



# Regulatory Analysis of Dodd-Frank relating to Recordkeeping and Risk Management in Swap Trading

White Paper

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# 1. Introduction

## About Dodd-Frank

The Dodd-Frank act (“The Act”) implements financial regulatory reform sponsored by the Democratically controlled 111<sup>th</sup> United States Congress and the Obama administration. This Act brings the most significant changes to financial regulation in the United States since the regulatory reform that followed the Great Depression, representing a significant change in the American financial regulatory environment affecting all Federal financial regulatory agencies and almost every aspect of the nation's financial services industry<sup>1</sup>.

In addition to the headline regulatory changes covering capital investment by banks and insurance companies, the Act introduces new regulation of hedge funds and private equity funds, alters the definition of accredited investors, requires reporting by all public companies on CEO to median employee pay ratios and other compensation data, enforces equitable access to credit for consumers, and provides incentives to promote banking among low- and medium-income residents.

The Dodd-Frank Wall Street Reform and Consumer Protection Act significantly overhauled the Financial Services regulatory framework in the United States, impacting virtually every regulatory agency and the financial services firms under their supervision. While many of the Act’s provisions are yet to be finalized, recent rulemaking related to the provisions of Title Seven, which amended Section 15 of the Securities Exchange Act and Section 4s of the Commodity Exchange Act pose significant technological and supervisory implications for firms engaged in Swaps activities. The Rules include new record keeping and risk management processes within affected firms, including the recording of conversations which include any “pre-execution trade information”. Once effective these rules will impose significant challenges to risk managers and compliance professionals at affected firms. In order to meet their regulatory obligations, firm’s must consider the variety and complexity of new requirements and the technological challenges inherent in record creation and maintenance, as well as surveillance oversight related to the retention of required records.

## Regulatory analysis

The regulatory analysis in this whitepaper is from Renaissance Regulatory Services, Inc. (RRS)<sup>2</sup>. The scope of the regulatory analysis is limited to the provisions in the Dodd-Frank Act relating to recordkeeping and risk management for swap dealers, major swap participants, security-based swap dealers, and security based major swap participants (“swap entities”). On December 21, 2010 and subsequently On May 23, 2011 , the SEC and the CFTC jointly proposed regulations further defining the terms “swap dealer”, “major swap participant,” “security-based swap dealer” and “security-based major swap participant”. The SEC and the CFTC are currently in the process of finalizing those regulations (the “Swap Definitional Regulations”).

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<sup>1</sup> From Wikipedia:

[http://en.wikipedia.org/wiki/Dodd%E2%80%93Frank\\_Wall\\_Street\\_Reform\\_and\\_Consumer\\_Protection\\_Act](http://en.wikipedia.org/wiki/Dodd%E2%80%93Frank_Wall_Street_Reform_and_Consumer_Protection_Act)

<sup>2</sup> For more information on RRS see: <http://www.rrscompliance.com/>

## 2. A new regulatory framework

### Amending previous Acts

The Dodd-Frank act creates a new regulatory framework, by

- Increasing transparency in financial transactions.
- Mandating coordination among regulatory agencies.
- Establishing new registration and reporting requirements for financial firms.
- Establishing a dedicated consumer protection agency.

Title VII of the Act amends the **Commodity Exchange Act** (“CEA”), the **Securities Act of 1933** (“Securities Act”), and the **Securities Exchange Act of 1934** (“Exchange Act”) to establish a comprehensive new regulatory framework for swaps to reduce risk, increase transparency, and promote market integrity within the financial system. Among other things, Title VII:

1. Provides for the registration and comprehensive regulation of **swap dealers** (“SDs”), **security-based swap dealers** (“SBSDs”), **major swap participants** (“MSPs”), and **major security-based swap participants** (“MSBSP”).
2. Imposes clearing and trade execution requirements on swaps, subject to certain exceptions.
3. Creates recordkeeping and real-time reporting regimes.
4. Enhances the rulemaking and enforcement authorities with respect to certain products, entities, and intermediaries subject to the SEC and CFTC oversight.

