

CFTC Issues Cross-Border Substituted Compliance Determinations, Provides Limited Phase In for Some Swap Requirements

January 7, 2014

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Just one day in advance of the December 21, 2013 expiration of the CFTC’s exemptive order delaying the applicability of some CFTC swap regulations for non-U.S. swap dealers and foreign branches of U.S. swap dealers, the CFTC approved a series of **comparability determinations**. These comparability determinations will allow CFTC-registered non-U.S. swap dealers and foreign branches of U.S. swap dealers to comply with local requirements rather than the corresponding CFTC rules in cases where substituted compliance is available under the **CFTC’s cross-border guidance**.¹ The CFTC made comparability determinations for some swap dealer entity-level requirements for Australia, Canada, the European Union (the “EU”), Hong Kong, Japan and Switzerland and for a limited number of transaction-level requirements for the EU and Japan.

Contemporaneously with the comparability determinations, the CFTC published two no-action letters ([here](#) and [here](#)) providing temporary relief for certain non-U.S. swap dealers in some of the above-listed jurisdictions (generally not including Hong Kong) for compliance with swap data reporting rules under Parts 45 and 46 and certain internal business conduct rules under Part 23 of the CFTC’s regulations, including risk exposure reporting, restrictions on counterparty clearing relationships and clearing member risk management. While the CFTC deferred the decision to make comparability determinations for swap data reporting requirements, the reporting no-action relief will allow non-U.S. swap dealers that do not have a U.S. ultimate parent to delay CFTC-mandated reporting for transactions with non-U.S. persons until (i) March 3, 2014 for transactions with guaranteed and conduit affiliates² and (ii) the earlier of 30 days after a substituted compliance determination and December 1, 2014 for transactions with non-U.S. persons that are not guaranteed or conduit affiliates.

Where the CFTC did not provide for comparability or timing relief, swap dealers will need to comply with the relevant requirements immediately, to the extent required in the CFTC’s cross-border guidance.

Comparability Determinations

The CFTC issued separate comparability determinations for entity-level requirements for Australia, Canada, the EU, Hong Kong, Japan and

¹ The CFTC’s actions also extend to non-U.S. MSPs and foreign branches of U.S. MSPs.

² This date is April 2, 2014 for purposes of Part 46 historical swap reporting.

Switzerland and for transaction-level requirements in the EU and Japan. These determinations are summarized briefly below. The charts included as **Appendix A** and **Appendix B** to this memorandum list entity- and transaction-level requirements and summarize the comparability determinations and timing relief.

Entity-Level Requirements

The CFTC made determinations that local law in each of the six jurisdictions listed above is comparable to the following entity-level requirements:

- position limit monitoring;
- diligent supervision;
- business continuity and disaster recovery;
- research and clearing conflicts; and
- subject to conditions described in Appendix A, chief compliance officer, risk management program, availability of information for disclosure and swap data recordkeeping.

This will enable CFTC-registered non-U.S. swap dealers to comply with local law for these requirements in lieu of CFTC regulations.

The CFTC declined to take up requests for comparability determinations with respect to CFTC rules restricting counterparty clearing relationships, though, as noted above, the CFTC granted certain non-U.S. swap dealers temporary no-action relief from having to comply with those requirements until March 3, 2014.

The CFTC also declined to make comparability determinations for any jurisdiction for the CFTC requirement to provide compliance and risk reports to the CFTC. Thus, in addition to reserving its rights to conduct examinations and directly access required books and records of swap dealers, the CFTC is requiring all registered swap dealers to submit to the CFTC annual compliance and quarterly risk exposure reports. As the CFTC found the underlying compliance and risk management obligations comparable in each jurisdiction, swap dealers relying on substituted compliance will need to submit reports to the CFTC that address local law requirements.

Transaction-Level Requirements

The CFTC issued comparability determinations for non-U.S. swap dealers and foreign branches of U.S. swap dealers in the EU or Japan for a limited number of transaction-level requirements.

