



U.S. COMMODITY FUTURES TRADING COMMISSION

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Re: Time-Limited No-Action Position for Bank Swap Dealers from certain Financial Reporting Requirements

Dear Ms. Brandon and Mr. Kennedy,

This is in response to your joint letter dated August 20, 2021 to the Market Participants Division (“Division”) of the U.S. Commodity Futures Trading Commission (“Commission”). By your joint letter, you request, on behalf of your members that are registered swap dealers (“SDs”), confirmation from the Division that it will not recommend an enforcement action to the Commission if certain SDs subject to capital requirements of a prudential regulator¹ (“Bank SDs”) fail to comply with financial reporting requirements set forth in Commission regulation 23.105(p)(2) as discussed below.²

I. Regulatory Background

¹ The term “prudential regulator” is defined by section 1a(39) (7 U.S.C. 1a(39)) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 1a *et. seq.*) to mean the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

² Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website, www.CFTC.gov.

Section 4s(f) of the CEA authorizes the Commission to adopt rules imposing financial condition reporting requirements on Bank SDs and on SDs subject to the Commission's capital rules ("Non-Bank SDs").³ Pursuant to the Section 4s(f), the Commission adopted Regulation 23.105(p)(2),⁴ which requires each Bank SD to file unaudited quarterly financial information with the Commission within 30 calendar days of the end of the Bank SD's fiscal quarter. The required financial information for a Bank SD consists of a statement of financial condition ("Balance Sheet"), a statement of regulatory capital ("Statement of Regulatory Capital"), and a schedule of the Bank SD's aggregate positions in security-based swaps, mixed swaps, swaps, and other derivatives ("Schedule 1").⁵ The Bank SD is required to submit its Financial Reports on the specific forms set forth in Appendix C to Subpart E of Part 23 of the Commission's regulations ("Appendix C").⁶

The Balance Sheet and Statement of Regulatory Capital contained in Appendix C were intended to be identical to the Federal Financial Institutions Examination Council ("FFIEC") Form 031 ("Call Report") generally filed by banks, including certain Bank SDs, with their respective prudential regulator.⁷ In this regard, the Balance Sheet was designed to be identical with Schedule RC—Balance Sheet of the Call Report, and the Statement of Regulatory Capital was designed to be identical to Schedule RC-R—Regulatory Capital of the Call Report. The use of identical forms was intended to allow Bank SDs to file the same financial information with the Commission that they file with their applicable prudential regulators.

Schedule 1, however, was not based on a corresponding statement or schedule contained in the Call Report. Schedule 1 contains position information that the Commission requested to monitor the activities of Bank SDs in the derivatives markets. The Financial Reports were also identical to corresponding statements and schedule required by the Securities and Exchange Commission ("SEC") for security-based swap dealers that are subject to the capital requirements of a prudential regulator.⁸

II. Request for Relief

You request relief, on behalf of impacted Bank SDs, from the provisions of Regulation 23.105(p)(2). Specifically, you request relief to permit Bank SDs that file a Call Report with their applicable prudential regulator to submit a Schedule RC—Balance Sheet and a Schedule RC-R—Regulatory Capital from the Call Report with the Commission in lieu of the Balance Sheet and Statement of Regulatory Capital required by Regulation 23.105(p)(2) and Appendix C.

³ 7 U.S.C. 6s(f). Financial condition reporting for Non-Bank SDs are also set forth in Regulation 23.105. Financial condition reporting requirements for Non-Bank SDs are not the subject of this letter.

⁴ See Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

⁵ The Balance Sheet, Regulatory Capital Statement, and Schedule 1 are collectively referred to in this letter as a Bank SD's "Financial Reports."

⁶ The Division acknowledges an error in Regulation 23.105(p)(2) that provides that a Bank SD is required to file the information contained in Appendix B to Subpart E of Part 23 with the Commission within 30 calendar days of the end of each quarter. The reference should be to Appendix C to Subpart E of Part 23 of the Commission's regulations.

⁷ See, 85 FR 57462, 57516-57517.

⁸ See SEC Rule 18a-7 (17 CFR 240.18a-7(a)(2)) and Rule 249.617 (17 CFR 249.617).

