

May 31, 2022

Ms. Amanda Olear, Acting Director  
Market Participants Division  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**Re: Request for Relief from Certain Business Conduct and Documentation Requirements**

Dear Ms. Olear:

The International Swaps and Derivatives Association, Inc.<sup>1</sup> (“**ISDA**”) is writing to the staff of the Market Participants Division (the “**MPD**” or “**Division**”) of the U.S. Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”) on behalf of its members that are Swap Dealers (“**SDs**”) to request no-action relief from certain business conduct and documentation requirements for swaps that are intended to be cleared. Specifically, we request that the Commission update existing relief from business conduct and documentation requirements to: (1) cover the full universe of swaps that are accepted for clearing; and (2) include swaps that are intended to be cleared through a Derivatives Clearing Organization (“**DCO**”) or a DCO exempt from registration (“**Exempt DCO**”) and that are executed on or pursuant the rules of Swap Execution Facilities (“**SEFs**”) that are exempt from registration (“**Exempt SEFs**”).

**I. Background**

On November 15, 2013, the Division of Swap Dealer and Intermediary Oversight (now renamed as the MPD) published No-Action Letter No. 13-70 (“**Letter 13-70**”). Letter 13-70 provides certain relief from Commission regulations for “swaps that are intended to be cleared,” which are defined as swaps that are accepted for clearing by a DCO and that are intended to be submitted for clearing contemporaneously with execution. Specifically, the relief provided in Letter 13-70 includes exemptions from:

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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 960 member institutions from 78 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)

- §§ 23.402(b)-(f)(*know your counterparty and other disclosures*), 23.430 (*verification of counterparty eligibility*), 23.431(a)-(b)(*material risks, characteristics, incentives and mid-market mark disclosures, and scenario analysis*), 23.431(d)(1)(*notice of right to receive daily mark from DCO for cleared swaps*), 23.432(a)-(b)(*notice of right to select DCO and to clearing*), 23.434 (*recommendations regarding institutional suitability*), 23.440 (*requirements for SDs acting as advisors to Special Entities*), 23.450 (*requirements for SDs acting as counterparties to Special Entities*), 23.451 (*political contributions by certain SDs*), and 23.504 (*swap trading relationship documentation*) for swaps that are intended to be cleared where the swap is not executed on or subject to the rules of a SEF or Designated Contract Market (“**DCM**”) and the SD does not know the identity of its counterparty prior to execution, and where the swap is submitted for clearing as soon as technologically practicable (“**ASTP**”) after execution if fully automated systems were used (“**Relief Prong 1**”);
- §§ 23.402(b)-(f)(*know your counterparty and other disclosures*), 23.430 (*verification of counterparty eligibility*), 23.431(a)-(b)(*material risks, characteristics, incentives and mid-market mark disclosures, and scenario analysis*), 23.431(d)(1) (*notice of right to receive daily mark from DCO for cleared swaps*), 23.432(a)-(b) (*notice of right to select DCO and to clearing*), 23.434 (*recommendations regarding institutional suitability*), 23.440 (*requirements for SDs acting as advisors to Special Entities*), 23.450 (*requirements for SDs acting as counterparties to Special Entities*), 23.451 (*political contributions by certain SDs*), and 23.504 (*swap trading relationship documentation*) for swaps that are intended to be cleared where the swap is executed on or subject to the rules of a SEF or DCM and the SD knows the identity of its counterparty prior to execution, and where the swap was accepted for clearing by a DCO as of November 15, 2013 or is subject to mandatory clearing (“**Relief Prong 2**”);
- §§ 23.402(b)-(f)(*know your counterparty and other disclosures*), 23.430 (*verification of counterparty eligibility*), 23.431(b) (*scenario analysis*), 23.431(d)(1) (*notice of right to receive daily mark from DCO for cleared swaps*), 23.432(a)-(b) (*notice of right to select DCO and to clearing*), 23.451(*political contributions by certain SDs*), and 23.504 (*swap trading relationship documentation*) for swaps that are intended to be cleared where the swap is executed on or subject to the rules of a SEF or DCM and the SD knows the identity of its counterparty prior to execution, and where the swap is of a type that was not accepted for clearing as of November 15, 2013 and is not subject to mandatory clearing (“**Relief Prong 3**”); and
- § 23.504 (*swap trading relationship documentation*) for swaps that are intended to be cleared where the swap is not executed on or subject to the rules of a SEF or DCM and the SD knows the identity of its counterparty prior to execution, and where the SD ensures that both parties submit the swap for clearing ASTP after execution if fully automated systems were used (“**Relief Prong 4**”).

