



## Exemptive Order U.S. Person Definition

In December 2012, the Commodity Futures Trading Commission (CFTC) issued a Final Exemptive Order Regarding Compliance with Certain Swap Regulations (78 Fed. Reg. 858, January 7, 2013) (the "Exemptive Order"). The Exemptive Order defines "U.S. person" as any of the following:

- (i) A natural person who is a resident of the United States;
- (ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) effective as of April 1, 2013 for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States;
- (iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity;
- (iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or
- (v) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above.

PLEASE NOTE: The CFTC will release a subsequent "U.S. person" definition that modifies or supplements the definition of "U.S. person" set forth above, and therefore the relevant definition of "U.S. person" for purposes of determining the applicability of the Dodd-Frank Act to cross-border swap transactions may change.

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