.

- **Banking entity** includes:
  - an insured depository institution (generally, a U.S. bank)
  - a company that controls an insured depository institution
  - a company that is treated as a bank holding company
    - a foreign bank with a U.S. branch, agency or U.S. commercial lending company subsidiary
    - a parent company of such foreign bank
  - an affiliate or subsidiary of any of the above



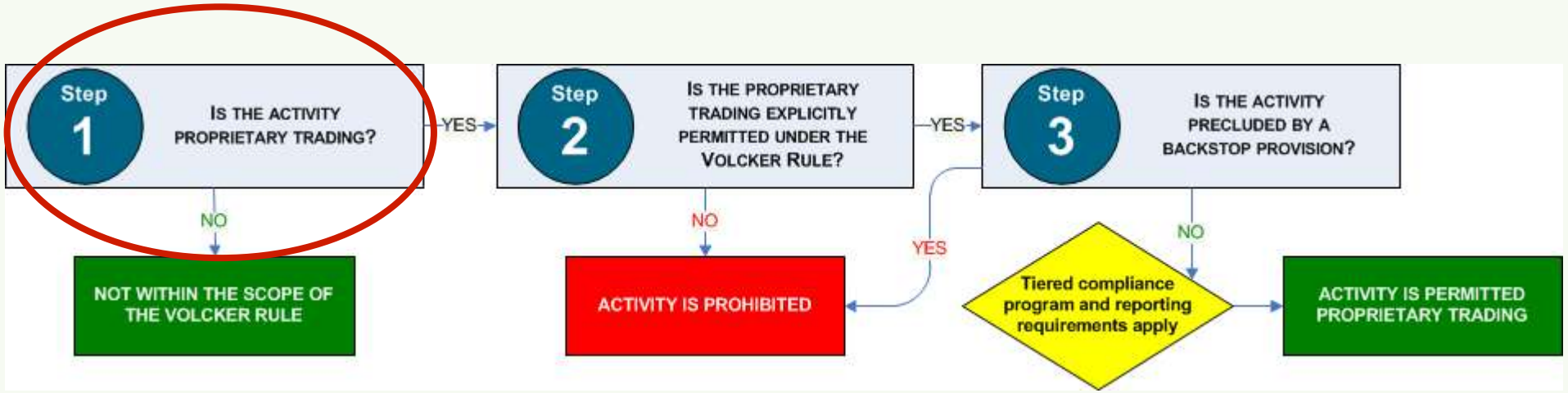
Proprietary Trading

Proprietary Trading



- Banking entities are prohibited from engaging in proprietary trading, subject to certain specifically permitted activities (including underwriting, market making, risk-mitigating hedging and, for foreign banks, transactions outside the United States).
- Permitted activities must be conducted in accordance with compliance and reporting requirements.
- Even if an activity is otherwise a "permitted activity," it may be prohibited under one of the three "backstop" provisions.
  - "Material conflict of interest"
  - "High risk asset" or "high-risk trading strategy"
  - Threat to the safety and soundness of the banking entity or the U.S. financial system

Step 1: Is the Banking Entity Engaged in Proprietary Trading?

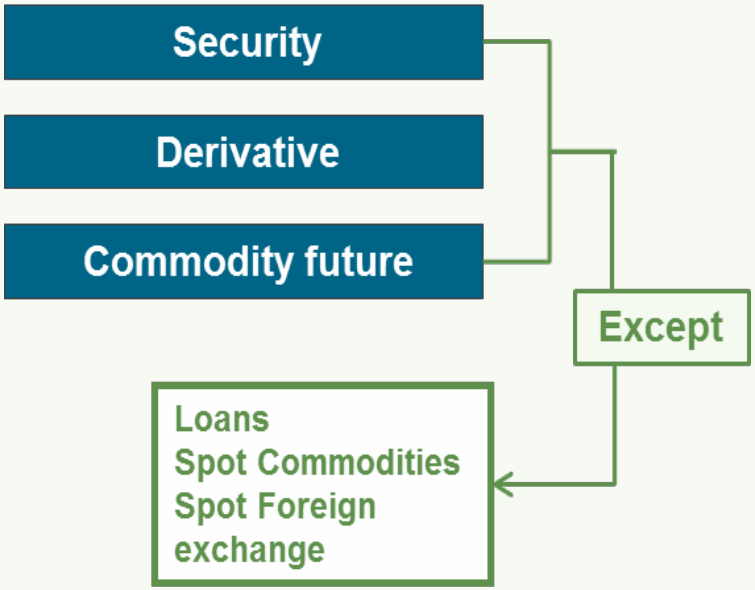


How Have the Regulators Defined Proprietary Trading?

