

**From:** DeAna Dow  
**Sent:** Wednesday, January 18, 2012 11:09 AM  
**To:** Ritter, Elizabeth L.  
**Subject:** Issues on the MSP definition

Hi Elizabeth. While I thought all of my clients were worried only about the SD definition, it turns out they also could be swept into the MSP def. I would like to point out a few of the concerns if you have a moment. In fact, I will outline a couple of the issues here and we can discuss hopefully at your earliest convenience.

1. How is the "substantial position" calculated, at the holding company level or at the entity level? This is not clear in the proposal. If it is done at the holding company level, it will bring in positions of foreign affiliates that likely would not impact the U.S. financial system. Calculation at the holding company level would push more companies into the MSP category where they have a significant foreign operation, although they would not be captured based on U.S. operations.

2. In the calculation of potential outward exposure, unused exposures are included. For example, if a company has an ISDA threshold of \$1 million, but has only used \$1000 of the threshold, the exposure would be \$1 million dollar under the proposed rule (including the unused exposure). Is this necessary when the exposure is only \$1000? Certain entities would be over the MSP threshold using this computation, but under it if only the actual exposure is included in the calculation. See specific language below:

If the person is permitted by agreement to maintain a threshold for which it is not required to post collateral, the total amount of that threshold (regardless of the actual exposure at any time) shall be added to the person's aggregate uncollateralized outward exposure for purposes of paragraph (sss)(1)(i)(B), (ii)(B), (iii)(B) or (iv)(B) of this section, as applicable.(Page 80214)

3) In determining exposure, Proposed Rule 1.3(sss)(2)(iii) will not permit netting of physical positions against swaps. Obviously, swaps are used to hedge physical positions and certainly equivalent positions in the swaps and cash markets reasonably can be offset. Is this negotiable?

4) Finally, it is not clear whether interaffiliate swaps count. We believe they should not and clarification of this understanding would be helpful.

If it's easier for you to respond by email, that's fine too or give me a call.

Thanks,  
De'Ana

De'Ana H. Dow  
Senior Vice President  
Ogilvy Government Relations  
1111 19th St., N.W., Suite 1100  
Washington, DC 20036

**From:** DeAna Dow  
**Sent:** Wednesday, January 18, 2012 2:29 PM  
**To:** Gardy, Laura  
**Subject:** MSP issues

Hi Laura. I had not focused on the MSP portion of the entity definitions until just recently, but have now identified a few important issues that you may want to consider as these rules near final. Please let me know if you will have time to discuss or just send me an email with any thoughts that you may have.  
Thanks.

1. How is the "substantial position" calculated, at the holding company level or at the entity level? This is not clear in the proposal. If it is done at the holding company level, it will bring in positions of foreign affiliates that likely would not impact the U.S. financial system. Calculation at the holding company level would push more companies into the MSP category where they have a significant foreign operation, although they would not be captured based on U.S. operations.

2. In the calculation of potential outward exposure, unused exposures are included. For example, if a company has an ISDA threshold of \$1 million, but has only used \$1000 of the threshold, the exposure would be \$1 million dollar under the proposed rule (including the unused exposure). Is this necessary when the exposure is only \$1000? Certain entities would be over the MSP threshold using this computation, but under it if only the actual exposure is included in the calculation. See specific language below:

If the person is permitted by agreement to maintain a threshold for which it is not required to post collateral, the total amount of that threshold (regardless of the actual exposure at any time) shall be added to the person's aggregate uncollateralized outward exposure for purposes of paragraph (sss)(1)(i)(B), (ii)(B), (iii)(B) or (iv)(B) of this section, as applicable.(Page 80214)

3) In determining exposure, Proposed Rule 1.3(sss)(2)(iii) will not permit netting of physical positions against swaps. Obviously, swaps are used to hedge physical positions and certainly equivalent positions in the swaps and cash markets reasonably can be offset. Is this negotiable?

4) Finally, it is not clear whether interaffiliate swaps count. We believe they should not and clarification of this understanding would be helpful.

De'Ana H. Dow  
Senior Vice President  
Ogilvy Government Relations  
1111 19th St., N.W., Suite 1100  
Washington, DC 20036