

Swap Dealer and Major Swap Participant Chief Compliance Officer Requirements and Responsibilities

Commodity Futures Trading Commission (“CFTC” or the “Commission”) regulations require the designation of a Chief Compliance Officer (“CCO”) by swap dealers (“SDs”) and major swap participants (“MSPs”) and enumerate the duties of the CCO (“CCO Regulations”).¹

General Guidance

SD and MSP applicants must, as part of the registration process, furnish to the National Futures Association (the “NFA”) documentation sufficient to demonstrate compliance with the CCO Regulations in the form of written policies and procedures (“WPPs”), including supervisory procedures (“SPs”), and other pertinent documentation, including:

1. Board resolutions:

- Authorizing the establishment of the CCO position and appointment of the CCO by the board of directors or the most senior officer of the registrant (the “senior officer”);
- Investing in the CCO the authority to develop, in consultation with the board of directors or the senior officer, appropriate policies and procedures to fulfill the duties set forth in the CEA and CFTC regulations relating to the registrant’s activities;
- Providing that the compensation of the CCO shall be approved by the board of directors or the senior officer;
- Providing that the CCO shall report directly to the board of directors or the senior officer;
- Providing that the CCO may be removed only by the board of directors or the senior officer and
- Providing that the board of directors or the senior officer shall meet with the CCO not less than once a year and otherwise at the CCO’s request.

2. The CCO’s resume.

3. An organizational chart that includes the reporting line of the CCO (including any reporting responsibility to a party (internal or external) other than the board of directors or the senior officer).

¹ CFTC Regulation 3.3 promulgated pursuant to Section 4s(k) of the Commodity Exchange Act (the “CEA”).

A non-U.S. registrant may be able to comply with certain of the CCO Regulations through substituted compliance in its local jurisdiction in accordance with the CFTC’s *Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 FR 45292 (July 26, 2013) (the “Cross-Border Guidance”) and any related comparability determination by the Commission.

Designation of the CCO

Requirements	Policy/Procedure
<p>§3.3(a) requires that:</p> <p>SDs/MSPs designate an individual to serve as the CCO, and provide the CCO with the responsibility and authority to develop, in consultation with the board of directors or the senior officer, appropriate WPPs to fulfill the duties set forth in the CEA and CFTC regulations relating to the SD's/MSP's swaps activities and to ensure compliance with the CEA and CFTC regulations relating to the SD's/MSP's swaps activities;</p> <p>The board of directors or the senior officer of the SD/MSP appoint the CCO;</p> <p>The CCO report to the board of directors or the senior officer;</p> <p>Only the board of directors or the senior officer of the SD/MSP may remove the CCO; and</p> <p>The board of directors or the senior officer approve the compensation of the CCO and meet with the CCO at least once a year and otherwise at the CCO's request.</p>	<p>WPPs should provide that:</p> <ul style="list-style-type: none"> • The CCO (and any future CCO) shall be appointed by the board of directors or the senior officer; • The CCO has the responsibility and authority to develop, in consultation with the board of directors or the senior officer, appropriate WPPs to fulfill the duties set forth in the CEA and CFTC regulations relating to the SD's/MSP's swaps activities and to ensure compliance with the CEA and CFTC regulations relating to the SD's/MSP's swaps activities; • The CCO reports directly to the board of directors or the senior officer;² • The board of directors or the senior office shall meet with the CCO at the CCO's request and not less than once a year;³ and • The CCO may be removed only by the board of directors or the senior officer. <p>SPs should:</p> <ul style="list-style-type: none"> • Include controls to monitor for compliance with CCO appointment, responsibility and reporting requirements.

² Where the CCO has additional reporting responsibilities and/or duties (e.g., as a member of the legal department or serving in a role for an affiliated entity), the WPPs should set forth the additional reporting lines and/or additional duties.

³ The CFTC staff has granted no-action relief permitting a CCO to report to, consult and meet with a governing body (as defined in CFTC Regulation 23.600(a)(4)) that is not the board of directors or the senior officer provided the conditions of the relief are met, including: (1) that the CCO be appointed by, have his or her compensation approved by, be removed only by and provide the annual report required under CFTC Regulation §3.3(e) to (concurrently with provision of the report to the governing body) the board of directors or the senior officer; (2) that the CCO meet with the governing body at least annually and otherwise at the election of the CCO at such times and under the same conditions as required under CFTC Regulation §3.3(a)(1); (3) that the CCO provide the board of directors or the senior officer with a summary of his or her consultations with the governing body with the annual report, and more frequently if deemed appropriate by the CCO; and (4) that the governing body observe all requisite corporate formalities as described in the relief. See CFTC Letter No. 14-158.