Title VII of the Act gives the CFTC authority to regulate entities that fall within the definition of the terms “swap dealer” or “major swap participant” and gives the SEC authority to regulate entities that fall within the definition of the terms “security-based swap dealer” or “major security-based swap participant” The Act also requires all swap dealers and major swap participants to be registered with the SEC and/or the CFTC. It contains definitions of “swap,” “swap dealer” and “major swap participant” but directs the SEC and the CFTC to adopt regulations that further define those terms.

Sections 754 and 774 of the Act state, in part, that unless otherwise provided the provisions are effective on the later of 360 days after the Act’s enactment (i.e., July 16, 2011) or, to the extent rulemaking is required, not less than 60 days after publication of the final regulation. The SEC and CFTC are continuing to implement the Act, and also have taken certain actions to minimize undue disruption and uncertainty for markets and participants, including extending the time frames for implementation of certain provisions of the Act.

### 3. Dodd-Frank Provisions

#### Relating to Record Keeping and Risk Management

The Act included specific requirements regarding the internal business conduct of swap entities. Section 764 of the Act created new section 15F of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup>. Newly enacted Section 15F(g)(1) requires security-based swap dealers and security-based major swap participants to:

*Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and*

*recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.*

The new section 15F(j)(2) requires security-based swap dealers and security-based major swap participants to:

*establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.*

Section 731 of the Dodd-Frank Act added section 4s to the Commodity Exchange Act (“CEA”)<sup>4</sup>. The new section 4s(g)(1) requires swap dealers and major swap participants to maintain:

*daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and*

*recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.*

The new section 4s(g)(4) requires swap dealers and major swap participants to maintain:

*a complete audit trail for conducting comprehensive and accurate trade reconstructions.*

The new section 4s(j)(2) requires swap dealers and major swap participants to:

*establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.*

<sup>3</sup> See Section 764 of the Dodd-Frank Act starting at page 409.

[http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173\\_enrolledbill.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf)

<sup>4</sup> See Section 731 of the Dodd-Frank Act starting at page 328.

[http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173\\_enrolledbill.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf)

## 4. CFTC Regulations

### Recent changes on Recordkeeping and Risk Management

On February 23, 2012, the CFTC adopted final rules regarding the internal business conduct of swap entities under the Dodd-Frank Act<sup>5</sup>. Although the CFTC did make some significant changes to their original rule proposals, the final rules pose some significant requirements on swap entities. For example, swap entities must make and maintain records of all oral or written communications that lead to the execution of a swap, including taping of all telephone conversations that include such information.

### Reporting, Recordkeeping and Daily Trading Records

The final rules (section 23.202) impose comprehensive reporting and recordkeeping obligations on swap entities. These requirements only apply to the swap entity's swaps business and related transactions. These requirements will pose significant technological and operational challenges for swap entities. The rules require swap entities to keep full, complete and systemic transaction and position records. These records include all information necessary to conduct a comprehensive and accurate trade reconstruction, both oral and written. This includes nearly all information collected during pre-execution, execution and post-execution processes.

Pre-execution trade information includes, but is not limited to:

- Records of all oral and written communications (including e-mails, trading system communications, chat discussions and social media) provided or received concerning quotes, solicitations, bids, offers, instructions, trading and prices that lead to the execution of a swap, regardless of how they are communicated;
- Reliable timing data that would permit complete and accurate trade reconstruction; and
- A date and timestamp.

Execution trade information includes, but is not limited to:

- The terms of the swap, including all terms regarding payment or settlement instructions, initial and variation margin requirements, option premiums, payment dates, and any other cash flows;
- The trade ticket;
- Names and identifiers for the swap and counterparties;
- The date and title of agreements to which the swap is subject;

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<sup>5</sup> The Securities Exchange Act Section 15F(f) requires registered Swaps Entities to comply with reporting and recordkeeping requirements established by either the SEC, and for their books and records to be open to inspection and examination by the regulator. The SEC plans to propose regulations in this area in 2012. Exchange Act Section 15F(j)(2) requires registered Swaps Entities to establish robust and professional risk management systems adequate for managing their businesses. The SEC proposed regulations related to risk management in July 2011, but they have not been finalized.