With respect to the relief provided for intended-to-be-cleared swaps that are executed non-anonymously on, or subject to the rules of a SEF or DCM (i.e., Relief Prongs 2 and 3), the Division explained that the application of certain business conduct requirements and documentation requirements to these transactions would be superfluous because there is no ongoing relationship between the counterparties given that such swaps are cleared immediately after execution. The Division agreed with market participants that such requirements would only

be “effective and meaningful” where there is in fact a continuing relationship between the counterparties that would necessitate such disclosures and documentation.

Notably, the Division provided exemptions from certain business conduct requirements for swaps that were accepted for clearing as of November 15, 2013—the date of issuance of Letter 13-70. The Division, however, did not provide similar relief to swaps that were accepted for clearing after the date of issuance of Letter 13-70 (i.e., compare Relief Prong 2 with Relief Prong 3). The Division reasoned that it did not have an appropriate basis to conclude that swaps that would be accepted for clearing after the date of Letter 13-70, but will not be subject to mandatory clearing, would be “sufficiently standardized” to warrant the same broad relief from business conduct requirements as those swaps that were accepted for clearing as of the date of Letter 13-70 or are subject to mandatory clearing.

Separately, in 2015, the Commission published four (4) orders for central clearing counterparties (“CCPs”) in Australia, Japan, Korea and Hong Kong that exempted these CCPs from registration as a DCO.<sup>2</sup> In each case, the Commission determined that these CCPs were subject to comparable, comprehensive supervision by appropriate government authorities in their home countries. The CFTC’s orders allow these Exempt DCOs to clear proprietary swap positions for their U.S. clearing members.

In addition, from 2017 through 2020, as the CFTC continued to harmonize its cross-border trading requirements, the Commission released several orders that exempted certain foreign derivatives exchanges or trading facilities in the EU, UK, Singapore and Japan from the SEF registration requirements.<sup>3</sup> These orders permit U.S. Persons to execute swap transactions, whether subject to the U.S. trade execution mandate or voluntarily traded on SEFs, to be executed on CFTC recognized foreign trading facilities according to the rules of those platforms, collectively named in the various orders.

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<sup>2</sup> The orders exempting ASX Clear (Futures) Pty Limited, Japan Securities Clearing Corporation, Korea Exchange, Inc. and OTC Clearing Hong Kong Limited are available on the CFTC’s website. Please see <https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizations>.

<sup>3</sup> See CFTC Order of Exemption, In the Matter of the Exemption of Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the European Union from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (July 23, 2020), *available at* <https://www.cftc.gov/media/4351/CFTCAmendmentOrderExemption072320/download>; CFTC Order of Exemption, In the Matter of the Exemption of Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the European Union from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (2017), *available at* [https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsandactions/documents/ifdocs/mtf\\_otforder12-08-17.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsandactions/documents/ifdocs/mtf_otforder12-08-17.pdf); CFTC Order of Exemption, In the Matter of the Exemption of Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the European Union from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (2018), *available at* [https://www.cftc.gov/sites/default/files/2018-12/MTF\\_OTF\\_AmendmentOrderExemption120318.pdf](https://www.cftc.gov/sites/default/files/2018-12/MTF_OTF_AmendmentOrderExemption120318.pdf); CFTC Order of Exemption, In the Matter of the Exemption of Electronic Trading Platforms Registered within Japan from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (2019), *available at*, <https://www.cftc.gov/PressRoom/PressReleases/7968-19>; CFTC Order of Exemption, In the Matter of the Exemption of Approved Exchanges and Locally-Incorporated Recognised Market Operators Authorized within Singapore from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (2020), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8301-20>.