- **For the EU:** The CFTC found that EU trade confirmation, portfolio reconciliation and portfolio compression requirements are comparable to the analogous CFTC regulations, without condition or exception. The CFTC also found comparable local law to CFTC daily trading record requirements, except with respect to records of pre-trade execution information, including records of oral

Swap Dealers Eligible to Rely on the Relevant Comparability Determination

Australia

- Authorized deposit-taking institutions and holders of an Australian Financial Services License

Canada

- Banks

The EU

- Entities subject to EMIR, MiFID or CRD

Hong Kong

- Authorized Institutions regulated by the HKMA

Japan

- Banks, Financial Instrument Business Operators and Registered Financial Institutions and entities otherwise subject to the same requirements

Switzerland

- Institutions supervised by FINMA

Entity-Level Requirements

First Category

- capital adequacy
- chief compliance officer
- risk management
- swap data recordkeeping, except rules relating to customer complaints and sales and marketing materials

Second Category

- swap data reporting to swap data repositories (“SDRs”), including historical swap reporting
- swap data recordkeeping requirements relating to customer complaints and sales and marketing materials
- large trader reporting

communications, and swap trading relationship documentation requirements, but only with respect to the confirmation and valuation provisions.

- **For Japan:** The CFTC found Japanese daily trading records and swap trading relationship documentation requirements comparable to CFTC requirements, except for CFTC requirements relating to disclosures and representations on the potential applicability of Dodd-Frank orderly liquidation authority provisions and certain counterparty clearing disclosures. The CFTC did not make a determination for Japanese rules with respect to trade confirmation, portfolio reconciliation and portfolio compression.

This will enable CFTC-registered swap dealers and foreign branches of U.S. swap dealers in these jurisdictions to comply with local law for these requirements where substituted compliance is available under the cross-border guidance, in lieu of complying with the relevant CFTC regulations.

The EU comparability determinations relating to trade confirmations, portfolio reconciliation, portfolio compression and swap trading relationship documentation requirements are identical in scope to the “essentially identical” determinations made by the CFTC staff in no-action letter 13-45 (available [here](#)). However, the set of transactions for which substituted compliance is available is not identical to the set of transactions for which relief under letter 13-45 is available. As a result, swap dealers will need to analyze their organizational structure and types of counterparties to determine what relief is available to specific transactions.

The CFTC declined to make comparability determinations in any jurisdiction for other key transaction-level requirements, including clearing and trade execution, and did not make determinations for transaction-level requirements for jurisdictions other than the EU and Japan.

Availability of Substituted Compliance

The CFTC’s recent comparability determinations are available to the non-U.S. swap dealers and foreign branches of U.S. swap dealers described in the sidebar for each jurisdiction. The determinations should be available to all currently registered non-U.S. swap dealers.

For requirements where the CFTC has made a comparability determination, substituted compliance is available for qualifying swap dealers, as provided by the CFTC’s cross-border guidance, as outlined below.

Entity-Level Requirements – General

The CFTC’s cross-border guidance divides entity-level requirements into First Category and Second Category requirements, as described in the accompanying sidebar, and provides for the possibility of substituted compliance for entity-level requirements in some cases, as follows:

U.S. Swap Dealers (including their foreign branches): No substituted compliance is available.

Non-U.S. Swap Dealers (including those affiliated with U.S. persons): Substituted compliance is potentially available for First Category entity-level requirements, regardless of the U.S. person status of the counterparty to a swap. With respect to Second Category entity-level requirements:

- for SDR reporting, substituted compliance is potentially available only where the counterparty is a non-U.S. person and the CFTC has direct electronic access to the swap data stored at the foreign trade repository;
- for swap data recordkeeping requirements relating to customer complaints and sales and marketing materials, substituted compliance is potentially available only where the counterparty is a non-U.S. person; and
- for large trader reporting, substituted compliance is not available.