- Fees or commissions and other expenses, identified by transaction;
- A date and timestamp; and
- Other relevant information.

Post-execution trade information includes, but is not limited to:

- Records of post-trade processing and events.

Importantly, records must be made of any oral or written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading and prices that lead to the execution of a swap. With regards to the recording of phone calls, the CFTC provided clarification of the requirement in the adopting release. Specifically, the CFTC notes that the rule requires a record of "all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a swap." Thus, to the extent pre-execution trade information is communicated by telephone, swap entities are required to record and retain those telephone conversations<sup>6</sup>. Furthermore, all quotations, verbal or otherwise, must have a timestamp to the nearest minute in Coordinated Universal Time (UTC). The rules also require that all records, including telephone recordings, be searchable by transaction and counterparty. The records of swaps and related cash and forward transactions must be kept for at least five years after the termination, maturity, expiration, transfer, assignment or "novation" date (date of substitution with a new contract) of the transaction, and be "readily accessible" for the first two years (rule 23.203). However, the voice recordings related to the transaction need only be kept for one year.

The CFTC has granted its staff the authority to create alternative compliance schedules for requirements that are found to be "technologically and economically impracticable." Specifically, the Director of the Division of Swap Dealer and Intermediary Oversight is authorized to establish an alternative compliance schedule for requirements that are found to be technologically or economically impracticable for an affected swap entity<sup>7</sup>.

## Risk Management Program

The rules require swap entities to create a risk management program that includes written policies and procedures. Risk management programs must be approved by the governing body of the swap entity and be provided to the CFTC (or to the NFA if directed by the CFTC) at the time of registration and thereafter upon request. The definition of "governing body" includes the CEO or committees of a board of directors or body performing a similar function, as well as a board, body, committee or officer of a division of a registrant if registration is required of a separately identifiable division. Although the risk management program in the final rules applies only to the swaps activities of the swap entity, the rules also require that the risk management program consider not only the swap-related risks of the swap entity, but also risks posed by the swap entity's affiliates, whether or not swap-related. In addition, the rules require the risk management program to be integrated into risk management at the consolidated entity level.

<sup>6</sup> See page 21 of final rule release at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister022312b.pdf>

<sup>7</sup> See page 315 of final rule release at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister022312b.pdf>

As part of the risk management program, swap entities will be required to create a “risk management unit” that must report directly to “senior management” and be independent of the swap entity’s business trading unit. This risk management unit does not have to be a formal division, but its members must be identified. The rules require significant ongoing approvals related to the risk management program, including for the program’s risk limits and “new product policy.” The risk management program must be designed to document, monitor and enforce a system of policies and procedures to monitor and manage risks of the swap entity. Swap entities’ risk management programs must also:

- Require the risk management unit to create detailed quarterly “risk exposure reports”;
- Require reporting of any material change in the risk exposure of the swap entity;
- Require quarterly review by senior management and annual review by the governing body of risk tolerance limits;
- Establish policies and procedures relating to central counterparties that set forth the conditions for the voluntary use of central counterparties to mitigate counterparty credit risk and require investigation into the adequacy of the financial resources and risk management procedures of used central counterparties;
- Provide for periodic auditing and testing; and
- Ensure that capital and margin requirements are met.

To date the regulators have not issued specific guidance beyond the initial rules and adopting releases. However, it is clear that swap entities must subject trading programs to policies and procedures governing use, supervision, maintenance, testing and inspection of programs. Review and testing of the risk management program are required at least annually and whenever there is a material change in the business of the swap entity that is likely to alter its risk profile. Such assessments must be done by either qualified internal audit staff that are independent of the business trading unit or by a qualified third-party audit service, and they must be reported to and reviewed by key personnel of the swap entity. Reviews and testing must be documented fully and provided to the CFTC upon request. Furthermore, considering the perceived risks to U.S. financial markets associated with swaps activities, and the high profile nature of these new regulations, senior management will undoubtedly be held accountable to ensure that such policies and procedures are established and implemented.

## Compliance Dates for CFTC Rules

The Commodity Futures Trading Commission (CFTC) is in the process of implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under Dodd-Frank, in August 2010, the Commission began issuing proposed rules and soliciting public comment.