Qualifications of the CCO

Requirements	Policy/Procedure
<p>§3.3(b) requires that:</p> <p>The individual designated to serve as the CCO have the background and skills appropriate for fulfilling the responsibilities of the position; and</p> <p>No individual disqualified, or subject to disqualification, from registration as an associated person of a CFTC registrant (pursuant to Section 8a(2) or 8a(3) of the CEA) may serve as the CCO.</p>	<p>WPPs should:</p> <ul style="list-style-type: none"> • Provide that the CCO shall have the background and skills appropriate for fulfilling the responsibilities of the position and establish the qualifications that will be required of the CCO, including education and experience; • Provide that the CCO may not be disqualified or subject to disqualification from registration as an associated person of a CFTC registrant; and • Provide a means for verifying that the CCO is not disqualified or subject to disqualification from registration as an associated person of a CFTC registrant. <p>SPs should:</p> <ul style="list-style-type: none"> • Include controls to monitor for compliance with the CCO qualification requirements.

Application for Registration

Requirements	Policy/Procedure
<p>§3.3(c) requires that:</p> <p>Each application for registration as a SD/MSP include a designation of the CCO as a principal of the applicant, effected by submission of Form 8-R pursuant to §3.10(a)(2).</p>	<p>WPPs should:</p> <ul style="list-style-type: none"> • Require a designation as principal and submission of a Form 8-R for any person holding the position of CCO from time to time and the senior officer to whom the CCO reports.⁴ <p>SPs should:</p> <ul style="list-style-type: none"> • Include controls to monitor for compliance with the CCO registration requirements.

⁴ Where the CCO serves as the CCO of another CFTC regulated entity, WPPs should require that the CCO also be listed as a principal of the other entity.

CCO Duties

Requirements	Policy/Procedure
<p>§3.3(d)(1)-(6) require that the CCO:</p> <p>Administer WPPs that are reasonably designed to ensure compliance with the CEA and CFTC regulations;</p> <p>In consultation with the board of directors or the senior officer, resolve any conflicts of interest that may arise;</p> <p>Take reasonable steps to ensure compliance with the CEA and CFTC regulations relating to the SD's/MSP's swaps activities;</p> <p>Establish procedures, in consultation with the board of directors or the senior officer, for the remediation of noncompliance issues identified by the CCO through a compliance office review, look-back, internal or external audit finding, self-reported error or validated complaint;</p> <p>Establish procedures, in consultation with the board of directors or the senior officer, for the handling, management response, remediation, retesting and closing of noncompliance issues; and</p> <p>Prepare and sign the annual report required under paragraphs (e) and (f) of CFTC Regulation 3.3.</p>	<p>WPPs should:</p> <ul style="list-style-type: none"> • Provide that the CCO will administer and maintain the firm's WPPs; • Provide that the WPPs have been reasonably designed to ensure compliance with the CEA and CFTC regulations; • Describe how the WPPs will be administered (<i>i.e.</i>, the resources, authority and supervisory process the CCO employs to administer the policies and procedures); • Provide that it is the CCO's duty to resolve any conflicts of interest that may arise in consultation with the board of directors or the senior officer; • Describe the process for resolving conflicts of interest (<i>i.e.</i>, outline steps for identification, consultation and resolution); • Provide a statement in the policies and procedures affirming that the CCO will take reasonable steps to ensure compliance with the CEA and CFTC regulations (<i>e.g.</i>, <i>"The chief compliance officer shall take reasonable steps to ensure compliance with the Commodity Exchange Act and the regulations thereunder relating to [Firm's] swaps activities."</i>); • Identify the tools and processes used for the identification of noncompliance issues (<i>e.g.</i>, compliance office reviews, look-backs, internal or external audits, the handling of self-reported errors or validated complaints); • Provide that the CCO shall establish WPPs, in consultation with the board of directors or the senior officer, for the handling, management response, remediation, retesting and closing of noncompliance issues; • Provide the processes for management response to and remediation of noncompliance issues (<i>e.g.</i>, identify time frames for assessment of materiality, potential actions based on the assessment, escalation procedures and response procedures for

	<p>complaints), retesting of noncompliance issues and closing of noncompliance issues; and</p> <ul style="list-style-type: none">• Provide that the CCO shall prepare and sign the annual report.⁵ <p>SPs should:</p> <ul style="list-style-type: none">• Include controls to monitor performance by the CCO of duties specified in the WPPs;• Include procedures to test the design, administration and enforcement of the WPPs and the adequacy of all tools and processes used to administer the WPPs; and• Include procedures to review the processes for identifying and resolving non-compliance issues, including management response, remediation, retesting and closing, and conflicts of interest.
--	---

⁵ Specifications concerning the annual report, furnishing of the annual report to the CFTC and related recordkeeping requirements are contained in CFTC Regulations §§3.3(e), (f) and (g).