Regulatory Reform

External Business Conduct Rules / Overview

Maria Douvas
April 2013

The information contained herein is not intended to be, and does not constitute, advice from Morgan Stanley. Morgan Stanley is not your advisor (municipal, financial or any other kind of advisor) and is not acting in a fiduciary capacity. This material does not provide investment advice or offer tax, regulatory, accounting or legal advice.
# Treatment of Foreign Exchange Instruments under Title VII of Dodd-Frank

<table>
<thead>
<tr>
<th>Instrument type</th>
<th>Description</th>
<th>Mandatory clearing / SEF electronic execution</th>
<th>Private regulatory reporting</th>
<th>Public real-time reporting</th>
<th>Business conduct obligations</th>
<th>Documentation requirements</th>
<th>Uncleared margin standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Exchange Spot</td>
<td>Instrument involving physical exchange of two different currencies to be settled within T+2 business days, or to facilitate securities settlement within the ordinary securities settlement cycle</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Foreign Exchange Forward</td>
<td>Instrument involving physical exchange of two different currencies to be settled on a specified future date that is beyond T+2 business days</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Regulators still developing international framework</td>
</tr>
<tr>
<td>Foreign Exchange Swap</td>
<td>Instrument involving physical exchange of two different currencies on a specific date followed by a reverse physical exchange of the two currencies at a later date</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Regulators still developing international framework</td>
</tr>
<tr>
<td>Foreign Exchange Option</td>
<td>Instrument provides holder, upon exercise, with right to exchange one currency for another currency or to receive payments as a result of changes in the value(s) of specified currencies (i.e., plain vanilla, non-deliverable options, barriers, binaries, knock-ins, knock-outs and options with other exotic features)</td>
<td>Not currently covered by mandate but could be in the future</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Foreign Exchange Non-Deliverable Forward</td>
<td>Instrument where single currency payment on settlement date is determined by reference to a rate source that publishes an exchange rate for two currencies (i.e., where one of those currencies is subject to exchange controls or other restrictions)</td>
<td>Not currently covered by mandate but could be in the future</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The information contained herein is not intended to be, and does not constitute, advice from Morgan Stanley. Morgan Stanley is not your advisor (municipal, financial or any other kind of advisor) and is not acting in a fiduciary capacity. This material does not provide investment advice or offer tax, regulatory, accounting or legal advice.
### CFTC External Business Conduct Rules

#### Heightened KYC / Suitability Requirements

- Verification of ECP status
- Know your customer requirements
- End-user exception
- Institutional suitability requirement
- Verification of Special Entity status

#### Special Entity Provisions

- Recommendations and advisor status
  - Safe harbors for:
    - ERISA
      1. Plan represents that it has a representing fiduciary
      2. Fiduciary represents that it will not rely on recommendations
      3. Plan represents that it will comply with policies to ensure that recommendation is evaluated by fiduciary
    - Non-ERISA plans
      4. SD does not express opinion as to whether Special Entity should enter into swap
      5. Special Entity represents that it will not rely on recommendations and will rely on advice from qualified independent representative
      6. SD discloses that it is not undertaking to act in the best interests of the Special Entity
  - Best interest standard
- Independent Representative qualifications
- Special disclosure of SD capacity
- Political contributions

#### New Pre-Trade Disclosure Requirements

- Disclosure of material risks
- Disclosure of material characteristics
- Disclosure of conflicts and incentives
  - Relative compensation
- Scenario analysis
  - Notification of right to receive scenario analysis
- Daily mark
  - Pre-trade and post-trade obligation

---

The information contained herein is not intended to be, and does not constitute, advice from Morgan Stanley. Morgan Stanley is not your advisor (municipal, financial or any other kind of advisor) and is not acting in a fiduciary capacity. This material does not provide investment advice or offer tax, regulatory, accounting or legal advice.
## Key Elements of Protocol 1- Action Required by May 1st