Under the final registration regulations, persons who believe that they are swap dealers or major swap participants will be able – but not required – to register before then. Registration will only become mandatory once the Swap Definitional Regulations become effective<sup>8</sup>.

In August 2012 the CFTC published Part 1 and SEC 17 CFR Parts 220, 240 and 241 in the Federal Register. This means that Swap Dealers and Major Swap Participants must register with the National Futures Association before October 12<sup>th</sup>, 2012.

The finalization process is ongoing. The CFTC has now finalized (at January 2013) 41 final rules and 8 final orders.

For an overview of all confirmed Dodd-Frank Final Rules and Orders, see:

<http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankFinalRules>

For an overview of proposed Dodd-Frank Final Rules, see:

<http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankProposedRules>

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<sup>8</sup> See Q & A for Final Registration Process Regulations for Swaps Entities at [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sd\\_msps\\_qa\\_final.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sd_msps_qa_final.pdf)

## 5. Cross Border effects of Dodd-Frank

Swaps trade in a global market. Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA) to impose a panoply of regulation on the swaps market mostly through regulations adopted by the Commodity Futures Trading Commission (CFTC). In Dodd-Frank, Congress expressed its intent to have the CFTC's regulations apply to the global swap market, including activity outside of the United States, if that activity has a "direct and significant connection with activities in, or effect on, commerce of the United States."<sup>1</sup>

Until recently, however, the CFTC had provided scant guidance as to how the new regulatory requirements would apply to cross-border swaps (i.e., swaps with at least one counterparty that is a non-U.S. person). On December 21, 2012, the CFTC took a major step toward providing clarification through a final exemptive order that provides time-limited relief to certain cross-border market participants.<sup>2</sup>

The final exemptive order narrows the definition of "U.S. person" for the purposes of the order and provides "non-U.S. persons" with relief from various aspects of compliance. The relief is effective only until July 12, 2013.<sup>3</sup> By that time, the CFTC hopefully will have finalized its cross-border guidance, which should provide more enduring certainty about the extraterritorial reach of the CFTC's jurisdiction over swaps.

### U.S. Person Definition

The foundation of the final exemptive order is a revised and narrowed definition of "U.S. person" that includes only the following five categories:

- A natural person who is a U.S. resident;;
- A corporation, partnership, LLC, trust, association, joint-stock company, fund or other similar enterprise that 1) is incorporated in the U.S. or 2) has its principal place of business in the U.S.;
- A pension plan for the employees of the entities listed above, unless the plan is "primarily for foreign employees" of the entity;
- An estate of someone who was a resident of the U.S. at the time of death, or a trust "governed by the laws of a state or other jurisdiction" in the U.S. if a court within the U.S. can exercise primary supervision over the trust's administration; and
- Individual or joint accounts for which a beneficial owner is a person within the scope of the above categories.

Consistent with the CFTC's proposed cross-border guidance, branches and agencies of a person will have the same U.S. person status as the principal entity. Therefore, foreign branches of U.S. banks will be considered U.S. persons. Any entity not covered by these five categories is considered a "non-U.S. person" for the purposes of the final order.

The definition of U.S. person — while only temporary — is much narrower than the definition the CFTC initially proposed. The CFTC had proposed that U.S. persons would include, in addition to the categories in the final order, entities for which the owners are responsible for the entity's liabilities and at least one owner is a U.S. person. The proposed definition also included commodity pools, pooled investment accounts and collective trusts of which

- 1) the operator is required to register as a commodity pool operator or
- 2) U.S. persons have direct or indirect majority ownership.

Additionally, pension plans for an entity with its principal place of business in the U.S. would have been U.S. persons. Finally, all estates and trusts subject to U.S. income tax fell within the definition.

The CFTC has signaled an intent to expand the U.S. person definition when it adopts the final cross-border guidance. In a companion Federal Register notice to the final exemptive order, the CFTC has proposed to include as U.S. persons some non-U.S. business organizations that are majority-owned by U.S. persons where the owners are responsible for the obligations of the entity as well as certain commodity pools and other collective investment vehicles that are majority-owned by U.S. persons. Comments on this proposal must be received on or before February 6, 2013.

