

## Mandatory Clearing Summary

### CLIENT ALERT: FIRST PHASE OF MANDATORY CLEARING IN THE UNITED STATES COMES INTO EFFECT ON MARCH 11, 2013

On November 28, 2012, the Commodities Futures Trading Commission (the "CFTC") issued its first clearing mandate of "Covered Swaps," which currently include four classes of interest rate swaps and two CDS classes. Compliance with the mandate is phased in accordance with the status of the swap counterparties. As of the first compliance date, March 11, 2013, Covered Swaps between solely "Category 1 entities," defined as swap dealers, major swap participants or "Active Funds" must be submitted to an eligible clearinghouse to be cleared<sup>1</sup>.

The second compliance date of June 10, 2013 mandates clearing of Covered Swaps by "Category 2 entities," unless the end-user exception applies<sup>2</sup>. Category 2 entities<sup>3</sup> include commodity pools, private funds and persons predominantly engaged in banking or in activities considered financial in nature<sup>4</sup>. All other U.S. persons must comply with this clearing mandate on or before September 9, 2013, unless the end-user exception applies.

The CFTC has defined the term "Active Fund" as follows:

"Active Fund" means a "private fund," as defined in Section 202(a) of the Investment Advisers Act of 1940, that (i) is not a Third-Party Subaccount (See CFTC Regulation 50.25 and 77 Fed. Reg. at 44456) and (ii) has executed 200 or more swaps per month on average over the 12 months preceding November 1, 2012. For purposes of clause (ii) of this definition, "swaps" shall mean swaps as defined by the CFTC for purposes of implementation schedules under parts 23 and 50 of CFTC regulations and shall exclude, without limitation, foreign exchange swaps and foreign exchange forwards exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act ("CEA").

Each market participant entering into Covered Swaps with Deutsche Bank AG or DB Energy Trading LLC on or after March 11, 2013 must make its own determination regarding its Active Fund status. If the market participant is an Active Fund, it must comply with the mandatory clearing requirements under the CEA.

If you are an Active Fund, we request that you notify us as soon as possible or before March 4, 2013 to ensure a smooth transition to the mandatory clearing of Covered Swaps and to minimize any trading disruptions. You can easily designate your Active Fund status through the ISDA Amend process or by executing and returning the attached Active Fund Notification via email to [df.protocol@db.com](mailto:df.protocol@db.com).

On or after March 11, 2013, any request by you to participate in a Covered Swap transaction will be deemed a representation that you are not an Active Fund, unless you have provided us with prior written notice that you are an Active Fund in accordance with a method of delivery specified above. Absent such prior written notice, any agreement by us to enter into any Covered Swap on or after the effective date will be made in reliance upon such representation.

If you have questions or comments concerning this Client Alert please contact us at: [df.protocol@db.com](mailto:df.protocol@db.com). Thank you.

DEUTSCHE BANK AG  
DB ENERGY TRADING LLC

[Click here to download the Deutsche Bank Active Fund Notification \(PDF\).](#)

1 The compliance date for the iTraxx class of CDS is April 2, 2013 IntercontinentalExchange (ICE) offers Category 1 counterparties clearing for iTraxx

2 Please refer to the end-user exceptions. See CFTC Regulation 39.6 and 77 Fed. Reg. at 42559.

3 Please note that a Third-Party Subaccount is not included in the Category 2 entity category. See CFTC Regulation 50.25 and 77 Fed. Reg. at 44456.

4 For full definition, please see section 4(k) of the Bank Holding Company Act.