



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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**Re: Extension of Time-Limited No-Action Position for Certain Foreign Based Nonbank Swap Dealers Domiciled in the United Kingdom and the European Union**

Dear Ms. North and Ms. Snagg:

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 No. 21-20,<sup>1</sup> previously extended by CFTC Letter No. 22-10,<sup>2</sup> with respect to certain capital and financial reporting requirements for eligible swap dealers (“SDs”). CFTC Letter No. 21-20 and CFTC Letter No. 22-10 were issued in response to joint letters by the Institute of International Bankers (“IIB”), International Swaps and Derivatives Association (“ISDA”), and Securities Industry and Financial Markets Association (“SIFMA”) to the Division, dated September 22, 2021 and July 20, 2022, respectively. CFTC Letter No. 21-20, as extended under CFTC Letter No. 22-10, provided, subject to the conditions therein, that the Division would not recommend an enforcement action to the

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<sup>1</sup> [CFTC Letter No. 21-20, Sept. 30, 2021](#). Commission letters are available at the Commission’s website, [www.cftc.gov](http://www.cftc.gov).

<sup>2</sup> [CFTC Letter No. 22-10, Aug. 17, 2022](#).

Commission prior to the time-limited date of October 1, 2024<sup>3</sup> if certain foreign-domiciled 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 Commission Regulations 23.100 – 23.106,<sup>4</sup> 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 Commission has issued comparability determinations and related comparability orders granting conditional substituted compliance in connection with the CFTC’s capital and financial reporting requirements to certain CFTC-registered SDs organized and domiciled in Japan, Mexico, the European Union (France and Germany), or the United Kingdom (“UK”).<sup>5</sup> The Commission has received, and is continuing to review, applications for comparability determinations for certain CFTC-registered SDs organized and domiciled in France or the UK that are subject to home country capital and financial reporting requirements not covered by the existing comparability determinations.

The Division is currently unaware of any instances where eligible foreign-domiciled SDs that are the subject of applications currently being considered by the Commission are not complying with, or are inappropriately relying upon, CFTC Letter No. 21-20, as extended by CFTC Letter No. 22-10. Further, to date, the Division has received financial reporting in accordance with CFTC Letter No. 21-20 and as required under their home country capital and financial reporting framework from such foreign-domiciled SDs without issue.

## **I. Regulatory Background**

On July 22, 2020, pursuant to Section 4s(e) and 4s(f) of the Commodity Exchange Act (“CEA”),<sup>6</sup> the Commission adopted comprehensive capital and financial reporting requirements applicable to, among other entities, SDs that are not subject to regulation by a prudential regulator

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<sup>3</sup> CFTC Letter No. 21-20 expired on October 6, 2022. CFTC Letter No. 22-10 extended the time-limited no-action position until the earlier of October 1, 2024 or the issuance of any final Comparability Determination addressing the comparability of the capital and financial reporting requirements applicable to the covered foreign-domiciled SDs in the relevant foreign jurisdiction.

<sup>4</sup> Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website, [www.CFTC.gov](http://www.CFTC.gov).

<sup>5</sup> *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan*, 89 FR 58470 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico*, 89 FR 58505 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Regulation in the European Union*, 89 FR 58572 (July 18, 2024) (“EU Order”); and *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the United Kingdom Prudential Regulation Authority*, 89 FR 58535 (July 18, 2024) (“UK PRA Order”).

<sup>6</sup> 7 U.S.C. 6s(e) and 6s(f).

(“nonbank SDs”).<sup>7</sup> Recognizing that approximately one-half of the nonbank SDs were organized and domiciled in foreign jurisdictions with potentially duplicative or inconsistent requirements, the Commission also established, in Commission Regulation 23.106, a substituted compliance framework, whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD with its home country’s capital and financial reporting requirements will satisfy all or parts of the CFTC’s capital and financial reporting requirements, provided the Commission finds such requirements comparable to the CFTC’s (such a determination referred to as a “Comparability Determination”).<sup>8</sup> A person requesting a Comparability Determination is required to submit an application to the Commission describing certain elements of the applicable foreign regulatory regime.<sup>9</sup> Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Comparability Determination. The Commission would issue a Comparability Determination in the form of an order (“Comparability Order”).

On July 18, 2024, the Commission issued four Comparability Determinations and related Comparability Orders granting conditional substituted compliance to certain nonbank SDs organized and domiciled in Japan, Mexico, the European Union, or the UK.<sup>10</sup> With regard to nonbank SDs based in the European Union, the EU Order applies only to nonbank SDs organized and domiciled in France or Germany and subject to the capital and financial reporting requirements established under the Capital Requirements Regulation<sup>11</sup> and the Capital Requirements Directive.<sup>12</sup> Smaller nonbank SDs subject to the capital and financial reporting requirements of

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<sup>7</sup> See *Capital Requirements of Swap Dealers and Major Swap Participants Final Rule*, 85 FR 57462 (Sept. 15, 2020). The term “prudential regulator” is defined by section 1a(39) of the CEA 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. 7 U.S.C. 1a(39).