## Effect of Non-U.S. Person Status on Swap Dealer and Major Swap Participant Threshold Calculations

The remainder of the final exemptive order addresses how the swaps provisions of the CEA and the CFTC's regulations will apply to non-U.S. persons that may register as swap dealers (SDs) or major swap participants (MSPs). The final exemptive order does not address compliance obligations of non-SD/MSP market participants. One impact of the final exemptive order relates to the calculations for determining whether an entity meets the thresholds of swaps activity requiring registration as a SD or MSP. To determine the threshold calculations for registering as a SD or MSP, the final exemptive order permits a non-U.S. person to exclude the following swaps:

- Swaps with a counterparty that also is a non-U.S. person.
- Swaps with a counterparty that is a foreign branch of a U.S. person that is registered as a SD or that represents that it intends to register by March 31, 2013.
- For SDs only, swaps of which the non-U.S. person is not a party because "the swap is entered into by an affiliated central booking entity."

Additionally, for the purposes of aggregating swap positions to determine if an entity exceeds the \$8 billion notional amount swap dealer de minimis level, a non-U.S. person engaged in swap dealing activities with U.S. persons may exclude the following swaps:

- The aggregate gross notional value of swaps from its U.S. affiliates' swap dealing activities.
- The aggregate gross notional value of swap dealing of any non-U.S. affiliate that is swap dealing with U.S. persons as of the date of the order or is registered as a SD, if the non-U.S. person is an affiliate of a registered SD.

- The aggregate gross notional value of its non-U.S. affiliates' swap dealing activities with non-U.S. counterparties.

In all of these exceptions, according to the CFTC, an entity may reasonably rely on a counterparty's representation regarding the counterparty's U.S. person status.

## Effect of Non-U.S. Person Status on SD/MSP Compliance

The CFTC's proposed cross-border guidance and exemptive order would have divided swap rules into two categories for SDs and MSPs — entity-level requirements and transaction-level requirements. The final exemptive order retains this distinction (using the same categories as the proposed order) and, like the proposed order, allows non-U.S. SDs and MSPs to delay compliance with some but not all entity-level requirements and transaction-level requirements under the CFTC's regulations.

Entity-level requirements are designed to manage risks to the SD as a whole. These requirements include capital adequacy, risk management, large trader reporting, recordkeeping and swap data repository (SDR) reporting. During the effectiveness of the order, non-U.S. SDs and MSPs can delay compliance with all entity-level requirements except for SDR reporting and large trader reporting as to swaps with U.S. counterparties. Non-U.S. SDs and MSPs that are affiliated with a parent that is a U.S. person that is an SD, MSP, bank, financial holding company or bank holding company must, however, comply with SDR and LTR reporting requirements for transactions with non-U.S. counterparties as well.

As for transaction-level requirements, non-U.S. SDs and MSPs have to comply with all requirements in effect as to transactions with U.S. counterparties. These requirements include but are not limited to external business conduct standards, recordkeeping, clearing for applicable transactions, and real-time public reporting. But, when entering into swaps with non-U.S. counterparties, non-U.S. SDs and MSPs need only comply with transaction-level requirements as may be required in the SDs' or MSPs' local jurisdiction.

## What effect does the final order have on the compliance dates for SDs and MSPs that are U.S. persons?

The final order has limited effect for SDs and MSPs that are U.S. persons. Such entities must register and comply with all effective entity-level and transaction-level requirements. The only exception is that a foreign branch of a U.S. SD or MSP, at least as to swaps with non-U.S. persons or with other foreign branches of U.S. SDs or MSPs, may comply with transaction-level requirements only as required in the local jurisdiction of the branch.

## Conclusion

While the CFTC's final exemptive order clarifies the scope of Dodd Frank's cross-border application to swaps, the effect is limited. The relief available under the order expires **July 12, 2013**. It is expected that sometime before July 12, 2013, the CFTC will adopt final cross-border guidance, which may modify certain aspects of the final order, including the definition of U.S. person. The final cross-border guidance also should explain how the CFTC's jurisdiction will impact non-SD/MSP market participants. In sum, until the CFTC adopts this final guidance, much uncertainty will remain about the impact of Title VII of Dodd-Frank on cross-border swaps.

