July 20, 2022

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: Substituted Compliance for Capital and Financial Requirements for Non-Bank Swap Dealers Domiciled in Japan, Mexico, United Kingdom and the European Union

Dear Mr. Smith:

The Institute of International Bankers ("**IIB**"), International Swaps and Derivatives Association ("**ISDA**") and Securities Industry and Financial Markets Association ("**SIFMA**", and together with IIB and ISDA, the "**Associations**")[1] are writing to request that the staff of the Market Participants Division (the "**Division**") of the Commodity Futures Trading Commission ("**Commission**" or "**CFTC**") extend the current time-limited no-action relief[2] on the matters set forth below relating to capital and financial reporting for swap dealers ("**SDs**") and major swap participants not subject to capital requirements of a prudential regulator[3] ("**Nonbank SDs**") under the Commission's new capital rules. Specifically, we request that Nonbank SDs be permitted to continue to comply with the capital and financial reporting requirements of their home country regulators while the Division and Commission continue their work to finalize pending applications for substituted compliance determinations.

I. Background

In September 2021, the Associations requested that Nonbank SDs be permitted to comply with the capital and financial reporting requirements of their home country regulators while the

[1] Please see the Appendix for more information on the Associations.

[2] *See* CFTC Letter No. 21-20 from Amanda L. Olear, Acting Director, Market Participants Division, to Kyle Brandon, Securities Industry and Financial Markets Association, Stephen Kennedy, International Swaps and Derivatives Association, and Stephanie Webster, Institute of International Bankers, Time Limited No-Action Position for Non-Bank Swap Dealers Domiciled in Japan, Mexico, United Kingdom and the European Union (September 30, 2021) ("**NAL 21-20**").

[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.

Division and Commission continue their work to finalize pending applications for substituted compliance determinations. Recognizing that the nonbank SDs subject to pending capital comparability determination applications must comply with applicable home country capital and financial reporting requirements, and that such capital requirements that are based on the Basel Committee on Banking Supervision ("**BCBS**") framework, the Division provided the relief requested on a time-limited basis, subject to the financial reporting and notification conditions, stating that such relief will not materially impact its ability to monitor the financial condition and overall safety and soundness of the covered nonbank SDs. Such relief was granted until the earlier of October 6, 2022 or the issuance of final Capital Comparability Determinations applicable to the certain Nonbank SDs located in the European Union ("**EU**"), Japan, Mexico, and the United Kingdom ("**UK**") ("**Covered Nonbank SDs**").

We understand that currently the Commission is planning to propose the capital comparability determinations for the EU, Japan, Mexico and the UK before making them final and there will need to be ample time for firms to provide meaningful comment to that process. As such, the final comparability determinations are not likely to be completed by the expiration of the NAL 21-20. We are concerned that imposing the full rule set at that time, while the Commission's comparability determinations remain pending would prove to be a significant operational challenge and may ultimately be unnecessary and duplicative.

We further understand that the Covered Nonbank SDs under the relief continue to be subject to home country capital and financial reporting rules and that there are no known issues with the compliance with the conditions set forth in NAL 21-20 and that the covered non-bank SDs are reporting consistent with that relief.

II. Discussion

As you are aware and noted in the granting of the initial relief, absent the granting of substituted compliance or an extension of NAL 21-20 ahead of October 6, 2022, Covered Nonbank SDs with pending applications will be required to implement the full scope of the Commission's capital and financial reporting requirements while also complying with the full scope of their respective home country capital and financial reporting requirements during the pendency of the application for comparability determination. Such a result would impose substantial operational and financial burdens on Covered Nonbank SDs which the Commission sought to address by incorporating a substituted compliance framework into Regulation 23.106. For example, while many of the Covered Nonbank SDs are subject to home country financial reporting requirements that are comparable to the Commission's financial reporting requirements set forth in Regulation 23.105, differences do exist in the accounting principles adopted in the different jurisdictions and in the form and frequency of some of the financial reporting requirements of the relevant jurisdictions, and therefore such SDs would be required to maintain books and records, and to prepare and present financial reports, in accordance with multiple accounting principles and conflicting deadlines.

Further, the Covered Nonbank SDs are subject to home country capital regimes that are based on the BCBS's international framework for banking institutions, which is consistent with the Commission's SD capital requirements. Therefore, we request extension of the relief to permit Covered Nonbank SDs that are subject to substituted compliance applications filed with the Commission to comply with their applicable home country capital and financial reporting requirements in lieu of the Commission's capital and financial reporting requirements pending the Commission's final assessment of the substituted compliance applications

<u>Request</u>: The Associations request that the Division extend the relief granted in NAL 21-20.

This relief would expire upon the issuance of final substituted compliance determinations applicable to the Covered Nonbank SDs located in the EU, Japan, Mexico, and the UK or October 6, 2024.

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

Sincerely,

Stephanie Webster
General Counsel
Institute of International Bankers

Steven Kennedy
Global Head of Public Policy
ISDA

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

Appendix

The **IIB** is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax, and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

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.

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 one 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.