

February 13, 2024

Chris Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Re: Capital Requirements for Swap Dealers and Major Swap Participants (RIN 3038-AD54)

Dear Mr. Kirkpatrick:

The Institute of International Bankers (“**IIB**”), the International Swaps and Derivatives Association (“**ISDA**”), and the Securities Industry and Financial Markets Association (“**SIFMA**” and, together with IIB and ISDA, the “**Associations**”)¹ appreciate this opportunity to provide the Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”) with comments in response to the above-captioned release proposing amendments to capital and financial reporting requirements for swap dealers (“**SDs**”) and major swap participants (“**MSPs**”) (the “**Proposed Amendments**”).²

We strongly support the Commission’s decision to propose amendments to certain of the Commission’s Part 23 regulations that impose minimum capital requirements and financial reporting obligations on SDs and MSPs by codifying parts of staff interpretive letters and amending certain other of its Part 23 regulations applicable to SDs.

I. Background

The Commission’s final rules on capital requirements for SDs and MSPs became effective November 16, 2020, with a compliance date of October 6, 2021 (the “**Final Rules**”).³ The extended compliance period provided the time needed to prepare for new financial reporting requirements as well as address capital model approvals. The date also aligned with that of the Securities and Exchange Commission’s (“**SEC**”) final set of capital, margin and financial reporting requirements for security-based swap dealers and major security-based swap participants (“**SBSDs**” and “**MSBSPs**”) (the “**SEC Final Rules**”).⁴

¹ Information regarding the Associations is set forth in the Appendix.

² Capital Requirements of [SDs] and [MSPs], 89 FR 2554 (Jan. 16, 2024).

³ Capital Requirements of [SDs] and [MSPs], 84 FR 69664 (Dec. 19, 2019).

⁴ Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 FR 43872 (Aug. 22, 2019).

Commission staff further supported the transition to the new requirements by issuing no-action and interpretive letters to address issues identified in the Final Rules. Two of those letters, No-Action Letters 21-15 and 21-18, as well as staff's experience implementing the Final Rules, inform the Proposed Amendments. We thank the Commission and its staff for working with our SD members throughout the capital and financial reporting rulemaking and rule implementation periods.

We appreciate that the amendments proposed are intended to provide technical and other clarifying changes necessary to effectuate the Final Rule's purpose. Below we provide comments supporting the codification of CFTC No-Action Letter 21-18. We also provide recommendations where we believe some further modification would better align the Proposed Amendments with the Commission's stated goal to be consistent with the SEC requirements for bank SBSDs and to maintain equivalent financial reporting requirements for dually-registered firms.

II. Proposed Codification of the CFTC Letters and Other Amendments

A. **The Associations Support Codifying CFTC Letter No. 21-18**

The Associations support codifying the staff position that bank SDs be required to provide the Commission with copies of financial reports that are required by, and filed with, their respective prudential⁵ or home country regulators, in lieu of complying with the substantive requirements of Appendix C to Subpart E of Part 23 of Commission Regulations ("**Appendix C**"), subject to certain conditions. There are two general categories of issues addressed in CFTC Letter No. 21-18 and its extension in CFTC Letter No. 23-11 (together "**NAL 21-18**"): (1) for non-U.S. 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 and (2) for U.S. bank SDs, aspects of the required templates and deadlines were misaligned with U.S. prudential regulators' current FFIEC Form 031, Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices ("**Call Report**") requirements.

1. *Non-U.S. Bank Swap Dealer Requirements*

As discussed in the Proposed Amendments, the Final Rules did not address financial reporting by bank SDs that are not required to file to financial reports with a prudential regulator because the bank SDs are domiciled outside the United States and are instead subject only to financial reporting of a home country

⁵ 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.

supervisor (“**Non-U.S. Bank SDs**”). As noted in the 2021 Associations’ letter to the Commission requesting relief (the “**2021 Letter**”),⁶ Non-U.S. Bank SDs generally are not required to file Call Reports or similar reports with their applicable U.S. prudential regulator for the entity as a whole. Specifically, a Non-U.S. Bank SD that does not have a U.S. branch or agency (or other U.S. banking operations) is not required to file such a report at all.