## 6. Meeting the new regulatory requirements

### Utilization of software applications

The recordkeeping rules in the Dodd-Frank act can be categorized into 3 regulatory requirements:

- All relevant communication must be captured
- Ability to reconstruct trades as they happened
- All communication must be monitored by the same rules

New technology platforms are now available to meet those new regulatory requirements in the Dodd-Frank Act, relating to recordkeeping and risk management. The NICE Trading Floor Compliance solutions<sup>9</sup> can provide the ability to reconstruct trade communications as they happen, tie them to SWAP transactions and enable a search through every type of related interaction including voice, instant messaging and email. The solutions can scan all communications for compliance risks based on predefined risk categories resulting in automatic alerts to provide compliance departments with greater insight into all communication which is relevant to the transaction.

### Reporting and Recordkeeping

One of the key elements stated within the Dodd Frank act is around the creation of a new section 15F within the Securities Exchange Act. The essence states that all written and verbal must be captured and secured. NICE offers “Compliance Essentials” a single platform allowing the secure capture, archive and management of all communications. The solution offers a flexible, yet secure, voice capture platform that can process Turrets, PBX phones, Mobile devices via various connection method to suit customer needs. The same platform can be integrated or expanded to cover written communication channels such as Email, Chat and Social Media. This offers customer a single platform to record and manage all of the content described in the Section 15F of the Act.

### Complete Audit Trail and Trade Reconstruction

Section 731 of the Dodd-Frank Act adds the requirement for accurate trade reconstructions. The NICE “Trade Reconstruction” solutions provides a sophisticated replay interface that displays all content clearly on a time line, showing a full audit trail of a trade regardless of the communication methods used.

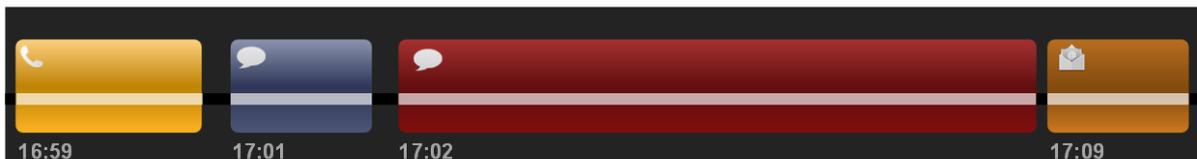


Figure 2: Trade Reconstruction Replay Interface

An important first step to start trade reconstruction is to capture all communication channels of a trader, identify them, and store them in a vault that NICE Trade Reconstruction can access.

<sup>9</sup> For more information on the NICE Trading Floor compliance solutions see also <http://www.nice.com/trading-floors>

## Execution Trade Information (including pre and post execution)

In order to accurately reconstruct a trade communication path, the captured interaction data must be assigned to the correct content. This capturing and tagging of the interactions is one of the most valuable elements to cover the needs related to swap identification and the recall of all elements including pre and post communications. Metadata that can be captured and tagged may be counterparty, SWAP Document ID, SWAP Transaction ID, SWAP deal names, stocks / currency / commodities names assisted with the SWAP etc.

