

June 15, 2023

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**”) and Securities Industry and Financial Markets Association (“**SIFMA**”, and together with ISDA, the “**Associations**”)<sup>1</sup> are writing to request that the staff of the Market Participants Division (the “**Division**”) of the Commodity Futures Trading Commission (“**Commission**”) extend the current time-limited no-action relief<sup>2</sup> 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 capital rules.

**I. Background**

In 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

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<sup>1</sup> Please see the Appendix A for more information on the Associations.

<sup>2</sup> See Commission Letter No. 21-18 from Amanda L. Olear, Acting Director, Market Participants Division, to Kyle Brandon, SIFMA and Stephen Kennedy, ISDA, Time Limited No-Action Position for Bank [SD] from certain Financial Reporting Requirements (August 31, 2021) (“**NAL 21-18**”).

<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.

<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).

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.

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. The Associations wrote to the Division describing in detail the challenges and unintended consequences of these issues.<sup>7</sup>

In August 2021, in response to the Associations’ request the Division issued NAL 21-18 addressing those two categories of issues subject to enumerated conditions. Such relief was granted until the earlier of October 6, 2023 or the adoption of any revised financial reporting and notification requirement applicable to such Bank SDs under Regulation 23.105(p).

We understand that currently the Division is planning to recommend the Commission consider amendments to the Final Rule that will address the issues covered by the current no action position and there will need to be ample time for firms to provide meaningful comment to that process. As such, the final amended rule is not likely to be completed by the expiration of the NAL 21-18. We are concerned that imposing the full rule set at that time while the Commission’s actions remain pending would prove to be a significant operational challenge and may ultimately be unnecessary and duplicative.

We further understand that there are no known issues with the compliance with the conditions set forth in NAL 21-18 and that the Bank SDs are reporting consistent with that relief.

## **II. Discussion**

As you are aware and noted in the granting of the initial relief, absent addressing the issues raised regarding Bank SD financial reporting or an extension of NAL 21-18 ahead of October 6, 2023, US Bank SDs would have to report using misaligned templates and timelines, and non-US Bank SD would have to implement the Commission’s full financial reporting regime while also complying with the full scope of their respective home country financial reporting requirements.

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<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). The SEC is currently seeking to address similar misalignments in the FOCUS Report Part IIC. See Proposed Rule Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report, 88 FR 23920 (April 18, 2023) and related SIFMA Comment Letter (May 22, 2023).

<sup>7</sup> See ISDA and SIFMA Letter to Division staff on Financial Reporting Requirements for Bank Swap Dealers (August 20, 2021).

Such a result would impose substantial operational and financial burdens on Bank SDs which the Commission sought to address by applying 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. 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 conditions 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.

Request: The Associations request that the Division extend the relief granted in NAL 21-18.

This relief would expire upon the earlier of October 6, 2025 or the adoption of any revised financial reporting and notification requirement applicable to such Bank SDs under Regulation 23.105(p).

We understand and agree that the Division may grant or deny the requested letter in its sole discretion, and that its decision to grant or deny the request, and its decisions concerning the content of the requested letter if granted, are not final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 704, and such decisions would therefore not be actionable under 5 U.S.C. § 702 or on any other basis. We further understand and agree that if the request is granted, any decision by the Division to condition further, modify, suspend, terminate, declare void, or otherwise restrict the terms of the letter would not be final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 704, and such actions by the Division therefore would not be actionable under 5 U.S.C. § 702 or on any other basis.

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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

Appendixes:

- Appendix A -- Description of Associations
- Appendix B – Commission Regulation 140.99 Certifications

## Appendix A

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.

**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>.

Appendix B

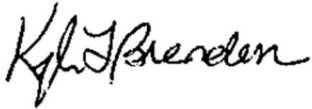
**Certifications Pursuant to Commission Regulation 140.99(c)(3)**

As required by Commission Regulation 140.99(c)(3), I, Steven Kennedy, hereby (i) certify that the material facts set forth in the attached letter dated June 15, 2023 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.



Steven Kennedy  
Global Head of Public Policy  
ISDA

As required by Commission Regulation 140.99(c)(3), I, Kyle Brandon, hereby (i) certify that the material facts set forth in the attached letter dated June 15, 2023 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.



Kyle Brandon  
Managing Director, Head of Derivatives Policy  
SIFMA