A list of these Exempt SEFs is available in the Appendix to this letter.<sup>4</sup>

## **II. Discussion**

Since Letter 13-70 was issued in 2013, the swaps market has grown. For example, the cleared interest rate derivatives market had a total trade count of 117,907 in Q4 2013 as compared to Q3 2021 where that number has nearly tripled to 318,212.<sup>5</sup> Alongside such growth, there has been a parallel increase in the number and types of swaps that are cleared through DCOs and Exempt DCOs, including swaps linked to risk-free rates (such as SOFR), which are being traded more frequently following the market-wide transition away from LIBOR.

Given these market developments and to facilitate the market's transition away from LIBOR, we believe that the aforementioned exemptions from the business conduct requirements in Relief Prong 2 should be extended to cover all swaps that are accepted for clearing by DCOs and Exempt DCOs on a go-forward basis. Specifically, this would include exemptions from:

- § 23.431(a) (material risks, characteristics, incentives and mid-market mark disclosures);
- § 23.434 (disclosures related to institutional suitability);
- § 23.440 (disclosure requirements for SDs acting as advisors to Special Entities); and
- § 23.450 (disclosure requirements for SDs acting as counterparties to Special Entities)

In the alternative, at a minimum, we ask that Relief Prong 2 be extended to cover swaps that have been accepted for clearing as of October 2021.<sup>6</sup>

The Division's position in 2013 that applying the full range of business conduct and documentation requirements to intended-to-be-cleared swaps would be superfluous is equally applicable to swaps that have been accepted for clearing after the issuance of Letter 13-70. As evidenced by the aforementioned clearing activity, these swaps are sufficiently standardized so as to obviate the need for material risk, characteristics, incentives and mid-market mark disclosures, as well as obligations related to institutional suitability. Moreover, with respect to requirements when dealing with Special Entities, once the swap is immediately cleared through a DCO, there is no ongoing relationship between the counterparties; thus, imposing these requirements on SDs would not be meaningful given that the swap at-issue is immediately replaced with two DCO-facing swaps after execution.

In addition, we believe the relief in 13-70 should also be updated to reflect the Commission's joint work with non-U.S. regulators to achieve both clearing and trading venue equivalency. In issuing the SEF and DCO exemptive orders for facilities in Europe and Asia, the Commission intended to enable U.S. market participants to have more access to clearing and centralized

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<sup>4</sup> While we have provided a list of platforms that are currently recognized by the CFTC as Exempt SEFs in Appendix A, we request that the Division extend the relief in Letter 13-70 to platforms that the Commission may recognize as Exempt SEFs after the date of issuance of this relief.

<sup>5</sup> See generally <https://swapsinfo.org/>.

<sup>6</sup> For illustrative purposes, we have separately provided MPD staff with information regarding swaps that were accepted for clearing as of October 2021 by the following registered DCOs: Chicago Mercantile Exchange (CME), Intercontinental Exchange (ICE), London Stock Exchange Group (LSEG), and Eurex.

trading and, at the same time, facilitate cross-border trading. Under these orders, the Commission also determined that SEFs and Exempt SEFs, and DCOs and Exempt DCOs, have comparable regulatory requirements and thus U.S. counterparties may comply with requirements of Exempt SEFs and Exempt DCOs in lieu of U.S. requirements.

Providing SDs with the same relief from business conduct and documentation requirements regardless of whether swaps are executed on a SEF or Exempt SEF, or cleared through a DCO or Exempt DCO, would reduce compliance burdens and streamline clearing and trading processes when executing swaps cross-border—thereby furthering the Commission’s goals of creating a level playing field and providing enhanced access to liquidity. Accordingly, we request that such relief be extended to intended-to-be-cleared swaps executed on Exempt SEFs and/or cleared through Exempt DCOs.