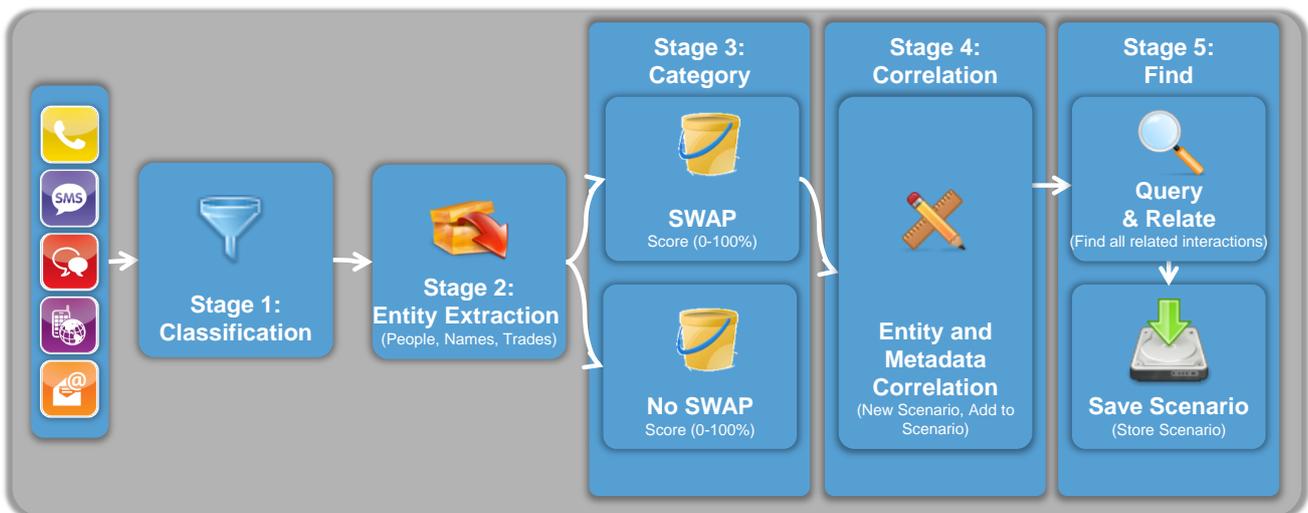


Figure 3: NICE Trade Reconstruction SWAP detection

The reconstruction process encompasses 5 steps to identify SWAP communications:

### Step 1: Classification

Step one in the process is to identify SWAP communications. NICE uses sophisticated communication classification algorithms to identify if any communications patterns related to SWAP communication is in the trader communication.

### Step 2: Entity Extraction

The next step in the process is to extract entities from the recorded communications. Entities such as People (including counterparty), Trade Terms, Stock Names, Commodity Names, etc. are extracted and stored as metadata with the recording.

### Step 3: Categorization

A categorization step uses the information gathered from the interaction metadata, any SWAP metadata gathered and the entity extraction to validate the claim by confirming the communication is related to a SWAP deal, this helps reduce the likelihood of false positives.

### Step 4: Correlation

Step 4 in the process is to find communications that are related to a SWAP scenario. NICE Trade Reconstruction uses all the information gathered in prior steps such as trade metadata, entity extraction, communication queries, communication metadata (time, counterparty etc.) to find related communication to a trade and saves that correlation together ready to be queried when needed.

## Step 5: Query

Final step in the process is the query step. Here the user queries for the communication around a SWAP. A user will find the relevant communication and then all other linked communications are pulled and presented to the user automatically. This shows to the user the SWAP transaction as well as all of the pre and post execution communications as part of the reconstruction.

## Risk Management Program

As part of a risk management program, NICE Proactive Compliance uses advanced applications to perform cross-channel Interaction Analytics — powerful technology for analyzing speech, emails, chats, and other interaction channels, to automatically analyze the content of interactions. NICE Proactive compliance has the ability to

- **explore** communications based on what was actually discussed
- **review** multi-channel communications
- **see** current communication topics and trends
- **highlight** interesting interactions or individuals with communication categorization
- **reconstruct** communication paths
- **improve** the efficiency of investigation processes

Each module of the NICE Proactive Compliance solution gives additional possibilities for a structured risk management process.

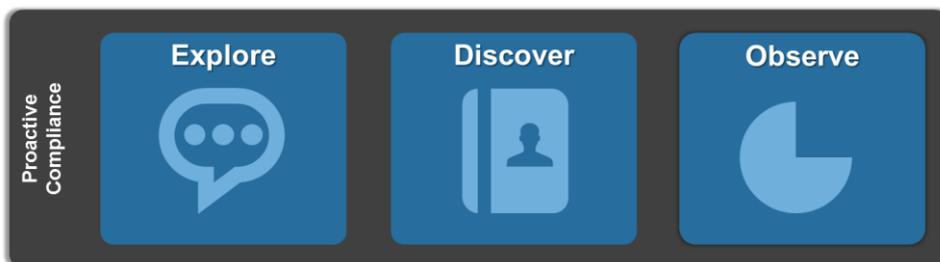


Figure 4: NICE Proactive Compliance Solution

## Explore

As part of the Proactive Compliance solution Explorer module offers an intelligent investigation function that provides huge power to normally untapped content. The search tool is able to offer a single interface to review voice call, Email, SMS, Chat and Social Media feeds. This is made more powerful by offering a search tool that can actually search for conversations in context to what was discussed as well as offering intelligent logic options when trying to find calls.