- Proprietary trading means engaging by a **banking entity** as **principal** for a **trading account** in any **purchase or sale** of **financial instruments**

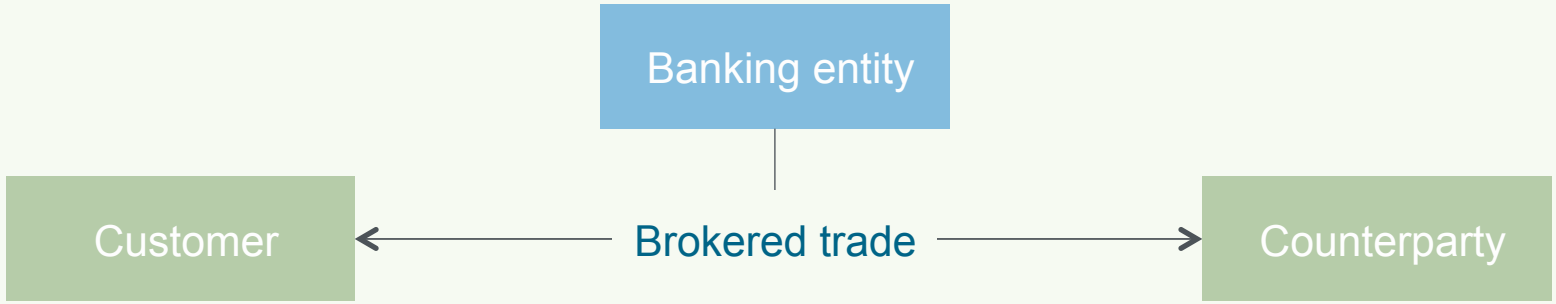
How Have the Regulators Defined Proprietary Trading?

Banking Entity | **Financial Instrument** | Principal | Trading Account | Exclusions



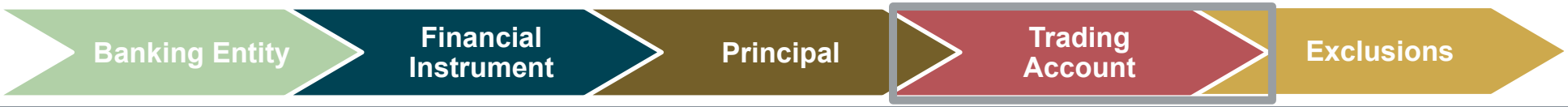
- **Financial instrument** includes:
  - A security, including an option on a security;
  - A derivative, including an option on a derivative; or
  - Commodity futures and options on futures.
- Financial instrument ***does not*** include:
  - A loan, to the extent it is not a security or derivative;
  - Spot foreign exchange or currency; and
  - Certain spot transaction in other commodities.

How Have the Regulators Defined Proprietary Trading?



- Proprietary trading ***does not*** include acting solely as agent, broker, or custodian.
  - Acting in these types of capacities does not involve trading as **principal**.

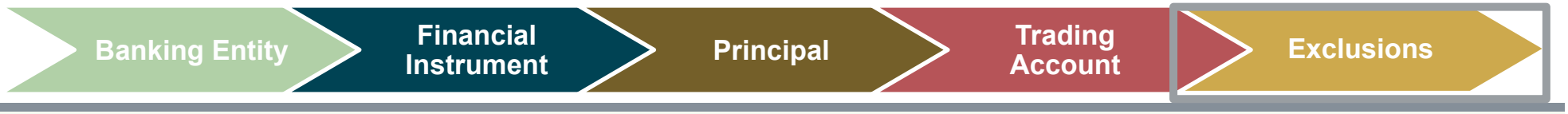
How Have the Regulators Defined Proprietary Trading?



A purchase or sale of a financial instrument is generally considered to be in a trading account if ***any*** of the following tests is satisfied:

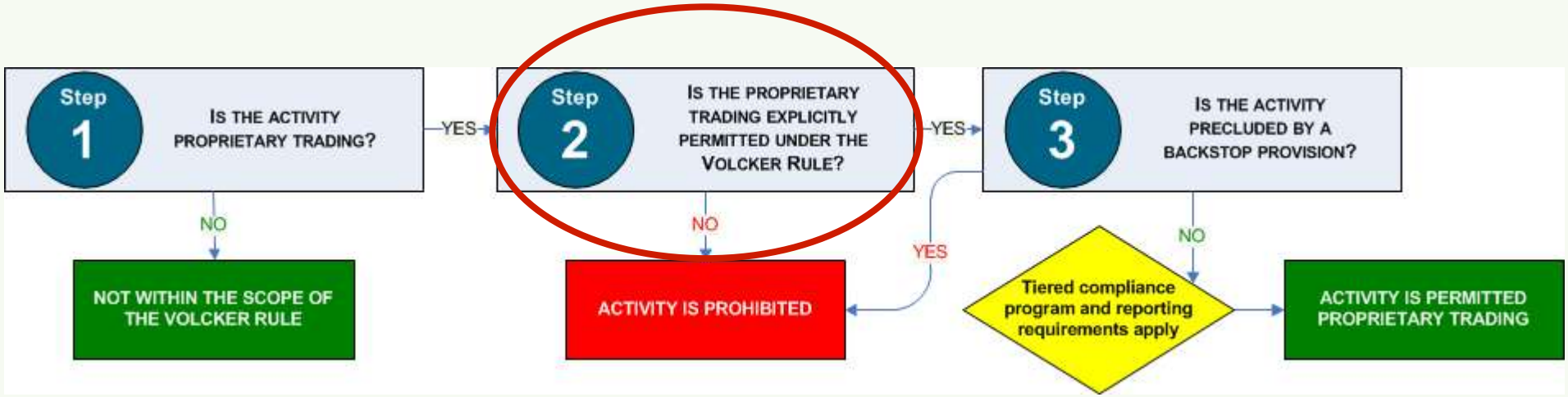
- **Purpose Test:** Trading principally for the purpose of short-term resale, benefitting from short-term price movements, realizing short-term arbitrage profits, or hedging a trading account position.
  - Rebuttable presumption if the purchase or sale, including a substantial transfer of the risk of the financial instrument occurs within 60 days.
- **Market Risk Capital Test:** A banking entity or affiliate that is an IDI, a BHC or an S&L company purchases or sells financial instruments that are both market risk capital rule covered positions and trading positions (or hedges thereof) under the U.S. market risk capital rule.
- **Status Test:** Regardless of purpose, if the purchase or sale occurs in connection with the activities of the banking entity that require it to be registered in the United States as a dealer, swap dealer, or security-based swap dealer or that engages in dealer activities outside the United States.

How Have the Regulators Defined Proprietary Trading?



- There are nine **exclusions** from proprietary trading for certain purchases and sales of financial instruments that generally do not involve short-term trading intent. These include:
  - repos and reverse repos;
  - securities lending or borrowing;
  - purchases and sales of securities for liquidity management purposes, subject to a documented liquidity management plan meeting certain requirements;
  - acting solely as agent, broker or custodian; and
  - purchases and sales for employee compensation plans.

Step 2: Permitted Proprietary Trading



Most of the compliance issues facing banks arise in the context of the permitted activities.

Permitted Proprietary Trading

- The Volcker Rule provides exemptions from the proprietary trading prohibition, subject to conditions, including implementation of detailed compliance and reporting programs.

- Permitted activities (also known as "exemptions") include:
  - market making;
  - risk-mitigating hedging;
  - underwriting;
  - trading in U.S. government obligations;
  - certain trading in foreign government obligations;
  - trading on behalf of customers (i.e., fiduciary and riskless principal transactions);
  - trading by a regulated insurance company; and
  - trading activities by foreign banking entities outside the United States ("TOTUS").

Market Making: Key Requirements

- The trading desk **routinely stands ready** to purchase and sell the financial instrument and is willing and available to quote, purchase and sell those types of financial instruments in **commercially reasonable amounts** and **throughout market cycles** as is appropriate based on the liquidity, maturity and depth of the market for the relevant financial instruments.

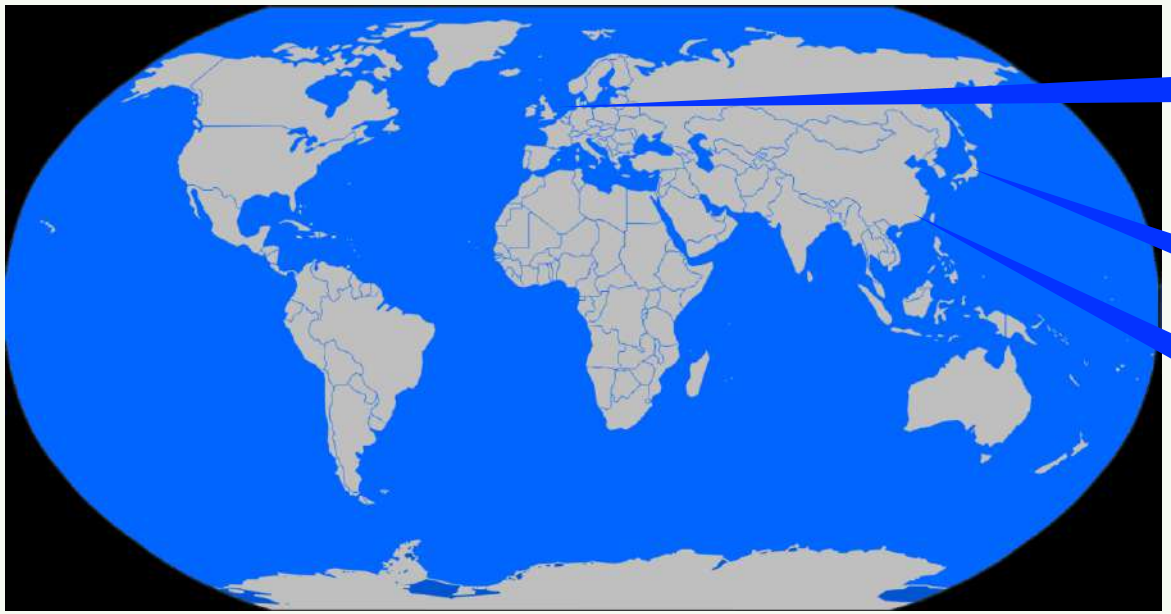
- The trading desk's **market maker inventory** must be designed not to exceed, on an ongoing basis, the **reasonably expected near-term demands** of **clients, customers or counterparties**.

