

# CFTC Portfolio Reconciliation Questionnaire and FAQs

CFTC Regulation 23.502 requires registered Swap Dealers (SD) and Major Swap Participants (MSP) to conduct portfolio reconciliations with all other SDs and MSPs. In addition, SD and MSP are required to have policies and procedures reasonably designed to ensure that they conduct portfolio reconciliations with all Non Swap Dealers and Non Major Swap Participants. Bank of America Merrill Lynch has identified your firm as either a Non Swap Dealer or a Non Major Swap Participant that has signed the ISDA March 2013 Dodd Frank 2.0 Protocol Agreement and has agreed to Swap Valuation and Material Term reconciliation for collateralized and non-collateralized trades. Additional information concerning this reconciliation is requested in order to successfully implement this business conduct rule. We request you please complete the questionnaire below and return to derivatives\_recon\_cftc@bofa.com.

**QUESTION 1 (A) – Pursuant to CFTC NAL No. 13-45 issued July 11, 2013 BofAML may rely on substitute compliance with DF 23.502 by satisfying the EMIR Risk Mitigation Techniques where swap transactions are subject to both CFTC Risk Mitigation Rules and EMIR Risk Mitigation Rules.**

Where swap transactions are subject to both CFTC and EMIR portfolio reconciliation regulations, and noting that you are an EU entity, you may elect to comply with EMIR regulations rather than complying with both CFTC and EMIR regulations. Please verify if you would like to utilize your substituted compliance right and operate under solely the EMIR regulations. An affirmative response will simplify our ongoing portfolio reconciliations because EMIR regulations require valuation reconciliation only. [As you have elected “Exchange” method, we would reconcile valuations in the “exposure” section of TriResolve (if subscribed), or an alternative using portfolio data you will send to us via other methods.]

This would be applicable, unless advised otherwise, for trades where you have any in scope transactions facing any of our 7 registered entities listed below.

YES  
 NO

The Bank of America Merrill Lynch counterparties listed have adhered as swap dealers to the ISDA March 2013 DF Protocol Agreement. The counterparties listed here wish to comply with the EMIR portfolio reconciliation rules which commenced on September 15, 2013, and otherwise satisfy the conditions set forth in CFTC Letter No. 13-45 Corrected and CFTC Letter No. 13-50 issued on August 23, 2013.

- |                         |  |
|-------------------------|--|
| 1. B4TYDEB6GKMZO031MB27 | Bank of America, N.A.                              |
| 2. P7PQG12H75LFHQHXV541 | Merrill Lynch Commodities, Inc.                    |
| 3. GDWTXX03601TB7DW3U69 | Merrill Lynch Capital Services, Inc.               |
| 4. GGDZP1UYGU9STUHRDP48 | Merrill Lynch International                        |
| 5. EQYXK86SF381Q21S3020 | Bank of America Europe Designated Activity Company |
| 6. I7E80LI4NVVT41W1WB02 | BofA Securities Japan Co., Ltd.                    |
| 7. 549300FH0WJAPEHTIQ77 | Bofa Securities Europe Sa                          |

**QUESTION 1(B) – If your firm is in scope for EMIR regulations, please provide your EMIR classification. The relevant classifications are financial counterparty (“FC”), non-financial counterparty above the clearing threshold (“NFC+”) or non-financial counterparty below the clearing threshold (“NFC-“).**\_\_\_\_\_

**QUESTION 2 – If your firm selected the Exchange method in Protocol 2.0, please select only one of the following options with regard to how your firm will reconcile Swap Valuations and Material Term data.**

\_\_\_ We are currently a subscriber of Tri-Resolve or intending to subscribe and will upload **ALL** in scope non cleared OTC derivative products (collateralized and non-collateralized). BofAML will reconcile both Swap Valuation and Material Term data with clients on this platform upon notification.

\_\_\_ We do not wish to subscribe to Tri-Resolve:

a. For Valuations, will send the portfolio data to Tri-Resolve’s secured portal called ‘QuickPort’(a free service provided by the vendor) and will upload **ALL** in scope non cleared OTC derivative products (collateralized and non-collateralized). <http://www.trioptima.co.uk/services/triResolve/triResolve-QuickPort.html>

b. For Material Term, will need to establish a data exchange method direct with BofAML as Tri-Resolve currently does not offer an upload service via QuickPort.