**Discover**

This module offers the ability to reconstruct all trade communications via the different channels as they happened over time and to correlate transactions and communications to make them searchable “by trade”.

**Observe**

Insight provides a fully interactive Compliance dashboard to discover current communications topics and trends, this module also has the ability to highlight communications or individuals of possible interest. The ability to proactively monitor all communications and discover compliance risks then automatically raise alerts for non-compliant communications. This module can prove that all communications are actively monitored for compliance regulations and has the ability to learn to monitor risk communication factors.

By sending case information from NICE Proactive Compliance alerts to the NICE Actimize Case Manager, a structured investigation process can be started based on both transactional information, as well as interaction information.

## Summary

To meet the new Dodd-Frank requirements for recordingkeeping and risk management NICE offers a suite of “Compliance Solutions”; powerful tools for complete control over the Trading Floor communication, combined with detection methods that proactively detects breaching of compliance rules or fraud. It also provides evaluation and reports on new and emerging risks by creating management overviews and signaling on trends.



Figure 5: NICE Compliance Solutions

By effectively capturing, monitoring and aggregating results from all trading communications, **NICE Compliance Essentials** can provide compliance departments with insights and real-time impact tools that will increase compliance protection against new regulations.

By finding hidden signals and presenting indicators for potential risks, **NICE Proactive Compliance** offers protection against errors and fraud. With proactively monitoring all communication compliance departments can show their intent to be compliant in action and therefore reduce potential fines and discomfort to the business.

## 7. Leveraging NICE's expertise

### Dedicated team of experts

NICE has a dedicated team of experts who assist institutions of all sizes in understanding and assessing the anticipated requirements of the new regulations, as well as leveraging NICE's solutions and technologies in order to be in compliance. NICE has recently opened new practice dedicated to the Dodd-Frank Act and is working with leading Financial Services firms to address its requirements. Financial institutions can leverage NICE's expertise and solutions to ensure compliance with key components of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to transactions and interactions for trading floors, contact centers, back offices and branches.

### Complex and technologically demanding

Dodd-Frank requirements for financial institutions and trading firms are complex and technologically demanding, requiring a wide spectrum of solutions across the enterprise. New levels of self-directed monitoring and surveillance are necessary for companies to achieve regulator transparency and trading controls. In addition, institutions must improve recordkeeping and real-time reporting of all written and oral communications relating to a transaction, while maintaining them securely in a manner which is readily retrievable via electronic access. NICE is actively engaged in the design and implementation of solutions to help these organizations achieve compliance.

### Action required now

Financial institutions must already take action to be compliant with the evolving requirements of Dodd-Frank. In partnership with top U.S. institutions, NICE is leveraging its industry domain expertise, and the unique position of offering a broad range of compliance technologies and solutions across channels to help shape the approach organizations will need to take to comply with this act.

For more information or enquiries on Dodd-Frank relating to Recordkeeping and Risk Management in Swap Trading, please contact [tradingfloors@nice.com](mailto:tradingfloors@nice.com).

## ABOUT NICE SYSTEMS

NICE Systems (NASDAQ: NICE), is the worldwide leader of intent-based solutions that capture and analyze interactions and transactions, realize intent, and extract and leverage insights to deliver impact in real time.

Driven by cross-channel and multi-sensor analytics, NICE solutions enable organizations to improve business performance, increase operational efficiency, prevent financial crime, ensure compliance, and enhance safety and security .

NICE serves over 25,000 organizations in the enterprise and security sectors, representing a variety of sizes and industries in more than 150 countries, and including over 80 of the Fortune 100 companies. [www.nice.com](http://www.nice.com).



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