In support of your request, you state that the FFIEC has revised the Call Report since the Commission adopted Appendix C. In this regard, you identify three line-items that have either been removed, added, or amended with additional language in the most recent Schedule RC or Schedule RC-R.⁹ As a result of these revisions, the Balance Sheet and Statement of Regulatory Capital contained in Appendix C are substantially comparable with the Schedule RC—Balance Sheet and Schedule RC-R—Regulatory Capital, but no longer identical.

You state that granting the requested relief would not materially impact the Commission's oversight of Bank SDs, as the relevant information in the revised Call Report is substantially comparable with the information that would otherwise be filed under Appendix C. You further state that if the relief is not provided, Bank SDs would have to prepare Balance Sheets and Statements of Regulatory Capital to comply with the Commission's requirements and separate statements in order to comply with the prudential regulators' requirements, which would increase costs to Bank SDs without enhancing the Commission's oversight. You also note that such an approach would be inconsistent with the Commission's original intent of harmonizing regulatory reporting with the prudential regulators' requirements.

You also request relief from the requirement in Regulation 23.105(p)(2) that requires a Bank SD to submit the Financial Reports contained in Appendix C to the Commission within 30 calendar days of the end of the Bank SD's fiscal quarter. In support of the request, you represent that certain prudential regulators permit banks, including certain Bank SDs, that operate non-U.S. branches to file their respective Call Report within 35 calendar days of the end of each quarter. You state that failing to provide such relief to Bank SDs would unnecessarily burden Bank SDs that have designed systems and procedures to report Call Report information with their applicable prudential regulator within 35 calendar days of the quarter end.

You further request relief to allow certain non-U.S. domiciled Bank SDs subject to home country capital standards in a G-20 jurisdiction or to capital standards that are consistent with the Capital Accord of the Basel Committee on Banking Supervision (a "Covered Non-U.S. Bank SD") to file financial information consisting of a balance sheet and a statement of capital prepared in accordance with its home country financial reporting requirements (either on a standalone basis or consolidated basis inclusive of the Bank SD's subsidiaries) and accounting standards in lieu of the applicable Balance Sheet and Statement of Regulatory Capital contained in Appendix C. You further request that such reports be filed with the Commission in the same frequency as required by the Covered Non-U.S. Bank SD's home country regulator.

In support of the request, you state that Covered Non-U.S. Bank SDs are generally not required to file Call Reports or similar reports with their applicable U.S. prudential regulator for the entity as a whole. Specifically, a Covered Non-U.S. Bank SD that does not have a U.S. branch or agency (or other U.S.-banking operations) is not required to file a Call Report at all with the prudential regulators. A Covered Non-U.S. Bank SD that does have a U.S. branch or agency is required to file a Call Report for its U.S. branch or agency¹⁰ and would be required to file certain additional financial information annually for the top tier foreign banking organization

⁹ See Request letter page 3.

¹⁰ See FFIEC Form 002, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC002_202106_f.pdf.

on a consolidated basis with the Federal Reserve Board, such as financial statements prepared in accordance with local accounting practices.¹¹

You state that requiring Covered Non-U.S. Bank SDs that do not file Call Reports to submit the Balance Sheet and Statement of Regulatory Capital contained in Appendix C would impose a substantial burden on such entities by requiring them to prepare financial statements in accordance with GAAP that are otherwise not required by a prudential regulator or home country regulator. You request that Covered Non-U.S. Bank SDs be permitted to file a statement of financial condition and statement of regulatory capital that are comparable to the Balance Sheet and Statement of Regulatory Capital contained in Appendix C, but prepared using the applicable local accounting requirements and submitted in a timeframe consistent with home country requirements.

