



Commodity Futures Trading Commission

Office of Public Affairs

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Fact Sheet and Q&A – Final Comparability Determinations and Orders for Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements in Certain Foreign Jurisdictions

The Commodity Futures Trading Commission (“CFTC” or “Commission”) is issuing four final comparability determinations and related orders finding that the capital and financial reporting requirements of the enumerated jurisdictions are comparable to the Commission’s capital and financial reporting requirements applicable to nonbank swap dealers (“SD”) and providing for the conditional availability of substituted compliance. The determinations and orders will apply to certain non-U.S. nonbank SDs organized and domiciled in the following jurisdictions: Japan; Mexico; the European Union (France and Germany); and the United Kingdom (“UK”) (for SDs designated for prudential supervision by the UK Prudential Regulation Authority).

Swap Dealer Capital and Financial Reporting Requirements

On July 24, 2020, pursuant to sections 4s(e) and 4s(f) of the Commodity Exchange Act (“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 to the comparability determinations, 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 “comparability determination.” The Commission would issue a comparability determination in the form of an order (“comparability order”).

Standard of Review for 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 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 Comparability Determinations

The Commission is issuing the final comparability determinations and related comparability orders in response to applications filed with respect to each relevant jurisdiction.¹ The Commission issued proposed comparability determinations and orders for the four jurisdictions on August 8, 2022,² December 13, 2022,³ June 27, 2023,⁴ and February 5, 2024,⁵ respectively.

Based on the representations made in the applications, the Commission's review of relevant foreign laws and regulations, and its analysis of the comments received in connection with the proposed determinations and orders, the Commission has determined that the relevant foreign jurisdictions' capital and financial reporting rules that were subject to the Commission's assessment, achieve comparable outcomes and are comparable in purpose and effect to the CFTC capital rules and financial reporting rules. In reaching this determination, the Commission took account of various factors, including that:

- The CFTC capital rules and each relevant foreign jurisdiction's capital rules are both 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;⁶
- The CFTC financial reporting rules and each relevant foreign jurisdiction's financial reporting rules are both designed to provide the Commission and the relevant foreign regulatory authorities, 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; and
- The relevant foreign regulatory authorities have the necessary powers to supervise and carry out enforcement actions with respect to non-U.S. nonbank SDs subject to their oversight.

Although certain differences between the relevant foreign jurisdictions' and the CFTC capital and financial reporting rules exist, in the Commission's view, the differences are not inconsistent with providing a substituted compliance framework, subject to specified conditions. A majority of the conditions contained in the comparability orders are designed to ensure that: (i) the non-U.S. nonbank SD is eligible for substituted compliance based on the laws and regulations of the relevant jurisdiction that were reviewed by the Commission in performing the comparability assessment, and (ii) the Commission and NFA receive timely financial information and notices to effectively monitor a non-U.S. nonbank SD's compliance with the comparability order and to assess the ongoing safety and soundness of the non-U.S. nonbank SD.

With regard to capital requirements, the conditions also include a requirement that each non-U.S. nonbank SD relying on an order maintain, at all times, an amount of common equity tier 1 capital (or equivalent) that is equal to or in excess of the equivalent of \$20 million. Concerning financial reporting, the conditions include requirements to provide the Commission and NFA with copies of certain reports and notices of certain events, including a notice if the non-U.S. nonbank SD experiences a decrease of 30 percent or more in its excess capital or if the firm fails to make or keep current financial books and records.

¹ The applications are available here: [Comparability Determinations for Substituted Compliance Purposes | CFTC](#).

² [Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination From the Financial Services Agency of Japan](#), 87 FR 48092 (August 8, 2022).

³ [Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Regulation by the Mexican Comisión Nacional Bancaria y de Valores](#), 87 FR 76374 (December 13, 2022).

⁴ [Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union](#), 88 FR 41774 (June 27, 2023).

⁵ [Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority](#), 89 FR 8026 (February 5, 2024).

