



September 22, 2021

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**”) provide time-limited no-action relief 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 regulator² (“**Nonbank SDs**”) under the Commission’s new capital rules. Specifically, we request that Nonbank SDs be permitted 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 July 2020 the Commission approved rules setting forth capital and financial reporting requirements (“**Final Rules**”).³ In the Final Rules, the Commission adopted comprehensive capital and financial reporting requirements for Nonbank SDs pursuant to Sections 4s(e) and (f) of the CEA. As part of this, the Commission recognized the legal and operational challenges for nonbank

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

² 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.

³ See Capital Requirements of [SD] and Major Swap Participants, 17 CFR Parts 1, 23, and 140), 85 FR 57462, 576 (Sept. 15, 2020).

SDs to develop policies, procedures, and systems to implement new capital and financial reporting requirements, including the development of capital models. Accordingly, the Commission established an extended compliance date of October 6, 2021 (“**Compliance Date**”).

The Commission also recognized that approximately one-half of the provisionally-registered Nonbank SDs are organized and domiciled in foreign jurisdictions (“**Covered Nonbank SDs**”) and possibly subject to comprehensive capital and financial reporting requirements by home country regulators. To address potential duplicative capital and duplicative or inconsistent financial reporting requirements, the Commission adopted a substituted compliance framework to permit Covered Nonbank SDs to rely on compliance with their home country regulator’s capital and financial reporting requirements in lieu of meeting all or parts of the Commission’s capital adequacy and financial reporting requirements, provided the Commission finds such requirements comparable to the CFTC’s. The accompanying process allows Covered Nonbank SDs, or persons acting on their behalf, to submit an application to the Commission requesting a determination that all or part of the relevant foreign jurisdiction’s capital and/or financial reporting requirements are comparable to the Commission’s corresponding requirements and provides a basis for substituted compliance.

From discussions with our members, we understand that currently the Commission has received applications for substituted compliance with respect to the capital and financial reporting requirements of the European Union (“**EU**”), Japan, Mexico, and the United Kingdom (“**UK**”). We understand that the staff has been working diligently to analyze and process these applications, which includes extensive reviews of foreign laws and regulations and in-depth comparisons with the Commission’s capital adequacy and financial reporting requirements. We further understand that such reviews and assessments are not yet complete, nor are they expected to be completed by the Compliance Date.

II. Discussion

As you are aware, absent the granting of substituted compliance ahead of the Compliance Date, 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 Basel Committee on Banking Supervision’s international framework for banking institutions, which is consistent with the Commission’s SD capital requirements. Therefore, we request relief to permit covered nonbank SDs that are subject to substituted compliance applications filed with the Commission prior to the Compliance Date 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

Request: The Associations request that the Division confirm that it would not recommend enforcement action to the Commission if a Covered Nonbank SD that is the subject of a pending application for substituted compliance filed with the Commission to comply with the capital and financial reporting requirements of its home country regulator in lieu of the CFTC's capital and financial reporting requirements⁴ while the Division and Commission continue to review and finalize the pending applications for substituted compliance determinations.

We believe that, subject to the financial reporting and notification conditions specified below, such relief will not materially impact the Commission's ability to monitor the financial condition and overall safety and soundness of the Covered Nonbank SDs. These conditions will permit the Division to continue to review and monitor the capital adequacy of these SDs under their home-country requirements during the interim time-period between the Compliance Date and the date the Commission issues a final determination.

- Covered Nonbank SDs submit to the Division financial information required by the home country regulator within 15 days of being required to submit such information to their home country regulator. Such information should include a Statement of Financial Condition, Statement of Income/Loss, and Statement of Regulatory Capital, and any other financial reporting information as the Division may require that is also required to be submitted to the home country regulator (and in the format required under the home country requirements).
- Covered Nonbank SDs provide notice to the Division within 24 hours of when they know or should have known that their regulatory capital is less than 120 percent of their minimum capital requirement as determined under their home country requirements.
- Covered Nonbank SDs must provide notice to the Division of their intent to rely on this relief.

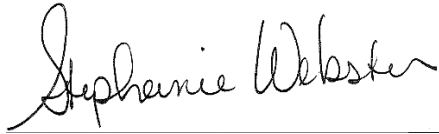
This relief would expire upon the issuance of final substituted compliance determinations applicable to the Covered Nonbank SDs located in the EU, Japan, Mexico, and the UK.

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⁴ As set forth in Regulations 23.100 through 23.106.

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 nearly 1 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>.