<sup>8</sup> 17 CFR 23.106. Pursuant to Commission Regulation 23.106(a)(1), a non-U.S. nonbank SD, a trade association or other similar group acting on behalf of its SD members, or a foreign regulatory authority that has direct supervisory authority over one or more non-U.S. nonbank SDs, may submit to the Commission an application for a Comparability Determination. 17 CFR 23.106(a)(1).

<sup>9</sup> Specifically, the application must contain: (i) a description of the objectives of the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements over 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 to supervise and enforce compliance with the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements. 17 CFR 23.106(a)(2)(i) – (iii).

<sup>10</sup> See *supra* note 5.

<sup>11</sup> *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012*, as amended (“Capital Requirements Regulation” or “CRR”).

<sup>12</sup> *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC*, as amended (“Capital Requirements Directive” or “CRD”).

the Investment Firms Regulation<sup>13</sup> and the Investment Firms Directive<sup>14</sup> cannot rely on the EU Order, as the Commission has not yet assessed the requirements established under the IFR/IFD framework.<sup>15</sup> Similarly, with regard to nonbank SDs organized and domiciled in the UK, the UK Order applies only to nonbank SDs subject to prudential regulation by the UK Prudential Regulation Authority (“PRA”).<sup>16</sup> UK nonbank SDs that are prudentially regulated by the UK Financial Conduct Authority (“FCA”) are subject to a separate regulatory framework, known as the Investment Firms Prudential Regime (“IFPR”), and cannot rely on the UK PRA Order.<sup>17</sup>

The Commission has received, and is continuing to review, applications pursuant to Commission Regulation 23.106 from: (i) nonbank SDs that are organized and domiciled in France, and subject to the capital and financial reporting requirements established under IFR and IFD; and (ii) nonbank SDs that are organized and domiciled in the UK, and subject to prudential regulation by the FCA under IFPR (collectively, the “covered nonbank SDs”).

## **II. Extension of Time Limit for No-Action Position**

The Division previously determined in CFTC Letter No. 21-20 and CFTC Letter No. 22-10 that requiring foreign-domiciled nonbank SDs in each of the applicant jurisdictions (as listed therein) to implement the full scope of the Commission’s capital and financial reporting requirements while the Commission reviewed requests for Comparability Determinations would be inadvisable. The Division provided the time-limited no-action position that expires on October 1, 2024, to afford the Commission time to assess the comparability of each jurisdiction’s regulatory regime, including the consideration of any public comments regarding its analysis.

As noted above, the Commission continues to actively consider applications for comparability determinations for UK-domiciled nonbank SDs that are prudentially regulated by the FCA under IFPR and France-domiciled nonbank SDs subject to the capital and financial reporting requirements of IFR and IFD, as the covered nonbank SDs are not eligible to rely on the Comparability Determinations and related Comparability Orders issued on July 18, 2024.<sup>18</sup> Due to the time required for assessing the comparability of each relevant jurisdiction’s applicable capital and financial reporting requirements for the covered nonbank SDs, the Division believes

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<sup>13</sup> *Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014* (“Investment Firms Regulation” or “IFR”).

<sup>14</sup> *Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU* (“Investment Firms Directive” or “IFD”).

<sup>15</sup> EU Order at 58577.

<sup>16</sup> UK PRA Order at 58538. The PRA is responsible for the prudential regulation of banks, building societies, credit unions, insurers, and major investment firms, including nonbank SDs designated for prudential supervision by the PRA based on specified criteria.

<sup>17</sup> The FCA is responsible for the prudential regulation of financial services firms, including nonbank SDs, that are not prudentially supervised by the PRA.

<sup>18</sup> *Supra* note 5.

an extension of the time-limited letter for the two jurisdictions with pending applications for covered nonbank SDs is necessary and appropriate.

The Division continues to require compliance with all relevant conditions of CFTC Letter No. 21-20, **and hereby extends the expiration of CFTC Letter No. 21-20 for the covered nonbank SDs (i.e., UK-domiciled nonbank SDs that are prudentially regulated by the FCA under IFPR and France-domiciled nonbank SDs subject to the capital and financial reporting requirements of IFR and IFD) until the earlier of December 31, 2026**, or the effective date of any final Commission action addressing the comparability of capital and financial reporting requirements applicable to covered nonbank SDs. The Division believes, in light of its analysis performed to date, as well as its ability to receive information from the covered nonbank 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 covered nonbank SDs located in the two 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 No. 21-20, with all the relevant conditions, as applicable to the covered nonbank SDs, and the newly revised time-limited date of **December 31, 2026** is restated herein below.