Lastly, you request relief to allow a Bank SD that is dually-registered with the SEC as a security-based swap dealer and required to file a FOCUS Report Part IIC to file such reports with the Commission in lieu of the Balance Sheet and Statement of Regulatory Capital required by Regulation 23.105(p)(2) and Appendix C. In support of your request, you state that the FOCUS Report Part IIC includes, among other financial information, a balance sheet, statement of regulatory capital, and a schedule of aggregate positions in security-based swaps, mixed swaps, swaps, and other derivatives that are identical to the Balance Sheet, Statement of Regulatory Capital, and Schedule 1 set forth in Appendix C. You request relief to address the SEC's pending substituted compliance orders for certain Covered Non-U.S. Bank SDs that may permit such firms to file financial information comparable to the FOCUS Part IIC with the SEC in lieu of the FOCUS Part IIC.

III. Division No-Action Position

The Commission finalized limited financial reporting requirements for Bank SDs in recognition that prudential regulators have an obligation to impose capital requirements on Bank SDs and have primary responsibility under the CEA to monitor Bank SD capital.¹² The limited financial reporting required by Regulation 23.105(p)(2) is intended to provide the Commission with information necessary to monitor the overall financial condition of Bank SDs at a high level due to their status as dealers in the swaps market and as counterparties to market participants, including Non-Bank SDs. The Division believes that providing the relief requested, subject to the conditions below, on a time-limited basis would not adversely impact its ability to monitor the capital position of Bank SDs.

Based on the facts and representations set forth in your letter and those summarized above, the Division will not recommend that the Commission take an enforcement action against a Bank SD for failure to comply with certain financial reporting requirements of Regulation 23.105(p)(2) if:

1. A Bank SD that files a Call Report with its applicable U.S. prudential regulator files the Schedule RC—Balance Sheet and the Schedule RC-R—Regulatory

¹¹ See FR Y-7, available at https://www.federalreserve.gov/reportforms/forms/FR_Y-720191231_f.pdf.

¹² See 7 U.S.C. 6s(e)(2)(i).

Capital from the Call Report, and Schedule 1 from Appendix C, with the Commission on a quarterly basis in lieu of the Balance Sheet and Statement of Regulatory Capital required under Appendix C, provided that the Bank SD files the above schedules with the Commission within the timeframe permitted by its applicable prudential regulator to file its Call Report.

2. A Covered Non-U.S. Bank SD that does not file a Call Report with a U.S. prudential regulator files a statement of financial condition and a statement of regulatory capital in lieu of the Balance Sheet and Statement of Regulatory Capital required under Appendix C, provided that the statements filed with the Commission: (i) contain comparable financial information to the information contained in the Balance Sheet and Statement of Regulatory Capital, and such statements are filed with the Covered Non-U.S. Bank SD's home country regulator; and (ii) include Schedule 1 of Appendix C with its balance sheet and statement of regulatory capital when filed with the Commission.
3. A Covered Non-U.S. Bank SD that prepares and presents the statement of financial condition, the statement of regulatory capital, and Schedule 1 in accordance with the accounting standards permitted by its applicable home country regulator, including the accounting principles established in its home jurisdiction, provided the statement of financial condition, statement of regulatory capital, and Schedule 1 are submitted to the Commission in the English language, with balances converted to U.S. dollars.
4. A Covered Non-U.S. Bank SD files the statement of financial condition, statement of regulatory capital, and Schedule 1 within 15 days of the earlier of the date such financial statements are filed with its home country regulator or the date such financial statements are required to be filed with its home country regulator. A Covered Non-U.S. Bank SD is required to file the financial statements and Schedule 1 with the Commission as of the end of each quarter, unless the Covered Non-U.S. Bank SD is only required to file such financial statements with its home country regulator on a semi-annual basis, in which case its financial statements and Schedule 1 must be filed with the Commission on a semi-annual basis.
5. A Covered Non-U.S. Bank SD that is dually-registered with the SEC as security-based swap dealer files a FOCUS Report Part IIC, or other SEC approved financial reports and schedules, with the Commission in lieu of its reporting obligation under Regulation 23.105(p)(2), provided that (i) the FOCUS Report Part IIC, or other SEC-approved financial reports and schedules, are filed with the Commission on the earlier of the due date for the reports under the SEC rules, or (ii) the date the reports were filed with the SEC. The FOCUS Report Part IIC or other SEC-approved financial reports and schedules must be filed with the Commission in the English language with balances converted to U.S. dollars.