In its granting no-action relief, staff noted that the Commission requires limited financial reporting requirements for bank SDs in recognition that prudential regulators have an obligation to impose capital requirements on and have primary responsibility under the CEA to monitor bank SD capital. Under NAL 21-18, Non-U.S. Bank SDs (or more generally those bank SDs that do not provide financial reports to a prudential regulators) may file with the Commission balance sheet and statement of regulatory capital information in accordance with applicable home country requirements, so long as the financial information is in English, with balances converted to U.S. dollars, and the financial information is filed within 15 days of the earlier of the date such financial information is filed or required to be filed with the Non-U.S. Bank SDs’ applicable home country regulator.

In the Proposed Amendments, the Commission would amend regulation 23.105(p) to add an exception to the financial reporting requirements for Non-U.S. Bank SDs that do not submit financial reports to a prudential regulator. The Non-U.S. Bank SDs would be permitted to file with the Commission financial reports that are submitted to their respective home country regulator, provided the financial reports submitted to the Commission are translated into English with balances converted to U.S. dollars, as well as continue to be required to file specific swap position information set forth in Schedule 1 to Appendix C. Finally, these Non-U.S. Bank SDs would be required to file with the Commission such reports no later than 90 calendar days following the end of the relevant period.

The Associations agree that the proposed 90-day time period should permit the Non-U.S. Bank SDs sufficient time to prepare and submit the financial reports that are submitted to their respective home country regulator, translated into English with balances converted to U.S. dollars, along with Schedule 1 to Appendix C. This approach allows the Commission to monitor the capital condition of such Non-U.S. Bank SDs, although the Commission does not establish the capital or margin requirements of bank SDs.

⁶ ISDA and SIFMA Letter to Commission on Financial Reporting Requirements of Bank Swap Dealers (Aug. 20, 2021)

2. U.S. Bank Swap Dealer Requirements

The Final Rules' financial reporting requirements for SDs with a prudential regulator ("**U.S. Bank SDs**") included two areas of misalignment that require technical correction: (1) outdated line-item cross references and (2) submission deadlines. We also noted in the 2021 Letter, that future misalignments will inevitably occur, as U.S. prudential regulators may amend their templates from time to time. NAL 21-18 provides that U.S. Bank SDs may file comparable Call Report schedules with the Commission in lieu of Appendix C in accordance with and within the timeframe permitted by the prudential regulators.

The Proposed Amendments would amend Commission regulation 23.105(p) to permit U.S. Bank SDs to file the relevant schedules under the Call Report (Schedule RC and Schedule RC-R), rather than replicating various line items from within those reports on a separately constructed balance sheet and statement of regulatory capital currently maintained in Appendix C. The Commission would continue to require submission of Schedule 1 of Appendix C, which contains relevant swap, mixed swap, and security-based swap position information. These schedules will be required to be submitted to the Commission on the date the Call Report is due to be filed with the relevant prudential regulator. The U.S. prudential regulators deadline for Call Report submission is 35 calendar days from the end of the quarter.

The Associations agree that the above-described approach, which codifies the conditions established in NAL 21-18, has resulted in the Commission and its staff receiving the requisite information to meaningfully oversee its population of bank SDs since 2021. We also support the proposed evergreen approach that provides for U.S. Bank SDs to submit the relevant portions of the Call Report, as updated by U.S. prudential regulators from time to time. This will avoid the need to periodically update the agencies' forms to ensure the cross references align with the current version of the Call Report.

3. Bank Swap Dealers/Security-Based Swap Dealers Requirements

Under NAL 21-18, bank SDs that are also registered with the SEC as SBSBs may alternatively satisfy their financial reporting obligations by filing comparable SEC-required financial reports and schedules with the Commission. Under SEC Final Rules, U.S. bank SBSBs submit FOCUS Report Part IIC and non-U.S. bank SBSBs submit FOCUS Report Part IIC as modified by the SEC's order regarding form and manner of financial reporting by non-U.S. SBSBs relying on substituted compliance or no-action positions, as applicable. The submission deadline is 35 calendar days after the relevant reporting period.