**QUESTION 3 – If your firm selected the Review method in Protocol 2.0:**

Bank of America Merrill Lynch will make available your firm’s data using our secured portal ML Clear. In order to set up your firm with ML Clear, please provide the following information below and an ML Clear specialist will contact you regarding the service and set up. For additional information on ML Clear, please see separate section below titled “ML Clear FAQ”

1. Firm legal name
2. Firm global identifier such as Legal Entity Identifier (LEI)
3. Operations contact name, e-mail and phone number who will provide operational related guidance.
4. If an SFTP/FTP setup is required please provide a technical contact name, e-mail and phone number who will assist with ML Clear set-up and transfer protocols.

**QUESTION 4 – With what frequency will your firm reconcile (For additional information please refer to FAQ “When do I need to reconcile under CFTC”)?**

Bank of America Merrill Lynch will engage in Portfolio Reconciliation based on the following minimum required frequencies for Non Swap Dealer reconciliations:

1. Quarterly for portfolios with more than 100 swaps
2. Annually for portfolios with 100 swaps or less

Please confirm your firm’s reconciliation frequency and provide close of business dates you prefer to use for reconciliation.

### **Additional (FAQs for BAML questions)**

#### **What is the definition of who is required to Reconcile for CFTC?**

CFTC Regulation 23.502 requires Swap Dealers and Major Swap Participants to conduct portfolio reconciliations with all other SD’s and MSP’s and to have policies and procedures reasonably designed to ensure that they conduct portfolio reconciliations with all other counterparties.

#### **What is the definition of what needs to be reconciled for CFTC?**

All open OTC Derivative contracts under CFTC jurisdiction whether they are collateralized or uncollateralized should be reconciled. There are 2 recommended reconciliations; (1) Swap Valuation; the difference between the lower valuation and the higher valuation of more than 10% of the higher valuation; (2) Material Terms; a subset of Swap Data Repository reportable fields.

#### **When do I need to reconcile under CFTC?**

When and how often portfolio reconciliation should take place depends on your classification and the number of trades in your portfolio. Bank of America Merrill Lynch plans to reconcile quarterly/annually according to the regulatory requirements, but will agree to a more frequent reconciliation upon request.

Non Swap Dealer reconciliation frequencies are as follows:

**3.** Quarterly for portfolios with more than 100 swaps

**4.** Annually for portfolios with 100 swaps or less

### **Should I elect Exchange or Review in the ISDA March 2013 Dodd Frank 2.0 Protocol Agreement?**

1. The Exchange method requires both parties to send their Swap Valuation and Material Term data to one another. This allows for a bilateral comparison of the portfolio and helps to expedite remediation of issues within the specified time period as recommended by the CFTC. Bank of America Merrill Lynch recommends bilateral exchange of data as this provides the greatest degree of transparency as well as risk mitigating benefits inherent in portfolio reconciliation. To this end, Bank of America Merrill Lynch uses the 3<sup>rd</sup> party vendor Tri-Resolve to conduct Swap Valuation and Material Term reconciliation.

2. The Review method allows your firm to receive both Swap Valuation and Material Term data directly from the swap dealer. Your obligation under the Review method will be to identify material discrepancies in the portfolio and advise the swap dealer within the specified timeframe which is documented as being 2 business days in the ISDA Protocol. If your firm's decision is only to receive data, Bank of America Merrill Lynch will make this data available via ML Clear as specified above.

### **Should I use a 3<sup>rd</sup> party vendor to reconcile my trades?**

This depends on what elections are made in the Protocol signing process. If you choose Exchange, the decision to use a 3<sup>rd</sup> party vendor should be based on criteria such as the size of your portfolio, the level of service you require and the frequency of the portfolio reconciliation that you require.

Below are two possible offerings for Material Term and Swap Valuation reconciliation by the 3<sup>rd</sup> party provider Tri-Resolve:

#### **1) Tri-Resolve:**

Much of the broker dealer population are subscribers to Tri-Resolve for valuation reconciliation. To help market participants prepare for portfolio reconciliation regulatory requirements, Tri-Resolve has recently expanded their service to include Material Term and Swap Valuation reconciliation for non-collateralized trades. Firms may want to consider using this fee-based service. Visit <http://www.trioptima.com> for further detail.

#### **2) Tri-Resolve QuickPort (Currently supports Swap Valuation only):**

This is a free service provided by Tri-Resolve. It allows non subscribing firms a secure method to upload their files to Tri-Resolve so that Bank of America Merrill Lynch may conduct a unilateral reconciliation. Upon completion of the reconciliation, summary level reconciliation results will be sent back to your firm. For additional information regarding privacy concerns please contact Tri-Resolve. Visit <http://www.trioptima.com> for further details.

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