Market Making: Additional Requirements

- The banking entity must have an **internal compliance program** meeting specified requirements, including the actions the desk will take to demonstrably reduce or significantly mitigate promptly the risks of its financial exposure.
- Limits on each desk, based on the nature and amount of the desk's market-making activities, addressing a number of specified factors.
- **Compensation arrangements** of persons performing market making-related activities must be designed not to reward or incentivize prohibited proprietary trading.
- The banking entity must be **licensed or registered** to engage in market making-related activity if and to the extent required by applicable law.

Trading Outside the United States ("TOTUS")

Market Making | Risk-Mitigating Hedging | Underwriting | Government Obligations | **TOTUS**



Two key elements to TOTUS:

- restrictions on the activity of the TOTUS desk;
- restrictions on types of counterparties.

TOTUS Exemption: Restrictions on the TOTUS Desk

- In order to qualify for TOTUS:
  - the banking entity must meet certain U.S. law requirements as a foreign bank, and may not be a subsidiary of a U.S. bank;
  - the banking entity, and personnel of the banking entity or its affiliate that **arrange, negotiate or execute** the purchase or sale, may not be located in the United States;
  - the banking entity, and its personnel, that **makes the decision** to purchase or sell as principal is not located in the United States;
  - the purchase or sale, **including any transaction arising from risk-mitigating hedging** related to the instruments purchased or sold, may not be accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located or organized in the United States; and
  - no **financing** may be provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State (with an exclusion for general financing).

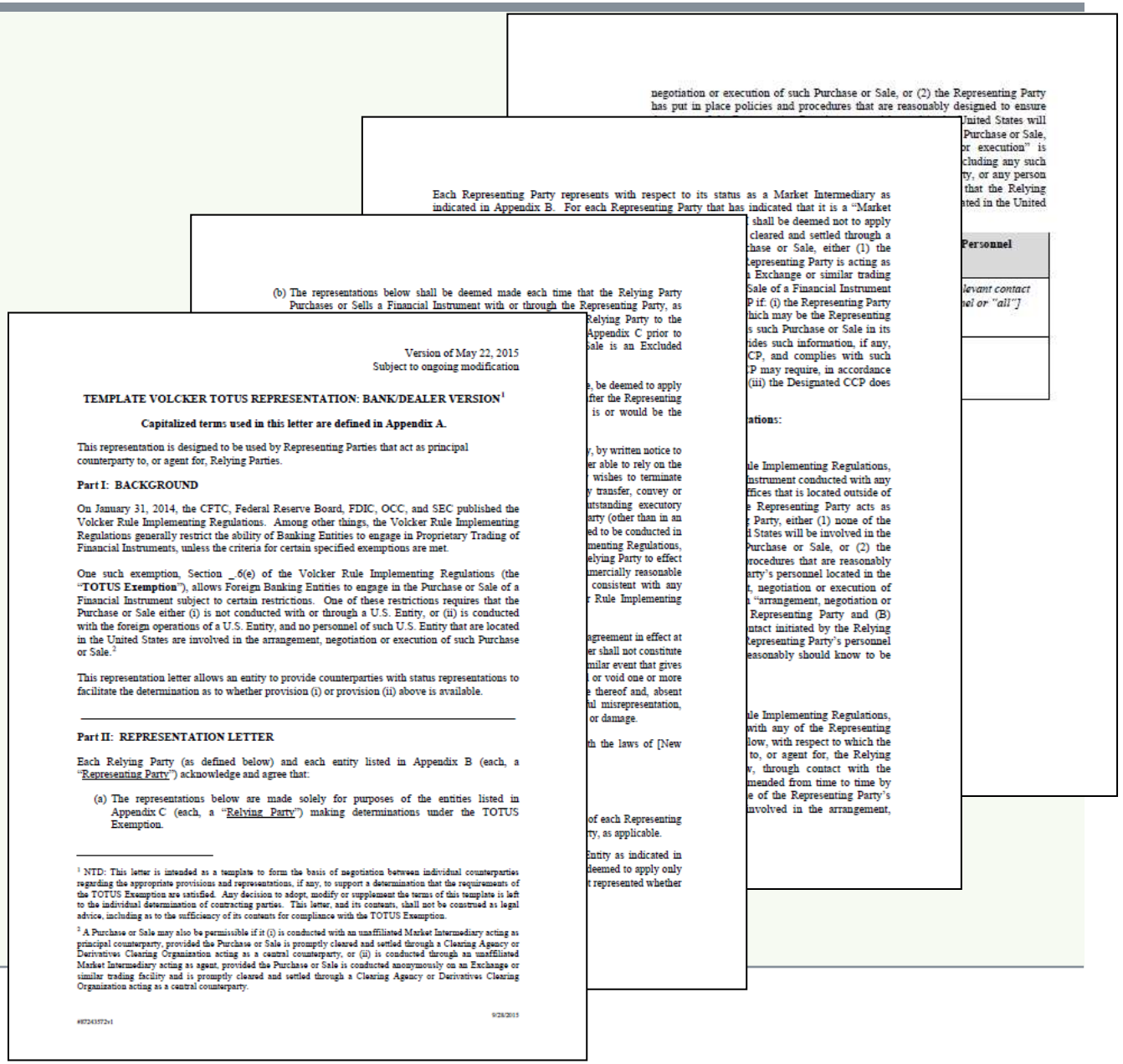
TOTUS Exemption: Restrictions on Counterparties