The relief granted by this letter will expire the earlier of October 6, 2023 or the adoption of any revised financial reporting and notification requirements applicable to such SDs under Regulation 23.105(p).¹³

This letter, and the position taken herein, represent the views of Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. This letter and the no-action position taken herein are not binding on the Commission.¹⁴ The relief issued by this letter does no excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed or omitted material facts or circumstances might render the relief provided by this letter void. Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please feel free to contact Thomas Smith, Deputy Director, at 202-418-5495, Josh Beale, Associate Director at 202-418-5446, or Jennifer Bauer, Special Counsel at 202-418-5472.

Sincerely,

Amanda L. Olear
Acting Director

¹³ In addition, to assist SDs in submitting financial reports directly to the Commission the Division intends to issue forthcoming guidance which will, among other things, instruct SDs on the procedures for submitting financial forms directly to the Division.

¹⁴ See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).



August 20, 2021

Thomas J. Smith
Deputy Director and Chief Accountant
Market Participant Division
U.S. Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Re: Financial Reporting Requirements for Bank Swap Dealers

Dear Mr. Smith:

The International Swaps and Derivatives Association (“**ISDA**”)¹ and Securities Industry and Financial Markets Association (“**SIFMA**”)² are writing to request that the staff of the Market Participants Division (the “**Division**”) of the Commodity Futures Trading Commission (“**Commission**” or “**CFTC**”) provide no-action relief on the matters set forth below relating to financial reporting for swap dealers (“**SDs**”) and major swap participants subject to capital requirements of a prudential regulator³ (“**Bank SDs**”) under the Commission’s new capital rules.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 950 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: www.isda.org. Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

² SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

³ The term “prudential regulator” is defined by section 1a(39) (7 U.S.C. 1a(39)) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 1a *et. seq.*) to mean the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

I. Background

On August 2019 the Commission approved rules setting forth capital and financial reporting requirements with a compliance date of October 6, 2021 (“**Final Rules**”).⁴ Under the Final Rules (Regulation 23.105(p)), the Commission requires limited financial reporting for Bank SDs, as these SDs are already subject to existing financial reporting requirements by their prudential regulators. Such Bank SDs are required to submit reports in accordance with Appendix C to Subpart E of Part 23 of Commission Regulations (“**Appendix C**”),⁵ which is intended to be aligned with FFIEC Form 031, “Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices” (the “**Call Report**”).⁶ These reports are required quarterly, beginning with end of the first fiscal quarter after the October 6, 2021 compliance date, and due within 30 calendar days of the end of the Bank SD’s fiscal quarter.

As discussed at greater length below, the Final Rules presented two categories of issues specifically for Bank SDs: (1) for US Bank SDs, aspects of the required templates and deadlines for Bank SDs were misaligned with US prudential regulators’ current Call Report requirements and (2) for non-US Bank SDs, the Final Rules did not expressly include an option to apply for substituted compliance, although it did provide such an option for non-bank SD financial reporting requirements.

We believe that these inadvertent issues are well understood by Division staff and the Commission and that the Commission intends to take future action to address them. In the meantime, however, as the compliance date approaches, we respectfully request staff provide time-limited no action as described below to address the identified issues until such time as the Commission resolves them permanently.

II. Discussion

Below we describe the issues raised by the two categories of issues described above and the clarifications or relief we would propose to address them.

A. U.S. Bank Swap Dealer Requirements

The CFTC Final Rules financial reporting requirements for Bank SDs include two areas of misalignment that require technical correction to be addressed before its compliance date (October 6, 2021). While we highlight two specific issues in this request, (1) submission deadlines and (2) outdated line item cross references, future misalignments will inevitably occur, as US prudential regulators may amend their templates from time to time.

⁴ See Capital Requirements of [SD] and Major Swap Participants, 17 CFR Parts 1, 23, and 140), 85 FR 57462, 576 (Sept. 15, 2020).

⁵ Regulation 23.105(p)(2) contains a typographical error providing that a Bank SD is required to file the information contained in Appendix B of Part 23 with the Commission within 30 calendar days of the end of each quarter. We understand the reference should be to Appendix C of Part 23.