⁶ The comparability determinations are limited to the comparison of the respective foreign jurisdiction's capital rules to the Bank-Based Capital Approach under the CFTC capital rules.

Effective Date and Confirmation Process

The final comparability orders become effective upon their publication in the Federal Register. As indicated in the orders, with respect to several conditions that impose new reporting or notice obligations on non-U.S. nonbank SDs, the Commission is granting an additional compliance period of 180 calendar days.

To rely on a comparability order, a non-U.S. nonbank SD meeting the eligibility conditions must file a notice stating its intention to comply with the foreign jurisdiction's capital and financial reporting rules assessed by Commission as part of the comparability determination in lieu of the relevant CFTC capital and financial reporting rules. The notice of intent must include the non-U.S. nonbank SD's representation that the firm is organized and domiciled in the relevant jurisdiction, is licensed in the appropriate regulatory category in that jurisdiction, and is subject to, and complies with, the jurisdiction's capital and financial reporting rules assessed by the Commission. A non-U.S. nonbank SD may not rely on a comparability order until it receives confirmation from Commission staff that the firm may comply with the applicable foreign jurisdiction's rules in lieu of the Commission's rules. The notice of intent must be prepared in the English language and submitted to the Commission via email to the following address: MPDFinancialRequirements@cftc.gov.

Q & A

1. **Would the comparability orders contribute to the practice of regulatory arbitrage?**

As part of the process leading to the Commission's comparability orders, Commission staff engaged in a thorough analysis of each foreign jurisdiction's capital and financial reporting framework. Based on this analysis, the Commission determined that the respective foreign jurisdiction's rules are comparable in purpose and effect, and achieve comparable outcomes, to the CFTC capital and financial reporting rules. In certain instances, the Commission found that the foreign jurisdiction's rules impose stricter standards. In limited circumstances, where the Commission concluded that a foreign jurisdiction lacks comparable and comprehensive requirements on a specific issue, the Commission included a condition designed to impose an equally stringent standard. Given the comparability between the CFTC's framework and the relevant foreign jurisdictions' frameworks, the Commission does not believe that market participants would find opportunities for regulatory arbitrage in the area of capital and financial reporting requirements.

2. **Why is the CFTC issuing comparability orders instead of requiring non-U.S. nonbank SD to comply with the CFTC capital and financial reporting requirements?**

In light of the Commission's ultimate conclusion that the relevant foreign jurisdiction's rules are comparable based on standards articulated in Commission Regulation 23.106(a)(3), the Commission believes that a failure to issue a comparability order would impose duplicative requirements that would result in increased costs for registrants and market participants without a commensurate benefit from an oversight perspective.

3. **How would the CFTC ensure that non-U.S. nonbank SDs comply with the applicable foreign jurisdiction's capital and financial reporting requirements?**

As part of the comparability assessment, Commission staff engaged in detailed evaluation of each foreign jurisdiction's capital and financial reporting framework. Based on this evaluation, the Commission concluded that each respective framework includes a comprehensive oversight program for monitoring the relevant non-U.S. nonbank SDs' compliance with the jurisdiction's rules. In addition, in issuing the comparability orders, the Commission is not ceding its supervisory and enforcement authorities. A comparability order permits a non-U.S. nonbank SD to satisfy the Commission's capital and financial reporting requirements by complying with certain foreign laws and/or regulations that have been found comparable to the Commission's laws and/or regulations in purpose and effect. The Commission and NFA, however, have a continuing obligation to conduct ongoing oversight, including potential examination, of non-U.S. nonbank SDs that operate under a comparability order to ensure compliance with the comparability order, including its conditions.

4. **What is the purpose of the comparability orders' conditions?**

As noted in the summary above, the primary objective of the majority of the conditions contained in the comparability orders is to set forth criteria for substituted compliance eligibility and to ensure that the Commission and NFA receive information to conduct ongoing monitoring of non-U.S. nonbank SDs' compliance with the comparability orders and to assess the safety and soundness of the non-U.S. nonbank SD.