- The purchase or sale must not be conducted **with or through a U.S. entity**, other than:
  - a purchase or sale with the foreign operations of a U.S. entity if no personnel of such U.S. entity that are located in the United States are involved in the arrangement, negotiation, or execution of such purchase or sale;
  - a purchase or sale with an unaffiliated market intermediary acting as principal, provided the purchase or sale is promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty; or
  - a purchase or sale through an unaffiliated market intermediary acting as agent, provided the purchase or sale is conducted anonymously on an exchange or similar trading facility and is promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty.

TOTUS Representation Letter

Market Making | Risk-Mitigating Hedging | Underwriting | Government Obligations | TOTUS

The **TOTUS Representation Letter** was developed to assist market participants in obtaining counterparty representations relevant to the TOTUS exemption, though most non-U.S. dealers are not requiring the letter when transacting with clients that are clearly non-U.S. entities.



negotiation or execution of such Purchase or Sale, or (2) the Representing Party has put in place policies and procedures that are reasonably designed to ensure

Each Representing Party represents with respect to its status as a Market Intermediary as indicated in Appendix B. For each Representing Party that has indicated that it is a "Market

(b) The representations below shall be deemed made each time that the Relying Party Purchases or Sells a Financial Instrument with or through the Representing Party, as

Version of May 22, 2015
Subject to ongoing modification

TEMPLATE VOLCKER TOTUS REPRESENTATION: BANK/DEALER VERSION[1]

Capitalized terms used in this letter are defined in Appendix A.

This representation is designed to be used by Representing Parties that act as principal counterparty to, or agent for, Relying Parties.

Part I: BACKGROUND

On January 31, 2014, the CFTC, Federal Reserve Board, FDIC, OCC, and SEC published the Volcker Rule Implementing Regulations. Among other things, the Volcker Rule Implementing Regulations generally restrict the ability of Banking Entities to engage in Proprietary Trading of Financial Instruments, unless the criteria for certain specified exemptions are met.

One such exemption, Section _.6(e) of the Volcker Rule Implementing Regulations (the "**TOTUS Exemption**"), allows Foreign Banking Entities to engage in the Purchase or Sale of a Financial Instrument subject to certain restrictions. One of these restrictions requires that the Purchase or Sale either (i) is not conducted with or through a U.S. Entity, or (ii) is conducted with the foreign operations of a U.S. Entity, and no personnel of such U.S. Entity that are located in the United States are involved in the arrangement, negotiation or execution of such Purchase or Sale.[2]

This representation letter allows an entity to provide counterparties with status representations to facilitate the determination as to whether provision (i) or provision (ii) above is available.

Part II: REPRESENTATION LETTER

Each Relying Party (as defined below) and each entity listed in Appendix B (each, a "Representing Party") acknowledge and agree that:

(a) The representations below are made solely for purposes of the entities listed in Appendix C (each, a "Relying Party") making determinations under the TOTUS Exemption.

[1] NTD: This letter is intended as a template to form the basis of negotiation between individual counterparties regarding the appropriate provisions and representations, if any, to support a determination that the requirements of the TOTUS Exemption are satisfied. Any decision to adopt, modify or supplement the terms of this template is left to the individual determination of contracting parties. This letter, and its contents, shall not be construed as legal advice, including as to the sufficiency of its contents for compliance with the TOTUS Exemption.