⁶ See 85 Fed. Reg. 57462, 57516 (Sept. 15, 2020) (“These quarterly unaudited reports filed with the Commission were largely based on existing ‘call reports’”). A Bank SD that is also registered with the Securities and Exchange Commission (“**SEC**”) as a security-based swap dealer may instead file Form X-17A-5 FOCUS Report Part IIC with the Commission. See Regulation 23.105(p)(7). We have requested similar relief from the SEC.

- *Alignment of Submission Deadline:* Although the Commission has clearly expressed the goal of aligning its deadline for Bank SD quarterly reporting with US prudential regulators' requirements,⁷ the Final Rules set the deadline for US bank SD reporting for 30 days after quarter end, while the prudential regulators' Call Report deadline for US banks with foreign branches is 35 days.
- *Alignment with Call Report Line Items:* As noted above, Appendix C is derived from the Call Report, which banks are already required to submit to relevant US prudential regulators. The version of the template included in the Final Rules, however, appears to have been based on an outdated version of the Call Report.

Section	Issue	Description
Absent from: Federal Register: P.175, Ref 68724 (Balance Sheet Section)	FOCUS Report Part IIC Balance Sheet VS FFIEC Call Report Schedule RC	- Schedule RC Balance Sheet (Line 2C) 'Equity securities with readily determinable fair values not held for trading': Line item is absent from the FOCUS Report but was added as a line item to the FFIEC Call Report in recent years
Federal Register: P.176, Ref 68725 (Capital Section)	FOCUS Report Part IIC Regulatory Capital VS FFIEC Call Report Schedule RC-R	- Schedule RC-R Regulatory Capital (Line 4) 'Tier III Capital allocated for market risk': Line item is present on the FOCUS report but absent on the current FFIEC031 Call Report. SEC's cost/benefit analysis suggested additional reporting line items would not be required.
Federal Register: P.176, Ref 68725 (Capital Section)	FOCUS Report Part IIC Regulatory Capital VS FFIEC Call Report Schedule RC-R	- Schedule RC-R Regulatory Capital (Line Items 3,5,6,9,10) need to be split into 'Standard' and 'Advanced' to account for Basel 3 implementation

If relief is not provided to address these issues and align with the Call Report, Bank SDs would have to prepare balance sheets and statements of regulatory capital to comply with the Commission's requirements and separate statements in order to comply with the prudential regulators' requirements, which would increase costs to Bank SDs without enhancing the Commission's oversight. Bank SDs that have designed systems and procedures to report Call Report information with their applicable prudential regulator within 35 calendar days of the quarter end would also face unnecessary burdens.

Our recommendation is that the Commission take an evergreen approach that allows Bank SDs to submit the relevant portions of the Call Report, as updated by US prudential regulators from time to time. This will avoid the need to periodically update the agencies' forms to ensure the cross-references align with the current version of the Call Report.

⁷ See 85 Fed. Reg. at 57517.

Request: We request that the Division confirm that it would not recommend enforcement action to the Commission if a US Bank SD (1) filed with the Commission the Schedule RC (Balance Sheet) and Schedule RC-R (Statement of Regulatory Capital) from the US Bank SD's Call Report, as filed with its prudential regulator, in lieu of the applicable schedules in Appendix C;⁸ and (2) made its Regulation 23.105(p) financial filing (as modified per clause (1)) within the timeframe required to file the Call Report with its prudential regulator (*e.g.*, within 35 calendar days after the end of its fiscal quarter if the US Bank SD had a foreign branch). This relief would expire upon the compliance date of superseding Commission action to align Regulation 23.105(p) and Appendix C with the Call Report.

