



Commodity Futures Trading Commission

Office of Public Affairs

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Fact Sheet – Proposed Comparability Determination and Related Order for Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority

The Commodity Futures Trading Commission (“CFTC” or “Commission”) is requesting comment on a proposed comparability determination and related order. Under this order, certain CFTC-registered swap dealers (“SDs”) domiciled in the United Kingdom (“UK”) and subject to prudential supervision by the UK Prudential Regulation Authority (“UK PRA”) could comply with certain capital and financial reporting requirements under the Commodity Exchange Act (“CEA”) by complying with corresponding capital and financial reporting requirements in the UK.

Swap Dealer Capital and Financial Reporting Requirements

On July 24, 2020, pursuant to sections 4s(e) and 4s(f) of the CEA, the CFTC adopted [final capital and financial reporting rules](#) applicable to, among other entities, SDs that are not subject to regulation by a prudential regulator (“nonbank SDs”).

The CFTC capital rules are designed to ensure the safety and soundness of nonbank SDs by requiring firms to maintain appropriate levels of capital to operate as SDs. The regulatory framework provides nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach; (ii) the Net Liquid Assets Capital Approach; and (iii) the Bank-Based Capital Approach. The Bank-Based Capital Approach, most relevant here, is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies. The Bank-Based Capital Approach also is consistent with the Basel Committee on Banking Supervision’s (“BCBS”) international framework for bank capital requirements.

As part of the overall assessment and monitoring of nonbank SDs for compliance with the Commission’s capital requirements, the CFTC financial reporting rules require nonbank SDs to file with the Commission and the National Futures Association (“NFA”) financial information, including periodic unaudited and annual audited financial statements, specific financial position information, and notices of certain events that may indicate a potential financial or operational issue that may adversely impact a nonbank SD’s ability to meet its obligations to counterparties and other creditors in the swaps market.

The Commission has also established a substituted compliance mechanism whereby a non-U.S. domiciled nonbank SD, trade association, or foreign-country regulator may submit an application requesting the Commission to determine that compliance with applicable home country capital and financial reporting requirements will satisfy all or parts of the Commission’s capital rules and financial reporting rules. Such determination is referred to as a “capital comparability determination.”

Standard of Review for Capital Comparability Determinations

The Commission’s review process reflects a principles-based, holistic approach that focuses on whether the applicable foreign jurisdiction’s capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs, and whether such requirements are comparable to the Commission’s in purpose and effect, not whether they are comparable in every aspect or contain identical elements. In making a preliminary comparability determination, the Commission considers, among other factors, the scope and objectives of the foreign jurisdiction’s capital and financial reporting requirements; whether the foreign jurisdiction’s capital and financial reporting requirements achieve comparable outcomes to the Commission’s corresponding capital requirements and financial reporting requirements; and the ability of the foreign regulatory authority or authorities to supervise and enforce compliance with the foreign jurisdiction’s capital adequacy and financial reporting requirements.

Summary of the Capital Comparability Determination

On May 4, 2021, the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association submitted an application (“Application”) requesting that the Commission determine that registered nonbank SDs organized and domiciled in the UK may satisfy certain capital and financial reporting requirements under the CEA by being subject to and complying with corresponding capital and financial reporting requirements under UK laws and regulations.

Of note, this proposed comparability determination only addresses nonbank SDs organized and domiciled in the UK which are licensed as investment firms and designated for prudential supervision by the UK PRA (“UK PRA-designated nonbank SDs”). Furthermore, the proposed comparability determination is limited to the comparison of the UK capital rules to the Bank-Based Capital Approach under the CFTC capital rules.

Based on its review of the Application and applicable UK laws and regulations, the Commission preliminarily determined that the UK capital and financial reporting rules applicable to UK PRA-designated nonbank SDs generally achieve comparable outcomes and are comparable in purpose and effect to the CFTC capital rules and financial reporting rules. In reaching this determination, the CFTC took account of various factors, including that:

- Both the CFTC capital rules and the relevant UK capital rules are based on the BCBS capital framework and seek to ensure the safety and soundness of nonbank SDs by requiring nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses from the firm’s business activities and decreases in the value of firm assets without the nonbank SD becoming insolvent; and
- Both the CFTC financial reporting rules and the relevant UK financial reporting rules are designed to provide the Commission and the UK PRA, respectively, with financial information to monitor and assess the financial condition of nonbank SDs and their ability to absorb decreases in firm assets and increases in firm liabilities.

Although certain differences between the relevant UK and CFTC capital and financial reporting rules exist, in the Commission’s view, the differences generally would not be inconsistent with providing a substituted compliance framework for UK PRA-designated nonbank SDs, subject to specified conditions, including those described below.

With regard to capital requirements, the proposed conditions include a requirement that each UK PRA-designated nonbank SD maintain, at all times, a minimum level of \$20 million regulatory capital in the form of equity defined as common equity tier 1 capital. Concerning financial reporting, the proposed conditions include requirements to provide the Commission and NFA with copies of certain reports and a notice of certain events, including notice if the UK PRA-designated nonbank SD’s capital falls below certain thresholds or if the firm fails to make or keep current financial books and records.

Comment Period

The CFTC is inviting public comment on its analysis and proposed comparability determination and order, including the proposed conditions, as well as on the Application and relevant UK laws.

The public comment period will be open for 60 days following the publication of the proposed comparability determination and order on cftc.gov. **Comments, identified by “UK Swap Dealer Capital Comparability Determination” may be submitted via the CFTC Comments Portal at: <https://comments.cftc.gov>.**

Comments may also be submitted by mail or by hand delivery to the Commission’s address at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, although submission through the CFTC Comments Portal is encouraged to avoid possible delays.