### **III. Request for Relief**

For the reasons indicated above, ISDA respectfully requests that the MPD update the relief in Letter 13-70 by:

- (1) eliminating the “timestamp” in Relief Prong 2 to all include swaps that are accepted for clearing (or, at a minimum, those swaps that have been accepted for clearing as of October 2021); and
- (2) extending the relief’s conditions to include swaps that are executed on Exempt SEFs and/or cleared through Exempt DCOs.

Thank you for your consideration of these important issues. Please contact me or Nicolette Cone (202-569-5782) if you have any questions or concerns.

Sincerely,



Bella Rozenberg  
Senior Counsel and Head of Legal and Regulatory Practice Group  
International Swaps and Derivatives Association, Inc.

## APPENDIX

### EU and UK Trading Facilities (MTFs/OTFs) Exempt from SEF Registration

<b>Name of Entity</b>	<b>Category (MTF or OTF)</b>	<b>Location</b>
360 Treasury Systems AG	MTF	Germany
Aurèl BGC OTF	OTF	France
Bloomberg Multilateral Trading Facility Limited	MTF	United Kingdom
BGC Brokers LP	OTF	United Kingdom
BTFE	MTF	Netherlands
CAPI OTF	OTF	Spain
CIMD OTF	OTF	Spain
Creditex Brokerage LLP	MTF	United Kingdom
Currenex	MTF	United Kingdom
Digital Vega FX	MTF	United Kingdom
Dowgate	MTF	United Kingdom
EBS MTF	MTF	Netherlands
FX Connect	MTF	United Kingdom
GFI Brokers Limited	OTF	United Kingdom
HPC OTF	OTF	France
ICAP EU OTF	OTF	France
ICAP Securities	OTF	United Kingdom
ICAP WCLK	MTF	United Kingdom
iSWAP	MTF	United Kingdom
iSwap Euro B.V.	MTF	Netherlands
KBL OTF	OTF	United Kingdom
Sunrise Brokers LLP	OTF	United Kingdom
Thomson Reuters	MTF	United Kingdom
TP ICAP EU MTF	MTF	France
Trad-X	MTF	United Kingdom
Tradeweb EU B.V.	MTF	Netherlands
Tradeweb Europe Limited	MTF	United Kingdom
Tradition	OTF	United Kingdom
Tradition-NEX OTF	OTF	United Kingdom
TSAF OTC OTF	OTF	France
Tullett Prebon Europe	OTF	United Kingdom

Tullett Prebon Europe	MTF	United Kingdom
Tullett Prebon EU OTF	OTF	France

Singapore Trading Facilities (AEs/RMOs) Exempt from SEF Registration

<b>Name of Entity</b>	<b>Category (AE/RMO)</b>
Asia Pacific Exchange Pte Ltd.	AE
BGC Partners (Singapore) Ltd.	RMO
Cleartrade Exchange Pte Ltd.	RMO
Euronext Markets Singapore Pte Ltd	RMO
GFI Group Pte Ltd.	RMO
ICAP (Singapore) Pte Ltd.	RMO
ICE Futures Singapore Pte Ltd.	AE
Nittan Capital Singapore Pte Ltd.	RMO
Refinitiv Transaction Services Pte Ltd.	RMO
Singapore Exchange Derivatives Trading Limited	AE
TFS Currencies Pte Ltd.	RMO
Tradition Singapore (Pte) Ltd	RMO
Tullett Prebon (Singapore) Limited	RMO

Japan Trading Facilities (ETPs) Exempt from SEF Registration

<b>Name of Entity</b>
BGC Shoken Kaisha Limited (Tokyo Branch)
Bloomberg Tradebook Japan Ltd.
Clear Markets Japan Inc
Totan ICAP Co., Ltd.
Tradewed Japan Ltd.
Tullet Prebon ETP Japan Ltd.
Ueda Tradition Securities Ltd.

**Certification Pursuant to Commission Regulation 140.99(c)(3)**

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated May 31, 2022 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

A handwritten signature in blue ink, reading "Bella Rozenberg". The signature is written in a cursive, flowing style.

Bella Rozenberg  
Senior Counsel and Head of Legal and Regulatory Practice Group  
International Swaps and Derivatives Association, Inc.