Transaction-Level Requirements – General

The CFTC’s cross-border guidance provides that substituted compliance is potentially available for transaction-level requirements other than external business conduct standards—so-called “Category A Transaction-Level Requirements”—based on the status of the counterparties, as summarized in the chart below.

Availability of Substituted Compliance for Category A Transaction-Level Requirements				
Counter-party is: Swap dealer is:	U.S. person (other than a foreign branch)	Foreign branch	Guaranteed or conduit affiliate	Non-U.S. person that is not a guaranteed or conduit affiliate
U.S. swap dealer (other than through a foreign branch)	Apply, no substituted compliance available			
Foreign branch	Apply, no substituted compliance available	Apply, substituted compliance available	Apply, substituted compliance available	Apply, substituted compliance available
Non-U.S. swap dealer (other than through a U.S. branch)	Apply, no substituted compliance available	Apply, substituted compliance available	Apply, substituted compliance available	Do not apply
U.S. branch of a non-U.S. swap dealer	Apply, no substituted compliance available			

Substituted compliance is not available for external business conduct standards—so-called “Category B Transaction-Level Requirements”—though such requirements do not apply to transactions between (i) non-U.S.

swap dealers and non-U.S. persons, (ii) non-U.S. swap dealers and foreign branches of U.S. swap dealers, (iii) foreign branches of U.S. swap dealers and non-U.S. persons or (iv) foreign branches of U.S. swap dealers.

Other than by way of the December 20, 2013 comparability determinations described above, the CFTC has not yet made substituted compliance available for other entity-level or transaction-level requirements.

Next Steps for the CFTC

In the comparability determinations, the CFTC stated that it is in the process of negotiating supervisory arrangements with each applicable foreign regulator to establish a “roadmap” for how foreign regulators will cooperate, share information and consult with each other. These arrangements may include establishing expectations for ongoing communications between regulators, memorializing understandings related to CFTC on-site visits and addressing confidentiality issues related to non-public information.

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Appendix A: Summary of Comparability Determinations for CFTC Entity-Level Requirements¹ Non-U.S. Swap Dealers / MSPs

 Determined comparable

 Determination deferred, declined or not requested, timing relief potentially available

 Determination deferred or declined, no timing relief provided

Jurisdiction Requirement	Australia	Canada	European Union	Hong Kong	Japan	Switzerland
Chief Compliance Officer <i>Rule § 3.3</i>	Determined comparable, except Rule § 3.3(e) (production of an annual compliance report) and Rule § 3.3(f) (CEO/CCO certification and annual compliance report submission to CFTC) Compliance with Rule §§ 3.3(e) and (f) may be satisfied by the preparation and signing of the comparable annual report required under local law and certification and submission of that report to the CFTC	Determined comparable, except Rule § 3.3(f) (CEO/CCO certification and annual compliance report submission to CFTC) Compliance with Rule § 3.3(f) may be satisfied by certification of and submission to the CFTC of the comparable annual report required under local law	Determined comparable, except Rule § 3.3(f) (CEO/CCO certification and annual compliance report submission to CFTC) Compliance with Rule § 3.3(f) may be satisfied by certification of and submission to the CFTC of the comparable annual report required under local law	Determined comparable, except Rule § 3.3(f) (CEO/CCO certification and annual compliance report submission to CFTC) Compliance with Rule § 3.3(f) may be satisfied by certification of and submission to the CFTC of the comparable annual report required under local law	Determined comparable, except Rule § 3.3(f) (CEO/CCO certification and annual compliance report submission to CFTC) Compliance with Rule § 3.3(f) may be satisfied by certification of and submission to the CFTC of the comparable annual report required under local law	Determined comparable, except Rule § 3.3(f) (CEO/CCO certification and annual compliance report submission to CFTC) Compliance with Rule § 3.3(f) may be satisfied by certification of and submission to the CFTC of the comparable annual report required under local law
Large Trader Reporting <i>Part 20</i>	Substituted compliance is not available under the Cross-Border Guidance Compliance date: July 13, 2013, at the latest, as a result of the expiration of the CFTC’s January Exemptive Order					
Capital Adequacy <i>Proposed Rule § 23.100 et seq.</i>	Determination deferred, pending final CFTC rules					

¹ Except as otherwise specified, references in this chart to dates on which compliance is required are based upon the respective dates in the CFTC no-action letters, prior to which the staff states that it will not recommend enforcement action.