[2] A Purchase or Sale may also be permissible if it (i) is conducted with an unaffiliated Market Intermediary acting as principal counterparty, provided the Purchase or Sale is promptly cleared and settled through a Clearing Agency or Derivatives Clearing Organization acting as a central counterparty, or (ii) is conducted through an unaffiliated Market Intermediary acting as agent, provided the Purchase or Sale is conducted anonymously on an Exchange or similar trading facility and is promptly cleared and settled through a Clearing Agency or Derivatives Clearing Organization acting as a central counterparty.

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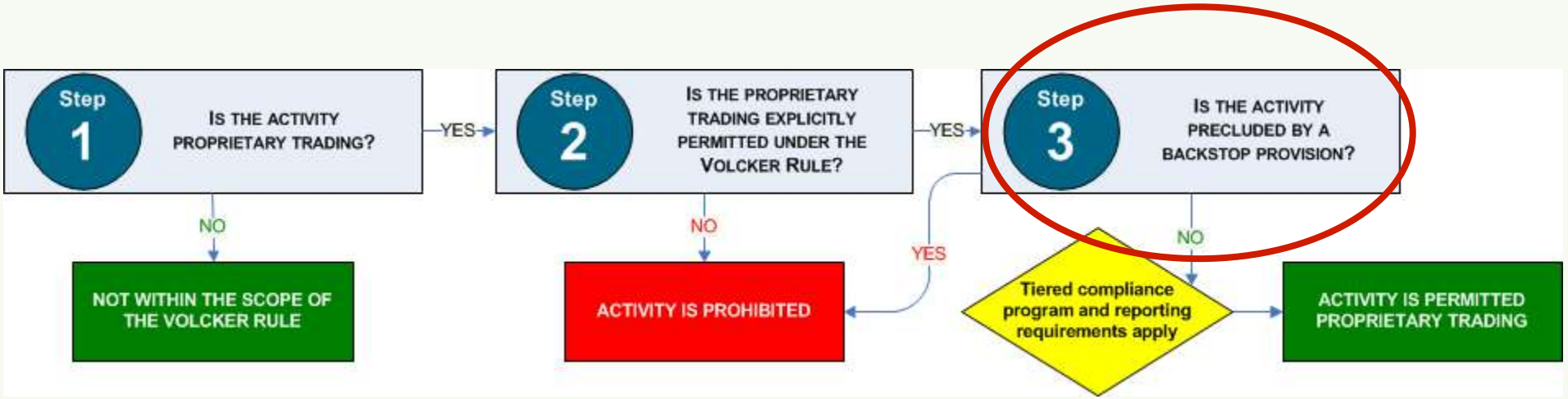
Davis Polk

Step 3: Is the Activity Precluded by a Backstop Provision?



Backstop Provisions

- Even if a trade or activity is permitted under the Volcker Rule's Proprietary Trading Provisions or Covered Fund Provisions, it may nonetheless be prohibited by the backstop prohibitions

involve or result in a "**material conflict of interest**" between the banking entity and its clients, customers, or counterparties

↓

unless, the banking entity either (i) provides clear, timely and effective disclosure to the client, customer or counterparty or (ii) has established, maintained and enforced information barriers

or

result, directly or indirectly, in a material exposure by the banking entity to a "**high-risk asset**" or a "**high-risk trading strategy**"

or

pose a threat to the safety and soundness of the banking entity or to the U.S. financial stability

Note that the backstop prohibitions apply to all permitted activities (exemptions, but not exclusions), including TOTUS.

Covered Funds

Covered Funds

- The Volcker Rule prohibits banking entities from:
  - engaging in **proprietary trading** or
  - acquiring or retaining an **ownership interest** in, **sponsoring** or having certain other relationships with **covered funds**,

  unless specifically excluded or permitted.
- **Super 23A** prohibits a banking entity or any affiliate from entering into "covered transactions" with a covered fund.
- The policy purpose of the covered fund provisions is to prevent banking entities from engaging in prop trading indirectly through investments in hedge funds and private equity funds.
- However, because the covered fund definition includes many types of funds in addition to hedge funds and private equity funds, it has a wide impact.
  - For example, these restrictions may affect businesses that involve structuring SPVs, including for non-fund transactions; trading or other investing in securitizations, including CLOs and CDOs; and traditional asset management activities.

What is a Covered Fund?