The Proposed Amendments would require a bank SD or MSP that is subject to the capital requirements of a prudential regulator and is also registered with the SEC as a SBSB or MSBSP and files a quarterly Form X-17A-5 FOCUS Report Part IIC with the SEC pursuant to 17 CFR 240.18a-7, to file such Form X-17A-5 FOCUS Report Part IIC with the Commission in lieu of the Call Report. Such a dual registrant would be required to file the form with the Commission when it files the form with the SEC but no later than 30 calendar days from the date the report is made.

The 30-day deadline is inconsistent with the Commission's alignment of the deadline for U.S. Bank SDs that are not also SDBDs to submit the Call Report when required by the prudential regulators, as noted above. Further, the SEC aligned its deadline for all bank SBSBs to submit FOCUS Report Part IIC to the same 35-day deadline.⁷ We believe the Commission intended to align its deadline, along with the form of required reports, with those required by prudential regulators and the SEC. The Commission should amend the rule text to reflect that intention. Our recommended edits included in Appendix A make it clear that the Commission requires bank SDs that are also SBSBs to submit to the Commission the same reports on the same day as they do to the SEC.

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⁷ See SEC, *Division of Trading and Markets letter on Financial Reporting requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants* (October 27, 2021) and *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants That Are Not U.S. Persons and Are Relying on Substituted Compliance Determinations With Respect to Rule 18a-7*, 86 FR 59208 (October 26, 2021) at 59210.

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We would be pleased to provide further information or assistance at the request of the Commission or its staff. Please do not hesitate to contact the undersigned if you should have any questions with regard to the foregoing.

Respectfully submitted,



Stephanie Webster
General Counsel
Institute of International Bankers



Chris Young
Head of U.S. Public Policy
International Swaps and Derivatives Association



Kyle Brandon
Managing Director, Head of Derivatives
Securities Industry and Financial Markets Association

cc: The Honorable Rostin Behnam, Chairman
The Honorable Kristin N. Johnson, Commissioner
The Honorable Christy Goldsmith Romero, Commissioner
The Honorable Summer K. Mersinger, Commissioner
The Honorable Caroline D. Pham, Commissioner

Ms. Amanda Olear, Director, Market Participants Division
Mr. Thomas Smith, Deputy Director
Mr. Joshua Beale, Associate Director

Appendix A

Recommended edits:

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(7) A swap dealer or major swap participant that is subject to the capital requirements of a prudential regulator and is also registered with the Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant and files a quarterly Form X-17A-5 FOCUS Report Part IIC with the Securities and Exchange Commission pursuant to 17 CFR 240.18a-7, must file such Form X-17A-5 FOCUS Report Part IIC with the Commission, [in the form and manner required by the Securities and Exchange Commission](#), in lieu of the financial reports required under paragraphs (p)(2) of this section. The swap dealer or major swap participant must file the form with the Commission when it files the Form X-17A-5 FOCUS Report Part IIC with the Securities and Exchange Commission, provided, however, that the swap dealer or major swap participant must file the Form X-17A-5 FOCUS Report Part IIC with the Commission no later than [the date Form X-17A-5 FOCUS Report Part IIC is due to be filed with the Securities and Exchange Commission](#) ~~30-calendar days from the date the report is made~~.⁸

⁸ Proposed Amendments, Fed. Reg. 2573

Appendix B

The **Institute of International Bankers** represents internationally headquartered financial institutions from over thirty-five countries around the world doing business in the United States. The membership consists principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The IIB works to ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers and comprise the majority of U.S. primary dealers. These institutions enhance the depth and liquidity of U.S. financial markets and contribute greatly to the U.S. economy through direct employment of U.S. citizens, as well as through other operating and capital expenditures.

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 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 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>.