Jurisdiction Requirement	Australia	Canada	European Union	Hong Kong	Japan	Switzerland
Swap Data Recordkeeping² Rule §§ 23.201 and 23.203	Determined comparable, except certain provisions of Rule § 23.203(b)(2) (related to production of information to CFTC, DOJ and applicable U.S. prudential regulator, upon request)	Determined comparable, except certain provisions of Rule § 23.203(b)(2) (related to production of information to CFTC, DOJ and applicable U.S. prudential regulator, upon request)	Determined comparable, except certain provisions of Rule § 23.203(b)(2) (related to production of information to CFTC, DOJ and applicable U.S. prudential regulator, upon request)	Determined comparable, except certain provisions of Rule § 23.203(b)(2) (related to production of information to CFTC, DOJ and applicable U.S. prudential regulator, upon request)	Determined comparable	Determined comparable, except certain provisions of Rule § 23.203(b)(2) (related to production of information to CFTC, DOJ and applicable U.S. prudential regulator, upon request)
Risk Management Program Rule § 23.600	Determined comparable, except Rule § 23.600(c)(2) (producing and providing quarterly risk exposure reports) Compliance with Rule § 23.600(c)(2) may be satisfied by production of quarterly risk exposure reports (covering the risks required under local law) to senior management, governing body and submission to the CFTC Compliance with Rule § 23.600(c)(2) required Mar. 3, 2014	Determined comparable, except Rule § 23.600(c)(2) (producing and providing quarterly risk exposure reports) Compliance with Rule § 23.600(c)(2) may be satisfied by production of quarterly risk exposure reports (covering the risks required under local law) to senior management, governing body and submission to the CFTC Compliance with Rule § 23.600(c)(2) required Mar. 3, 2014	Determined comparable, except Rule § 23.600(c)(2) (producing and providing quarterly risk exposure reports) Compliance with Rule § 23.600(c)(2) may be satisfied by production of quarterly risk exposure reports (covering the risks required under local law) to senior management, governing body and submission to the CFTC Compliance with Rule § 23.600(c)(2) required Mar. 3, 2014	Determined comparable, except Rule § 23.600(c)(2) (producing and providing quarterly risk exposure reports) Compliance with Rule § 23.600(c)(2) may be satisfied by production of quarterly risk exposure reports (covering the risks required under local law) to senior management, governing body and submission to the CFTC No timing relief provided³	Determined comparable, except Rule § 23.600(c)(2) (producing and providing quarterly risk exposure reports) Compliance with Rule § 23.600(c)(2) may be satisfied by production of quarterly risk exposure reports (covering the risks required under local law) to senior management, governing body and submission to the CFTC Compliance with Rule § 23.600(c)(2) required Mar. 3, 2014	Determined comparable, except Rule § 23.600(c)(2) (producing and providing quarterly risk exposure reports) Compliance with Rule § 23.600(c)(2) may be satisfied by production of quarterly risk exposure reports (covering the risks required under local law) to senior management, governing body and submission to the CFTC Compliance with Rule § 23.600(c)(2) required Mar. 3, 2014

² Substituted compliance for non-U.S. swap dealers and MSPs, with respect to CFTC Rule §§ 23.201(b)(3) and (b)(4) (swap data recordkeeping relating to complaints and marketing and sales materials) is only available for swaps with non-U.S. person counterparties, including guaranteed and conduit affiliates. Firms must comply with these provisions for all transactions with U.S. person counterparties, including foreign branches of U.S. swap dealers and MSPs.