- The Volcker Rule's "covered fund" definition is very broad.
  - An issuer that would be an investment company under the U.S. Investment Company Act of 1940 ***but for*** section 3(c)(1) or 3(c)(7) of that Act;
  - Any covered commodity pool under CFTC rules; and
  - Certain foreign funds offered to U.S. persons or with particular sponsorship or ownership relationships with a U.S. banking entity.
- Certain investment vehicles are ***explicitly excluded*** from the definition of a Covered Fund:
  - Registered investment company (mutual fund, ETF) or BDC
  - Foreign pubic fund
  - Foreign pension fund
  - Joint venture
  - Acquisition vehicle
  - Loan securitization
  - ABCP conduit
  - Covered bond vehicle

What is an Ownership Interest?

Generally, an ownership interest is:

- Any equity or partnership interest; or
- An "other similar interest," where the banking entity has:
  - The power to select or remove the fund manager
  - A share in income, gains or profit
  - A residual interest in assets
  - Excess spread
  - Writes-down amounts payable due to losses
  - A return based in performance of assets
  - Certain other synthetic rights

What is a Sponsor of a Covered Fund?

Generally, a banking entity is a sponsor of a Covered Fund where it:

- Acts as general partner
- Acts as managing member
- Is the CPO
- Has the power to select or control majority of directors, trustees or management
- Shares its name with the fund
- Acts as trustee

Covered Funds

PERMITTED ACTIVITY EXEMPTIONS

- Provided specified conditions are met, the prohibition on covered fund investing and sponsoring does not apply to:
  - ***Underwriting and market making***. A banking entity's underwriting activities or market making-related activities involving a covered fund, subject to the **3% aggregate limit** and **in some cases the 3% per-fund limit**;
  - ***Asset management and ABS issuer exemptions.*** Organizing and offering a covered fund to which services are provided, subject to conditions, including **3% aggregate limit** and **per-fund limits**.
  - ***Activities solely outside the United States***. Covered fund investment solely outside the United States by a non-U.S. banking entity for third-party covered funds. (The non-U.S. banking entity may not participate in the offering or sale of the fund to U.S. investors.)
    - This is available for U.S. and non-U.S. third party covered funds.
  - ***Seeding***. Establishing and seeding a covered fund with sufficient initial equity to permit the covered fund to attract unaffiliated investors, for a limited **seeding period**, subject to conditions, including the **3% aggregate limit**.

Order Extending the General Conformance Period for Legacy Covered Funds

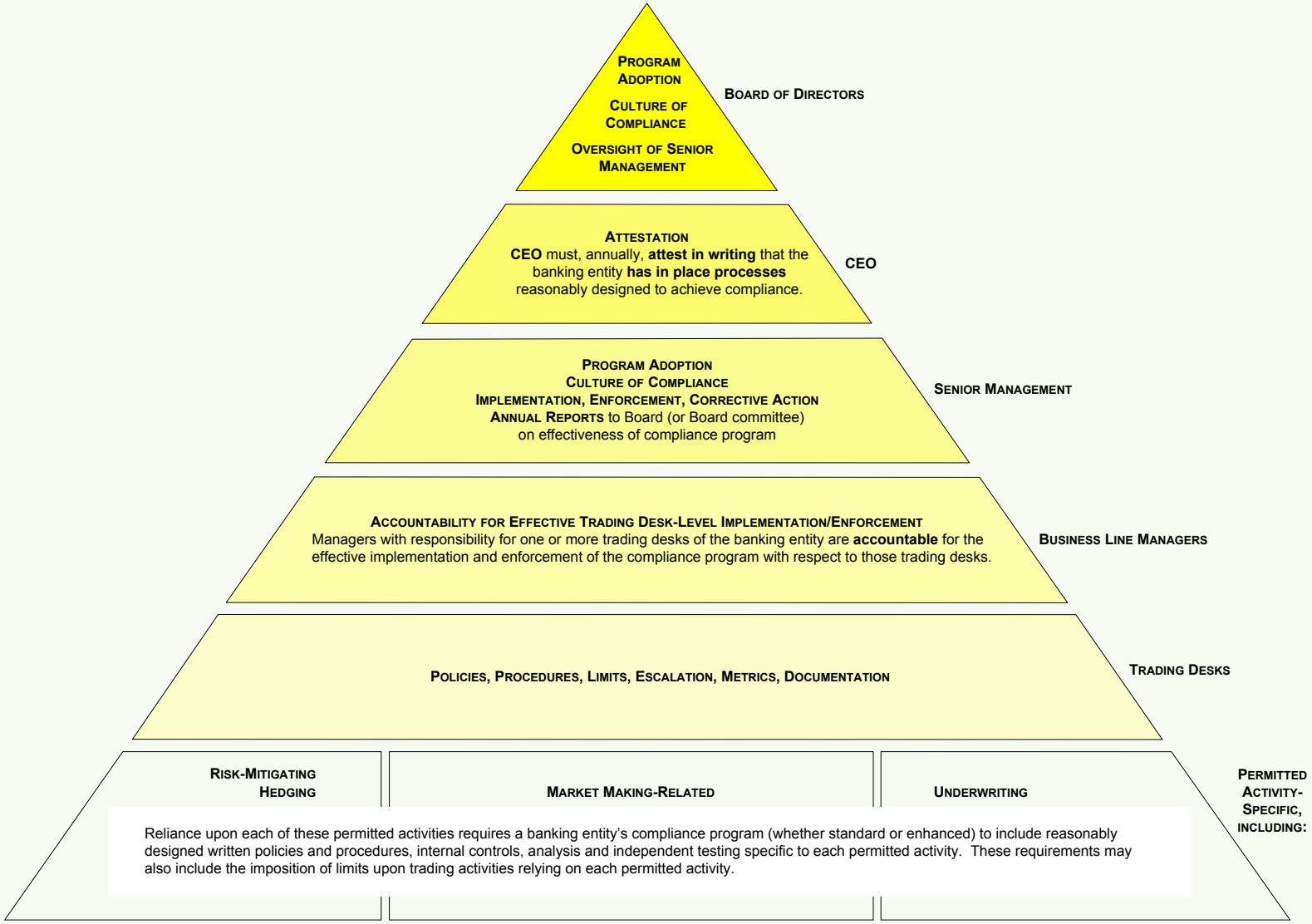
- In December 2014, the Federal Reserve provided an extended conformance period for "legacy" covered funds and foreign funds.
  - **One-year automatic extension until July 21, 2016.**
    - To conform investments in and relationships with covered funds and foreign funds that may be subject to the Volcker Rule and that were "in place" before December 31, 2013.
    - The Federal Reserve also indicates it intends to grant a final one-year extension of the general conformance period until July 21, 2017.
  - **Cut-off date for eligibility is December 31, 2013.**
    - The December 2014 Order applies to "legacy covered funds investments and relationships made by banking entities prior to December 31, 2013."

