

Catherine E. Napolitano, Esq.
Director & Assistant General Counsel
Bank of America Merrill Lynch

Key Compliance Challenges - April, 2013

I. Assumptions regarding FX market structure

- Divergent client base translates into divergent capabilities
- Product evolution

II. CD3 no-action relief

Temporary Reporting Delay from April 10, 2013 Compliance Date

- **CFTC NAL** issued April 9 2013 extends P43 & P45 for swaps between non-financial swap counterparties
- **Credit & Interest Rate:** report July 1, 2013; backload from April 10-July 1 by August 1, 2013
- **FX, Equity and Commodity Swaps:** report Aug.19, 2013; backload from April 10-August19 by September19, 2013
- **Historic Swap** reporting effective October 31, 2013
- **Inter-affiliate Transactions**
- **CFTC permanent NAL issued** April 5, 2013 from P45 reporting and end-user exemption-related reporting between wholly- or majority-owned affiliates meeting certain requirements
 - i. **Wholly-owned:** (i) one party directly or indirectly holds 100% ownership in the other and reports consolidated financials under GAAP/IFRS, or (ii) third party directly or indirectly holds 100% ownership in both affiliated parties and reports consolidated financials under GAAP/IFRS

- ii. **Majority-owned:** (i) one party directly or indirectly holds majority ownership in the other party and reports consolidated financials under GAAP/IFRS, or (ii) third party directly or indirectly holds majority ownership in both affiliated parties and reports consolidated financials under GAAP/IFRS.

- iii. **“Majority”** defined as majority of equity securities or right to receive majority of capital of partnership upon dissolution.

- o Applies to trades between affiliates who are not SDs/MSPs and are not affiliated with SDs/MSPs/systemically important financial companies and who are not executing on a SEF/platform/trading facility or clearing through a clearinghouse/DCO.

- o Report outward-facing swaps of either affiliate with unaffiliated entities or ensure unaffiliated counterparty will report the trade

- o One party to report outward-facing swaps between a non-US affiliate and an unaffiliated non-US counterparties outside the US

- o No relief if counterparties elect the inter-affiliate clearing exemption, but counterparties can still rely on the NAL if they elect the clearing end-user exemption to apply to the inter-affiliate trade

- o **Additional conditions for majority-owned but not wholly-owned affiliates:**
 - Report to an SDR within 30 days of the end of each fiscal quarter;
 - No relief for P43 swaps (i.e. arms length resulting in change to market position between affiliates must be publicly reported; other inter-affiliate swaps exempt)

* **Historic Swaps**

- * NAL exempts swaps from historical reporting of inter-affiliate swaps between wholly- or majority-owned affiliates, subject to conditions, including that:
1. Neither counterparty is a SD/MSP or affiliated with a SD/MSP/systemically important financial company
 2. Swap is not executed on a trading facility,
 3. Neither counterparty submits the trade for clearing at a DCO, and
 4. Affiliated counterparties retain full and comprehensive records.

III. Privacy & Confidentiality Reporting Implications

- **CFTC NAL 12-46 issued December 7, 2012**
- **CFTC Issues Additional Information December 21, 2012 for LEIs & Certain Identifying Information**
 - Conflicting Rules
 - Jurisdictional Analysis
- **OTC derivatives Regulators Group Report to G-20 Finance Ministers and Central Bank Governors April 18-19, 2013**
 - Additional Conflicting Rules
 - International coordination efforts
 - National authorities ultimately responsible
- **Next Steps**
 - Regulatory Initiatives