



U.S. COMMODITY FUTURES TRADING COMMISSION

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Re: Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union

Dear Ms. Brandon, Mr. Kennedy, and Ms. Webster:

The Market Participants Division (“the Division”) of the U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) is extending the position taken in CFTC Letter 21-20, with respect to certain capital and financial reporting requirements for eligible swap dealers (“SDs”). CFTC Letter 21-20¹ was issued in response to your joint letter dated September 22, 2021 to the Division. CFTC Letter 21-20 provided, subject to the conditions therein, that the Division would not recommend an enforcement action to the Commission prior to the time-limited date of October 6, 2022 if certain foreign-domiciled nonbank SDs (“covered nonbank SDs”) complied with their respective home-country capital and financial reporting requirements in lieu of the Commission’s capital and financial reporting requirements set forth in Regulations 23.100–

¹ CFTC Letter No. 21-20, Sept. 30, 2021.

23.106,² pending the Commission’s determination of whether the capital and financial reporting requirements of certain foreign jurisdictions are comparable to the Commission’s corresponding requirements. The Division is currently unaware of any instances where eligible foreign-domiciled SDs in jurisdictions for which applications³ have been received by the Commission and are under consideration are not complying with or are inappropriately relying upon CFTC Letter 21-20. Further, to date, the Division has received financial reporting in accordance with CFTC Letter 21-20 and as required under their home country capital and financial reporting framework without issue.

I. Regulatory Background

Section 4s of the Commodity Exchange Act (the “CEA”) authorized the Commission to adopt rules imposing minimum capital requirements on SDs that are not subject to rules of a prudential regulator (“nonbank SDs”) and major swap participants (“MSPs”).⁴ On July 22, 2020, the Commission adopted comprehensive capital and financial reporting requirements for these entities pursuant to Sections 4s(e) and (f) of the CEA with a compliance date of October 6, 2021.⁵

The Commission also recognized that approximately one-half of the nonbank SDs were organized and domiciled in foreign jurisdictions 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 Regulation 23.106 whereby a foreign-domiciled nonbank SD or foreign-domiciled nonbank MSP may petition the Commission to permit compliance with their home country regulator’s capital and financial reporting requirements in lieu of meeting all or some of the Commission’s capital adequacy and financial reporting requirements, provided the Commission finds such requirements comparable to the those of the CFTC. 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 (“Capital Comparability Determination”).⁶ The availability of

² Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website, www.CFTC.gov.

³ The Commission has received applications pursuant to Regulation 23.106 from the following jurisdictions: Japan, Mexico, the United Kingdom, and the European Union.

⁴ See 7 U.S.C. 6s. The term “prudential regulator” is defined by section 1a(39) (7 U.S.C. 1a(39)) of the 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.

⁵ See Capital Requirements of Swap Dealers and Major Swap Participants Final Rule, 85 FR 57462 (Sept. 15, 2020).

⁶ 17 CFR 23.106. Specifically, pursuant to Regulation 23.106, a covered nonbank SD, or a person acting on behalf of covered nonbank SDs, may file an application containing: (i) a description of the objectives of the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements over covered nonbank SDs that are subject to the Commission’s capital adequacy and financial reporting requirements; (ii) a description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements address the elements of the Commission’s capital adequacy and financial reporting requirements for nonbank SDs, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements; and (iii) a description of the ability of the relevant foreign regulatory authority or authorities

substituted compliance is conditioned upon the Commission issuing a Capital Comparability Determination finding that the relevant foreign jurisdiction's capital adequacy and financial recordkeeping and reporting requirements for foreign domiciled nonbank SDs and/or foreign domiciled nonbank MSPs are comparable to the Commission's corresponding SD and/or MSP capital and financial reporting regulations.⁷

Currently, the Commission has received applications for a Capital Comparability Determination with respect to the capital and financial reporting requirements of the European Union ("EU"), Japan, Mexico, and the United Kingdom ("UK").

II. Extension of Time Limit for No Action Position

The Division previously determined in CFTC Letter 21-20 that requiring foreign-domiciled nonbank SDs in each of the four jurisdictions listed above to implement the full scope of the Commission's capital and financial reporting requirements while the Commission reviewed requests for Capital Comparability Determinations would be inadvisable. The Division provided the time-limited no-action letter that expires on October 6, 2022, to provide time for the Commission to individually assess the comparability of each jurisdiction including the consideration of any public comments regarding its analysis. The Commission continues to actively consider the applications and is likely to adopt proposals for public comment prior to issuing final Capital Comparability Determinations. Due to the time required for issuing the proposals for public comment, and addressing any comments received, the Division believes an extension of the time-limited letter is necessary and appropriate.

