



Advisory Note: Upcoming Documentation Requirements

This advisory note highlights a recent rulemaking by the Commodity Futures Trading Commission (“CFTC”), and actions you may need to take to avoid disruption in your ability to trade swaps on and after **May 5, 2014**.

In November 2013, the CFTC published final rules implementing requirements for swap dealers and major swap participants to notify counterparties of their right to require segregation of margin (other than variation margin) for uncleared swap transactions.¹ Pursuant to CFTC Regulation 23.701:

- notices must be provided at least once each calendar year to an officer responsible for the management of collateral,²
- swap dealers and major swap participants must obtain confirmation of receipt by the appropriate officer, and
- swap dealers and major swap participants must also obtain counterparty elections whether or not to require segregation of collateral in accordance with CFTC Regulations 23.702 and 23.703.

CFTC Regulation 23.701 became effective on January 6, 2014. For market participants that became “new counterparties” of a swap dealer or major swap participant after that date (*e.g.*, by putting in place an ISDA Master Agreement, Collateralized Trading Agreement or Long Form Confirmation in order to begin trading uncleared swaps), the relevant swap dealer or major swap participant must comply with CFTC Regulation 23.701 by **May 5, 2014**.³ For market participants that were existing counterparties on or prior to January 6, 2014, the compliance date is **November 3, 2014**.

Once these requirements go into effect, swap dealers and major swap participants must obtain the required receipt confirmations and elections prior to confirming additional swap transactions with the counterparty. Consequently, market participants who wish to avoid potential trading disruptions should be prepared to receive these notices and provide the necessary responses **prior to the applicable compliance date(s)**.

In addition, market participants should note that elections to segregate margin in accordance with CFTC Regulations 23.702 and 23.703 (“**CFTC Segregation**”) require segregation with a

¹ *Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy*, 78 Fed. Reg. 66621 (Nov. 6, 2013) (adopting CFTC Regulations 23.700-23.704).

² See CFTC Regulation 23.701(c). If no such officer is identified by the counterparty, the notification is to be made to the Chief Risk Officer of the counterparty, or, if there is no such officer, to the Chief Executive Officer. If no Chief Executive Officer exists, the notice may be given to highest-level decision-maker for the counterparty.

³ See 78 Fed. Reg. at 66621 & n. 1.