For the avoidance of doubt, the Division is only extending the time-limited letter for covered nonbank SDs (i.e., UK-domiciled nonbank SDs that are prudentially regulated by the FCA under IFPR and France-domiciled nonbank SDs subject to the capital and financial reporting requirements of IFR and IFD). The Division is **not** extending the time-limited letter for the nonbank SDs eligible to rely on the four Comparability Determinations and related Comparability Orders issued on July 18, 2024 that were covered in the prior no-action letters.<sup>19</sup>

### **III. Division No-Action Position**

The Division recognizes that for each of the covered nonbank SDs, the two jurisdictions with applications for Comparability Determinations under consideration by the Commission already impose capital and financial reporting requirements. Based on the Division's preliminary review of the applications for Comparability Determinations and the assertions set forth in the letters requesting further extension of CFTC Letter No. 21-20, previously extended by CFTC Letter No. 22-10,<sup>20</sup> the Division understands that the regulatory framework applicable to covered nonbank SDs in each of the two jurisdictions incorporates key components of the Basel Committee on Banking Supervision's international framework for risk-based capital requirements ("Basel framework" or "Basel standards"),<sup>21</sup> which also forms the basis for the Commission's Bank-Based Capital Approach.<sup>22</sup> Specifically, the Division understands that although the aim of the relevant

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<sup>19</sup> *Supra* note 5.

<sup>20</sup> Request letters dated September 3, 2024, by Deborah North, Partner, Cleary Gottlieb Steen & Hamilton LLP, and Ferdisha Snagg, Counsel, Cleary Gottlieb Steen & Hamilton LLP. Request letters are available on the Commission's website, [www.cftc.gov](http://www.cftc.gov).

<sup>21</sup> The Basel framework is available at: [https://www.bis.org/basel\\_framework/index.htm](https://www.bis.org/basel_framework/index.htm).

<sup>22</sup> See 85 FR 57462, 57491-57495. The Commission permits nonbank SDs to select one of three methods to calculate their capital requirements: (i) the Bank-Based Capital Approach; (ii) the Net Liquid Assets Capital Approach; or (iii) the Tangible Net Worth Capital Approach. See 17 CFR 23.101.

regulatory regimes is to better align the capital requirements with the business model of covered nonbank SDs than the Basel framework for banking institutions, the regimes retain key elements of the Basel framework, including with respect to the quality of regulatory capital, the treatment of counterparty credit risk, and the capitalization of market risk. The Division also recognizes that a final analysis could result in Comparability Determinations with specified conditions or another Commission action.

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 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 while Commission staff is evaluating whether a recommendation for Comparability Determination is appropriate. Covered nonbank SDs eligible for such no-action position granted 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 of information that the Commission may ultimately determine necessary as part of any final Comparability Determination.

Based on the facts and representations set forth in the original request letter dated September 22, 2021, the letter dated July 20, 2022, requesting an extension of CFTC Letter No. 21-20, and your letters dated September 3, 2024, requesting a further extension of CFTC Letter No. 21-20, previously extended by CFTC Letter No. 22-10, the Division will not recommend an enforcement action to the Commission against a covered nonbank SD that is subject to a 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 Commission 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 the UK, is licensed with the FCA as an investment firm and subject to prudential regulation by the FCA under IFPR.
2. The covered nonbank SD, if domiciled in France, is licensed as an investment firm in France and subject to prudential requirements under IFR and IFD.
3. 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 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.<sup>23</sup>

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<sup>23</sup> Covered nonbank SDs that are dually registered with the U.S. 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. Currently, none of the covered nonbank SDs registered with the Commission is dually registered with the SEC as a broker-dealer or as a security-based swap dealer.

4. 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.<sup>24</sup>
5. The covered nonbank SD must provide notice to the Division of its intent to rely on the no-action position granted herein.<sup>25</sup>

The no-action position granted by this letter will expire on the earlier of **December 31, 2026** or the effective date of any final Commission action addressing the comparability of capital and financial reporting requirements applicable to the covered nonbank SDs.

This letter, and the position taken herein, represent the views of the 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.<sup>26</sup> The no-action position taken 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 position taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed or omitted material facts or circumstances may render the no-action position 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 the no-action position provided herein, in its discretion.

If you have any questions concerning this correspondence, please feel free to contact Thomas Smith, Deputy Director, at [tsmith@cftc.gov](mailto:tsmith@cftc.gov), Liliya Bozhanova, Associate Director at [lbozhanova@cftc.gov](mailto:lbozhanova@cftc.gov), Jennifer Bauer, Special Counsel at [jbauer@cftc.gov](mailto:jbauer@cftc.gov), or Christine McKeveny, Attorney Advisor, at [cmckeveny@cftc.gov](mailto:cmckeveny@cftc.gov).

Sincerely,

Amanda L. Olear  
Director

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<sup>24</sup> Information required to be submitted to the Division pursuant to this no-action letter should be submitted using the Winjammer™ system maintained by National Futures Association.

<sup>25</sup> Notice of such intent should be directed to the following email inbox: [MPDFinancialRequirements@cftc.gov](mailto:MPDFinancialRequirements@cftc.gov). A previously submitted notice of intent filed pursuant to CFTC Letter No. 21-20 or CFTC Letter No. 22-10 will be presumed to apply to the no-action position granted herein pursuant to this extension position unless otherwise indicated by the covered nonbank SD.

<sup>26</sup> See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division ... and not the Commission or other Commission staff.”).