The Division continues to require compliance with all conditions of CFTC Letter 21-20, **and hereby extends the expiration of CFTC Letter 21-20 until October 1, 2024**, or such earlier dates as final Capital Comparability Determinations are issued by the Commission for each of the applicant jurisdictions, respectively. The Division believes, in light of its analysis performed to date, as well as its ability to receive information from the foreign-based SDs concerning their capital adequacy to ensure safety and soundness, that a full implementation of the Commission's final capital and financial reporting rules for nonbank SDs located in the four applicant jurisdictions would represent a significant operational challenge and may ultimately be unnecessary and duplicative. For full clarity, the Division's No-Action Position of CFTC Letter 21-20, with all the conditions and the newly revised time-limited date of **October 1, 2024** is fully restated herein below.

III. Division No-Action Position

The Division recognizes the four (4) jurisdictions for which Capital Comparability Determinations have been requested already impose capital and financial reporting requirements for each of the provisionally registered covered nonbank SDs within those respective jurisdictions. The Division understands each of these jurisdictions have committed to adopting the Basel III risk-

to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements. See 17 CFR 23.106(a)(2)(i) – (iii).

⁷ 17 CFR 23.106(a)(3).

based capital standards,⁸ which also form the basis for the Commission's adopted bank-based SD capital approach.⁹ The Division also recognizes that a final analysis after the consideration of public comments could result in full comparability determinations or determinations with specified conditions.

The Division believes that extending the no-action letter, subject to the conditions below, on a time-limited basis will not adversely impact its ability to oversee the safety and soundness of the impacted covered nonbank SDs. The below 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 for purposes of fully evaluating whether a recommendation for Capital Comparability Determination is appropriate. Covered nonbank SDs eligible for such relief herein should not in any way view the information which may be provided to the Commission pursuant to this no-action letter as dispositive of the type information the Commission may ultimately determine necessary as part of any final Capital Comparability Determination.

Based on the facts and representations set forth in the original request letter dated September 22, 2021 and subsequent letter requesting an extension of CFTC Letter 21-20 dated July 20, 2022, the Division will not recommend an enforcement action to the Commission against a covered nonbank SD that is subject to a Capital Comparability Determination application filed with the Commission and that complies with the capital and financial reporting requirements of its home country regulator in lieu of the capital and financial reporting requirements of Regulations 23.101-23.106. The Division's position is subject to the conditions listed below.

1. The covered nonbank SD, if organized and domiciled in Mexico, is licensed with the Mexican Banking and Securities Commission (Comision Nacional Bancaria y de Valores) as a broker-dealer (casa de bolsa).
2. The covered nonbank SD, if organized and domiciled in Japan, is registered with the Financial Services Agency of Japan as a Type I Financial Instruments Business Operator.
3. The covered nonbank SD, if organized and domiciled in the UK, is licensed with the UK Prudential Regulatory Authority or the UK Financial Conduct Authority as an investment firm.
4. The covered nonbank SD, if domiciled in the EU, is licensed as a credit institution or as an investment firm in an EU member state.
5. The covered nonbank SD submits to the Division financial information required by the home country regulator within 15 days of being required to submit such information to its home country regulator. Such information should also include a Statement of Financial Condition, Statement of Income/Loss, and Statement of Regulatory Capital

⁸ See the most recent progress report from the Basel Committee on Banking Supervision, available at: <https://www.bis.org/bcbs/publ/d506.htm>.

⁹ See 85 FR 57462, 57491.

to the extent these are not part of the information required by its home country regulator. The information should be provided in English and may be prepared in the format required under the home country requirements.¹⁰

6. The covered nonbank SD provides notice to the Division within 24 hours of when it knows or should have known that its regulatory capital is less than 120 percent of its minimum capital requirement as determined under its home country requirements.¹¹
7. The covered nonbank SD must provide notice to the Division of its intent to rely on this relief.¹²

The relief granted by this letter will expire the earlier of **October 1, 2024** or the adoption of any final Capital Comparability Determination applicable to the covered nonbank SDs located in the EU, Japan, Mexico, and the UK.

This letter, and the position taken herein, represent the views of Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. This letter and the no-action position taken herein are not binding on the Commission.¹³ The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed or omitted material facts or circumstances might render the relief provided by this letter void. Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please feel free to contact Thomas Smith, Deputy Director, at 202-418-5495, Josh Beale, Associate Director at 202-418-5446, or Jennifer Bauer, Special Counsel at 202-418-5472.

Sincerely,

Amanda L. Olear
Director

¹⁰ Covered nonbank SDs that are dually-registered with the Securities and Exchange Commission (“SEC”) as broker-dealers or security-based swap dealers may file financial reports required by the SEC with the Division in lieu of the financial reports required by their home country regulators. The covered nonbank SDs should file copies of the SEC financial reports with the Division at the same time the financial reports are filed, or required to be filed, with the SEC.

¹¹ Information required to be submitted to the Division pursuant to this relief should be submitted using the Winjammer™ system maintained by National Futures Association.

¹² Notice of such intent should be directed to the following email inbox: MPDFinancialRequirements@cftc.gov. A previously submitted notice of intent filed pursuant to CFTC Letter 21-20 will be presumed to apply to the relief granted herein pursuant to this extension position unless otherwise indicated by the covered nonbank SD.

¹³ See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division ... and not the Commission or other Commission staff.”).