<table>
<thead>
<tr>
<th>Issue</th>
<th>Necessary Action</th>
</tr>
</thead>
</table>
| Eligible contract participant status – required for all swap counterparties | Confirm ECP type (Part III, Question 2)  
- Certain commodity pools must also provide additional ECP representation for FX instruments (Addendum 1, §4) |
| Financial entity status – included in SDR reports and may affect reporting responsibility for non-dealer trades and eligibility for end-user exception | Confirm status (Part III, Question 5)                                                                                                           |
| Special Entity status (e.g., pension plan or endowment) – additional business conduct obligations apply | Confirm status (Part III, Question 6)  
- ERISA plan must identify representative that is an ERISA fiduciary (Part II, Question 8)  
- Non-ERISA Special Entity must identify qualified independent representative (Part II, Question 7) – could be third party trading advisor or an internal employee |
| Safe harbor election                       | Incorporate additional schedule as follows:  
- Non-Special Entity (Schedule 3 through Part III, Question 9)  
- Non-ERISA Special Entity (Schedule 4 through Part III, Question 7)  
- ERISA Special Entities (adhere to Schedule 5 or 6 through Part III, Question 8 or 9) |
| Pre-trade disclosures                      | • Provide e-mail address for delivery (Part III, Question 10)  
- Consent to initial oral disclosure (Part III, Question 11)  
- Consent to non-disclosure of pre-trade marks for highly liquid instruments (Addendum II, §2) |

First Addendum to Protocol 1 also includes question on Active Fund status.  
Second Addendum to Protocol 1 also includes questions on Category 2 and U.S. person status.

The information contained herein is not intended to be, and does not constitute, advice from Morgan Stanley. Morgan Stanley is not your advisor (municipal, financial or any other kind of advisor) and is not acting in a fiduciary capacity. This material does not provide investment advice or offer tax, regulatory, accounting or legal advice.
Pre-Trade Mid-Market Quotations

Background and Issues

Jeff Lillien
Associate General Counsel
Deutsche Bank
April 26, 2013
I. Origins and Purpose of the Rule

- Commentary
- Final rule version
- Stated purpose in final rule release
II. Implementation Issues

- What is pre-trade mid?
- Method of disclosure
- Recordkeeping
III. FMLG Initial Request for Relief

• Underlying rationale
• Data-based approach
• Scope of request
• Buy-side input
IV. CFTC Relief and Issues

• Scope of CFTC Relief
• Conditions of CFTC Relief
• Potential for Expansion
• Issues:
  – Consent requirement (bilateral; multilateral)
  – Compound products
  – Anonymous platforms
V. Follow-up Requests for CFTC relief

• Consent vs. Disclosure
• BIS 31: extended tenors
• Multilateral platforms
• Anonymous execution
VI. What to expect on May 1

• Additional Relief?
• Different approaches to consent?
• Different approaches to accomplishing PTMM disclosure?
• Different approaches on platforms?
External Business Conduct Rules
-Buy-Side Perspective-

Foreign Exchange Committee
Forum on the Dodd Frank Act and Foreign Exchange Market
April 26, 2013

Robin S. Meister
Global Head of US Regulatory Affairs, BNP Paribas Investment Partners
Head of Legal, Compliance and Operational Risk – North America
**DF Protocol Adherence Process**

- **Communications**
  - Industry Technology - Markit ISDA Amend and CICI Utility
    - Fluid and Unpredictable
    - Monitoring System Changes
    - Monitoring and Modifying Data Inputs
    - Reconciling Discrepancies between Systems
  - Counterparties
    - Inundated with Queries about Client Information
    - Revisiting Legal and Factual Analyses
  - Clients
    - Regular Communications
    - Responding to Queries
      - Impact on Clients’ Portfolios
      - Coordination of Adherence Efforts
      - Structure of DF Protocol Reporting Regime
      - Privacy and Client Confidentiality
DF Protocol Adherence Process

- **Regulatory Developments**
  - Impact on Internal Decisions
  - Internal Resource Allocation
  - Changing Regulations and Compliance Deadlines
  - Planning for Forthcoming Rules

- **Legal Documentation**
  - New Industry Documentation
  - Form Investment Management Agreement Provisions

- **Compliance Policies and Procedures**

- **Operational Readiness**
  - Analyzing Internal Infrastructure and Processes
  - Keeping Clients Informed
Cross-Border Considerations

- **Internal Steering Committee**
  - Cross-Border Impact on Firm
  - Coordination of Compliance Efforts
  - Information Sharing

- **Co-Managed Accounts**
  - U.S. Person Analysis
  - U.S. Swap Dealer vs. Non-U.S. Swap Dealer
  - Letters to Confirm U.S. vs. Non-U.S. Status of Dealers

- **Coordination of Regulators**
  - U.S. Regulators’ Coordination with Global Counterparts
  - Impact on the Industry