B. Non-U.S. Bank Swap Dealer Requirements

In Regulation 23.106, the Commission adopted a program for non-US SDs to seek a determination from the Commission that it operates in a jurisdiction that has comparable capital adequacy and financial reporting rules and if the Commission so determines, meet some or all of its capital and financial reporting requirements by complying with that jurisdiction's requirements. Within Regulation 23.105, however, the Commission solely addressed the availability of such substituted compliance in connection with a non-bank SD's monthly and annual financial reporting obligations.⁹ Regulation 23.105 did not expressly extend parallel treatment to quarterly reporting requirements for non-US Bank SDs under paragraph (p), even though there is less of a reason to impose CFTC-specific financial reporting requirements on SDs that are not subject to the Commission's capital adequacy requirements, nor even US GAAP accounting, upon which US bank reporting requirements are based. This omission diverges from the parallel Securities and Exchange Commission ("**SEC**") framework, which contemplates substituted compliance for financial reporting by non-US security-based swap dealers that have a prudential regulator.

We further note that non-US Bank SDs generally are not required to file Call Reports or similar reports with their applicable U.S. prudential regulator for the entity as a whole. Specifically, a non-US Bank SD that does not have a US branch or agency (or other US banking operations) is not required to file such a report at all. A non-US Bank SD that does have a U.S. branch or agency is required to file a report of assets and liabilities (a Call Report) for its US branch or agency¹⁰ and would be required to file certain additional financial information annually for the top-tier foreign banking organization on a consolidated basis with the Federal Reserve Board, such as financial statements prepared in accordance with local accounting practices.¹¹

Accordingly, requiring a Covered Non-U.S. Bank SD to submit the balance sheet and statement of regulatory capital contained in Appendix C would impose a substantial burden on such entities by requiring them to prepare financial statements in accordance with GAAP that are otherwise not required by a prudential regulator or home country regulator.

⁸ A US Bank SD would remain obligated to file the position information in Schedule 1 of Appendix C with the Commission or NFA.

⁹ See Regulation 23.105(o).

¹⁰ See FFIEC Form 002, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC002_202106_f.pdf.

¹¹ See FR Y-7, available at https://www.federalreserve.gov/reportforms/forms/FR_Y-720191231_f.pdf.

Request: We request that the Division confirm that it would not recommend enforcement action to the Commission if a non-US Bank SD subject to home country capital standards in a G-20 jurisdiction or that are consistent with the Capital Accord of the Basel Committee on Banking Supervision (a “**Covered Non-US Bank SD**”)¹² (1) filed with the Commission financial information consisting of a statement of financial condition and a statement of regulatory capital prepared in accordance with its home country financial reporting requirements (either standalone or consolidated inclusive of the Bank SD’s subsidiaries) and accounting standards (*e.g.*, IFRS or local GAAP), translated into English and with balances converted to US dollars, in lieu of the applicable schedules in Appendix C¹³ and (2) made its Regulation 23.105(p) financial filing (as modified per clause (1)) no later than 15 calendar days after filing its statement of financial condition and statement of regulatory capital with its home country prudential regulator. For the avoidance of doubt, if a Covered Non-U.S. Bank SD filed this information with its home country regulator on a semi-annual basis, it would make its Regulation 23.105(p) financial filing with the Commission or NFA with the same frequency.

In addition, we request that the Division confirm that it would not recommend enforcement action to the Commission if a Covered Non-US Bank SD that is dually-registered as a security-based swap dealer satisfies its financial statement reporting obligation under Regulation 23.105(p) by filing a copy of its FOCUS Report Part IIC, or other SEC approved financial report, with the Commission, so long as the Covered Non-US Bank SD files the FOCUS Report Part IIC or other SEC approved financial report with the Commission on the earlier of the due date of the report under the rules of the SEC or the date the financial reports were filed with the SEC, in the English language, and with balances converted to US dollars.

This relief would expire upon the compliance date of superseding Commission action to provide for non-US Bank SDs to rely on substituted compliance under Regulations 23.105(p) and 23.106.

* * *

Please feel free to reach out to the undersigned should you have any questions.

Sincerely,



Steven Kennedy
Global Head of Public Policy
ISDA



Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

¹² A Non-US Bank SD would not qualify for this relief if the Non-US Bank SD (other than its US branch) files a Call Report with a US prudential regulator. Such a Non-US Bank SD would instead need to rely on the relief for US Bank SDs requested above.

¹³ A Covered Non-U.S. Bank SD would remain obligated to file the position information in Schedule 1 of Appendix C with the Commission or NFA, but could do so in accordance with home country accounting standards.