



August 20, 2021

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

**Re: Financial Reporting Requirements for Bank Swap Dealers**

Dear Mr. Smith:

The International Swaps and Derivatives Association (“**ISDA**”)<sup>1</sup> and Securities Industry and Financial Markets Association (“**SIFMA**”)<sup>2</sup> 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 regulator<sup>3</sup> (“**Bank SDs**”) under the Commission’s new capital rules.

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<sup>1</sup> 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](http://www.isda.org). Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

<sup>2</sup> 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>.

<sup>3</sup> 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**”).<sup>4</sup> 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**”),<sup>5</sup> 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**”).<sup>6</sup> 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.

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

<sup>5</sup> 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.

<sup>6</sup> 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,<sup>7</sup> 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.

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<sup>7</sup> 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;<sup>8</sup> 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.<sup>9</sup> 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 agency<sup>10</sup> 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.<sup>11</sup>

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.

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

<sup>9</sup> See Regulation 23.105(o).

<sup>10</sup> See FFIEC Form 002, available at [https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC002\\_202106\\_f.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC002_202106_f.pdf).

<sup>11</sup> See FR Y-7, available at [https://www.federalreserve.gov/reportforms/forms/FR\\_Y-720191231\\_f.pdf](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**”)<sup>12</sup> (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 C<sup>13</sup> 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.

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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

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<sup>12</sup> 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.

<sup>13</sup> 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.