U.S. Person Definition Comparison Chart: Regulation S, SEC Rule, and CFTC Guidance

A key element of determining whether a particular swap or security-based swap transaction is subject to U.S. law requires classification of the parties involved, including analysis of whether any counterparty is a "U.S. Person" or an affiliate of a U.S. Person. The following chart describes the criteria under which various categories of individuals and entities would be considered as a U.S. Person for purposes of SEC Regulation S, the SEC Cross-border Rule and the CFTC Cross-border Guidance.

	SEC Reg. S	**SEC Cross-border Rule**	**CFTC Cross-border Guidance**
Natural Person	A natural person resident in the United States	A natural person resident in the United States	A natural person resident in the United States
U.S. Legal Entity	A partnership or corporation organized or incorporated under the laws of the United States	A partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States	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 (other than an entity described in prongs (iv) or (v) of the definition, below) (a "legal entity"), in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States
Non-U.S. Legal Entity	A partnership or corporation organized or incorporated under the laws of any foreign jurisdiction; and formed by a U.S. Person principally for the purpose of investing in securities not registered under the Securities Exchange Act, unless it is organized or incorporated,	[Not a U.S. Person, but may be considered to be subject to SEC jurisdiction because it transacts within the United States]	Collective Investment Vehicle A commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) of the definition and that is majority-owned by one or more U.S. Persons described in prongs (i)–(v) of the definition, except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly offered only to non-U.S. Persons and not offered to U.S. Persons

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	and owned, by accredited investors who are not natural persons, estates or trusts		Other A legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned by one or more U.S. Persons described in prongs (i)–(v) of the definition and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity
Foreign Branch of U.S. Person	A agency or branch of a U.S. Person located outside the United States is NOT a U.S. Person if: (A) the agency or branch operates for valid business reasons; and (B) the agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located	A foreign branch of a U.S. Person is a U.S. Person but not required to be counted if it is a registered SB swap entity or before SB swap registration rules are effective	A foreign branch of a U.S. Person is a U.S. Person but not required to be counted if it is a branch of a registered swap entity
U.S. Branch of Foreign Person	A agency or branch of a foreign entity located in the United States		

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Estate	A estate of which any executor or administrator is a U.S. Person; UNLESS (A) an executor or administrator of the estate who is not a U.S. Person has sole or shared investment discretion with respect to the assets of the estate; and (B) the estate is governed by foreign law	An estate of a decedent who was a resident of the United States at the time of death	An estate of a decedent who was a resident of the United States at the time of death
Trust	A trust of which any trustee is a U.S. Person; UNLESS (A) a trustee who is not a U.S. Person has sole or shared investment discretion with respect to the trust assets, and (B) no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. Person	A trust of which any trustee is a U.S. Person	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 jurisdiction over the administration of the trust
Employee Benefit Plan	An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country	Not explicitly covered but may be similar analysis to that for accounts	A pension plan for the employees, officers, or principals of a legal entity, unless the plan is primarily for the benefit of foreign employees of such entity
Discretionary	A discretionary account or similar account (other than	An account (whether discretionary or non-	A individual account or joint account (discretionary or not) where the beneficial owner (or one of the owners in the case of a joint account) is a

	SEC Reg. S	SEC Cross-border Rule	CFTC Cross-border Guidance
Account	an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; But not: 1. A discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. Person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States; 2. Discretionary account "[w]here a non-U.S. Person makes investment decision for the account of a U.S. Person" [Statement in Reg. S adopting release]	discretionary) owned by a U.S. person	U.S. Person described in prongs (i)–(vii) of the definition
Nondiscretionary	A non-discretionary account or similar account (other than an estate or trust) held	An account (whether discretionary or non-discretionary) beneficially	A individual account or joint account (discretionary or not) where the beneficial owner (or one of the owners in the case of a joint account) is a

	SEC Reg. S	SEC Cross-border Rule	CFTC Cross-border Guidance
Account	by a dealer or other fiduciary for the benefit of a U.S. Person	owned by a U.S. Person	U.S. Person described in prongs (i)–(vii) of the definition