Volcker Compliance Requirements

The Volcker Compliance Program

- Large Banking Entities: Banking entities with $50 billion or more of total consolidated assets (U.S. assets for foreign banking entities) must implement an **enhanced compliance program**.
- Mid-Size Banking Entities: Banking entities with more than $10 billion but less than $50 billion of total consolidated assets (U.S. assets for foreign banking entities) and less than $10 billion of trading assets and liabilities (combined U.S. operations for foreign banking entities) must implement a **standard compliance program**.
- Small Banking Entities: Banking entities with less than $10 billion of total consolidated assets (U.S. asset for foreign banking entities) must implement a standard compliance program, but benefit from relief allowing implementation of a **simplified compliance program**.

Enhanced Compliance Program Requirements



CEO Attestation Under the Enhanced Compliance Program

CEO attestation. **Based on a review by the CEO of the banking entity, the CEO of the banking entity must, annually, attest in writing to the Volcker Regulators that the banking entity has in place processes to establish, maintain, enforce, review, test and modify the compliance program in a manner reasonably designed to achieve compliance.**

- The first attestation must be filed by **March 31, 2016**.

Lanny A. Schwartz
PARTNER

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Mr. Schwartz is a member of Davis Polk's Corporate Department and the Trading and Markets practice within our Financial Institutions Group. He advises on securities compliance, regulatory and transactional matters. His clients include major international banks, broker-dealers, securities exchanges and consulting firms.

From 1999 to 2005, Mr. Schwartz was Executive Vice President and General Counsel of the Philadelphia Stock Exchange. Previously, he was Managing Director and Counsel at Bankers Trust Company, concentrating in bank and broker-dealer regulation and investment banking.

RECOGNITION

Mr. Schwartz is listed as a leading lawyer in several legal industry publications, including:

- *Chambers USA: America's Leading Lawyers for Business*
- *IFLR1000*
- American Lawyer Media's *The New York Area's Best Lawyers*
- Woodward/White's *Best Lawyers in America*.

OF NOTE

- Speaks and writes regularly on securities market structure and regulatory issues
- Former Member, Adjunct Faculty, Columbia Law School
- Former Instructor, Wharton Executive Education/NASD Institute for Professional Development

PROFESSIONAL HISTORY

- Partner, 2007-present
- Counsel, Davis Polk, 2005-2007
- Executive Vice President and General Counsel, Philadelphia Stock Exchange, 1999-2005

Lanny A. Schwartz *(cont.)*
PARTNER

PROFESSIONAL HISTORY (cont.)

- Managing Director and Counsel, Bankers Trust Company, 1989-1999
- Associate, Cleary Gottlieb Steen & Hamilton, London and New York offices, 1985-1989

ADMISSIONS

- State of New York
- Commonwealth of Pennsylvania

EDUCATION

- B.A., Oriental Studies, University of Pennsylvania, 1976
  - *summa cum laude*
- J.D., New York University School of Law, 1983
  - *cum laude*
  - Order of the Coif