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. 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,
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. 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 separate legal entity pursuant to agreements that comply with the specific requirements of the regulations. Some of the contractual terms required in connection with CFTC Segregation have not commonly been used in segregation arrangements. As an election for CFTC Segregation is effective for all uncleared swaps executed after the election is made (or, if such election is made before the relevant compliance date, after such compliance date), market participants electing CFTC Segregation will need to establish compliant segregation arrangements, and those with existing arrangements will likely need to amend or replace them, prior to executing new uncleared swaps with the relevant swap dealer or major swap participant.

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In order to provide for the delivery of notices to the personnel required by

CFTC Regulation 23.701, market participants should be prepared to provide the necessary contact information to their swap dealer and major swap participant counterparties well in advance of the relevant compliance date.

The attached form can be used to send the required contact information to swap dealer and major swap participant counterparties.

Counterparty: Southern Trust Company Inc
Address: ____________________________

____

____
Deutsche Asset & Wealth Management
[redacted]

Date: _____________

Re: Contact Information For Purposes of CFTC Regulation 23.701

Dear Sir or Madam:

The following contact information is being provided for purposes of your delivery of notices pursuant to CFTC Regulation 23.701 ("CFTC IM Segregation Right Notices"). CFTC IM Segregation Right Notices for Counterparty may be provided to the person identified below (the "Collateral Contact") using the following contact information.

I. Collateral Contact Type (please select one)

Officer responsible for the management of collateral
Chief Risk Officer of the Counterparty
Chief Executive Officer of the Counterparty
Highest-level decision-maker for the Counterparty

II. Collateral Contact Name: ____

III. Collateral Contact E-mail Address: ________________________________

IV. Collateral Contact Mailing Address:

____
____
____

V. Collateral Contact Telephone/Fax Numbers:

____

*   *   *

[Signature Page Follows]

By executing this letter, we hereby represent that (i) we have all power and necessary authority to execute and deliver this letter on behalf of Counterparty and (ii) the Collateral Contact identified in this letter is the appropriate person to receive notices for the Counterparty pursuant to CFTC Regulation 23.701.

Kind regards,

Counterparty: ______________________________

Counterparty LEI / CICI ______________________________

By: ______________________________

Name: ______________________________

Title: ______________________________

Employer: ______________________________

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).

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.

See 78 Fed. Reg. at 66621 & n. 1.

Market participants wishing to elect segregation in accordance with CFTC Regulations 23.702 and 23.703 may wish to consult with legal counsel as to the potential impact on trading in uncleared swaps and whether an election to not require such segregation is preferable until such time as appropriate arrangements are established. The CFTC has advised that market participants may continue to agree to alternative arrangements for the handling of collateral that do not conform to the requirements of CFTC Regulations 23.702 and 23.703.

Market participants should note that Collateral Contact information should be updated as appropriate to avoid potential trading disruptions in future years. See CFTC Regulation 23.701(e) (requiring notice at least once per calendar year).

CFTC Regulation 23.701(c) states that the notification required pursuant to CFTC Regulation 23.701(a) must be made to an officer of the counterparty responsible for the management of collateral if such an officer has been identified to the swap dealer or major swap participant. If no such person has been identified by the Counterparty, then the notification must be made to (persons using this form should select accordingly):
the Chief Risk Officer of the counterparty;
or if there is no such officer, the Chief Executive Officer; or
if none, the highest-level decision-maker for the counterparty.

Please note that while only one “Collateral Contact Type” should be selected, market participants may provide information for more than one Collateral Contact.

If this letter is being executed and delivered by an agent on behalf of one or more Counterparties, the agent should insert “as agent for [name of account, client, fund, investor and/or other principal][the accounts, clients, funds, investors and/or other principals named on the attached sheet]”. If the agent is acting on behalf of more than one Counterparty, (i) it may list the names (and LEIs) of such Counterparties on a separate sheet and (ii) this letter should be treated as if it were a separate letter with respect to each Counterparty listed on such sheet.

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