³ CFTC No-Action Letter No. 13-78 states that relief is not necessary for non-U.S. SDs and MSPs established in Hong Kong, as no such entities are required to comply with Rule §§ 23.600(c)(2), 23.608 and 23.609 as of December 21, 2013. On December 3, 2013, the Hongkong and Shanghai Banking Corporation Limited (“HSBC”) filed an application seeking withdrawal from registration as a swap dealer; accordingly, the CFTC issued no-action relief for HSBC during the period between December 21, 2013 and the earlier of the effective date of HSBC’s withdrawal of registration as a swap dealer or the date on which the application for deregistration is withdrawn or rejected. CFTC No-Action Letter No. 13-83 (Dec. 20, 2013).

Jurisdiction \ Requirement	Australia	Canada	European Union	Hong Kong	Japan	Switzerland
Position Limit Monitoring Rule § 23.601	Determined comparable ⁴					
Diligent Supervision Rule § 23.602	Determined comparable					
Business Continuity and Disaster Recovery Rule § 23.603	Determined comparable					
Research and Clearing Conflicts Rule § 23.605	Determined comparable ⁵					
Availability of Information for Disclosure Rule § 23.606	Determined comparable, except Rule § 23.606(a)(2) (production of information to CFTC and applicable U.S. prudential regulator, upon request)	Determined comparable, except Rule § 23.606(a)(2) (production of information to CFTC and applicable U.S. prudential regulator, upon request)	Determined comparable, except Rule § 23.606(a)(2) (production of information to CFTC and applicable U.S. prudential regulator, upon request)	Determined comparable, except Rule § 23.606(a)(2) (production of information to CFTC and applicable U.S. prudential regulator, upon request)	Determined comparable	Determined comparable, except Rule § 23.606(a)(2) (production of information to CFTC and applicable U.S. prudential regulator, upon request)
Restrictions on Counterparty Clearing Relationships Rule § 23.608	Declined to make determination, timing relief available Compliance required Mar. 3, 2014	Declined to make determination, timing relief available Compliance required Mar. 3, 2014	Declined to make determination, timing relief available Compliance required Mar. 3, 2014	Declined to make determination, no timing relief provided ³	Declined to make determination, timing relief available Compliance required Mar. 3, 2014	Determination not requested, timing relief available Compliance required Mar. 3, 2014

⁴ These comparability determinations apply only to rules requiring monitoring trading to prevent violations of applicable position limits. A swap dealer / MSP must comply with any applicable position limit established by the CFTC, a DCM or a SEF.

⁵ The discussion of the determination for Switzerland fails to include the “CFTC finds comparability” language that is otherwise included in the discussions of Rule § 23.605 for the other jurisdictions. However, the summary table issued by the CFTC states that comparability was found for Rule § 23.605 under Swiss law. We believe that the omission of the conclusory paragraph in the section is a typographical error. See Notice of Comparability Determination for Certain Requirements under Swiss Financial Market Regulation, 78 Fed. Reg. 78899, 78907 (Dec. 27, 2013).

Jurisdiction Requirement	Australia	Canada	European Union	Hong Kong	Japan	Switzerland
Clearing Member Risk Management Rule § 23.609	Determined comparable	Determined comparable	Determined comparable	Declined to make determination, no timing relief provided ³	Determined comparable	Declined to make determination, timing relief available Compliance required Mar. 3, 2014
Swap Data Reporting Part 45 (except the recordkeeping requirements of Rule §§ 45.2 and 45.6)	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Mar. 3, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Mar. 3, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Mar. 3, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, no timing relief provided	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Mar. 3, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Mar. 3, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates
Historical Swap Data Reporting Part 46 (except the recordkeeping requirements of Rule §§ 46.2 and 46.4)	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Apr. 2, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Apr. 2, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Apr. 2, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, no timing relief provided	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Apr. 2, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates 	Determination deferred, timing relief available Compliance required: <ul style="list-style-type: none"> Apr. 2, 2014 for transactions with guaranteed and conduit affiliates; Earlier of 30 days after a comparability determination and Dec. 1, 2014 for transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates

Jurisdiction	Australia	Canada	European Union	Hong Kong	Japan	Switzerland
Requirement						
Swap Data Recordkeeping Recordkeeping requirements of Rule §§ 45.2, 45.6, 46.2 and 46.4 ⁶	Determination deferred, no timing relief provided					

⁶ CFTC No-Action Letter No. 13-75 states that (1) CFTC Rule 45.2(a)(4) (requiring records that include, without limitation, all records required by Part 23) is independently governed by the applicability of the underlying Part 23 requirements and (2) during the period of relief provided by the letter, the CFTC staff will not recommend enforcement based on the failure of a non-U.S. SD/MSP to maintain records identifying a non-U.S. counterparty to a swap by means of an LEI/CICI, issued pursuant to Part 45, if: (i) the counterparty's LEI/CICI is not publicly available, (ii) the counterparty has not already provided its LEI/CICI to the non-U.S. SD/MSP, and (iii) the counterparty does not provide its LEI/CICI to the non-U.S. SD/MSP in connection with the swap transaction, provided that the non-U.S. SD/MSP generates a substitute counterparty identifier for such counterparty and utilizes such identifier in the records that the non-U.S. SD/MSP is required to maintain as a condition of relying on such relief.

Appendix B: Summary of Comparability Determinations for CFTC Transaction-Level Requirements¹
Non-U.S. Swap Dealers / MSPs and Foreign Branches of U.S. Swap Dealers / MSPs

■ Determined comparable ■ Determination deferred or declined, no timing relief provided

Jurisdiction \ Requirement	European Union ²	Japan
Daily Trading Records Rule § 23.202	Determined comparable, except Rule §§ 23.202(a)(1) and (b)(1) (related to recordkeeping, including records of oral communications)	Determined comparable
Trade Confirmation Rule § 23.501	Determined comparable	Not addressed; no determination
Portfolio Reconciliation Rule § 23.502	Determined comparable	Not addressed; no determination
Portfolio Compression Rule § 23.503	Determined comparable	Not addressed; no determination
Swap Trading Relationship Documentation Rule § 23.504	Determined comparable, only with respect to Rule §§ 23.504(b)(2) and (b)(4) (confirmations and valuations, respectively) ³	Determined comparable, except Rule §§ 23.504(b)(5) and (b)(6) (OLA disclosures and representations and clearing disclosures, respectively)

¹ The CFTC **did not issue comparability determinations or timing relief for the following transaction-level requirements in any jurisdiction:**

- mandatory clearing (CEA § 2(h)(1) and Rule § 50.4)
- margin requirements (Proposed Rule § 23.150 et seq.)
- swap processing (Rule §§ 23.506 and 23.610)
- segregation requirements (Rule §§ 23.700 – 23.704)
- trade execution (CEA § 2(h)(8) and Rule §§ 37.12 and 38.11)
- end-user relationship documentation (Rule § 23.505)
- real-time public reporting (Part 43 and Rule § 23.205)
- external business conduct standards (Rule §§ 23.400 – 23.451)

² With respect to the substituted compliance determinations for the EU, the CFTC states that comparability determinations do not extend to the requirement that the CFTC and any U.S. prudential regulator have direct access to applicable records, with respect to any transaction-level requirement.

³ No comparability finding was made regarding Rule §§ 23.504(a)(2) (SDs/MSPs must establish policies and procedures, approved in writing by senior management, reasonably designed to ensure that they have entered into swap trading relationship documentation with each counterparty before or contemporaneously with entering into a swap transaction); 23.504(b)(1) (general documentation requirements); 23.504(b)(3) (credit support arrangements, including margin requirements); 23.504(b)(5) (representations of status as an insured depository institution or financial company); 23.504(b)(6) (clearing disclosures); and 23.504(c) and (d) (documentation audit and recordkeeping requirements, respectively).