U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000

Market Participants
Division

Amanda L. Olear
Acting Director

Ms. Lauri Scoran
Chief Compliance Officer
Jefferies Financial Services, Inc.
520 Madison Avenue
New York, NY 10022

Re: Time-Limited No-Action Position for Registered Swap Dealer to use Models to Compute Market Risk and Credit Risk Capital Charges In Lieu of Standardized Charges

Dear Ms. Scoran:

This is in response to your letter (the "Request") dated September 29, 2021, to the Market Participants Division ("Division") of the Commodity Futures Trading Commission ("Commission" or "CFTC"). In your letter, you request on behalf of Jefferies Financial Services, Inc. ("JFSI"), a swap dealer ("SD") provisionally registered with the Commission, that the Division confirm that it will not recommend an enforcement action to the Commission if JFSI, in computing its regulatory capital under regulation 23.101,[1] calculates certain market risk and credit risk charges for interest rate products using internal models that have not been approved for use by the Commission, the National Futures Association ("NFA"), the Securities and Exchange Commission ("SEC"), a prudential regulator,[2] or a foreign regulatory authority in lieu of the standardized market risk charges required under regulation 23.103. You request this relief for a time-limited period not to exceed November 1, 2021.

[1] Commission regulations are found at 17 CFR Ch. I, and are available at the Commission's website, http://www.cftc.gov.

[2] The term "prudential regulators" is defined in section 1a(39) of the Commodity Exchange Act ("CEA") to mean the Board of Governors of the Federal Reserve System ("Federal Reserve Board"); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. *See* 7 U.S.C. 1a(39).

I. Regulatory Background

Section 4s(e) of the CEA directs the Commission to adopt rules imposing minimum capital requirements for SDs that are not subject to a prudential regulator ("non-bank SDs").[3] Pursuant to section 4s(e), the Commission adopted regulation 23.101,[4] which generally requires a non-bank SD to maintain minimum capital in accordance with an approach tracking requirements established by the prudential regulators ("bank-based approach")[5] or pursuant to the capital requirements established by the SEC for security-based SDs ("net liquid assets approach").[6] Regardless of the choice of the bank-based approach under Regulation 23.101(a)(1)(i) or the net liquid assets approach under Regulation 23.101(a)(1)(ii), a non-bank SD that elects to use internal models to compute market and credit risk charges must have its models approved by the Commission or a registered futures association in accordance with Regulation 23.102.[7] Alternatively, a non-bank SD that does not have model approval must use standardized charges for computing market risk and credit risk.

A non-bank SD, however, that has market risk or credit risk models that have been previously approved by the SEC, a prudential regulator, or a foreign regulatory authority, for use by the non-bank SD or its affiliate, is permitted to use such models on or after the compliance date of the Final SD Capital Rule pending the subsequent approval or denial of the non-bank SD's models by the Commission or the NFA.[8] Specifically, Regulation 23.102(f)(1) provides that a non-bank SD may use internal market risk or credit risk models upon the submission of a certification to the Commission and the NFA, signed by the Chief Executive Officer, Chief Financial Officer, or other appropriate official with knowledge of the non-bank SD's capital requirements and the capital models, that such models are in substantial compliance with Commission's model requirements and have been approved for use in computing capital by the non-bank SD, or an affiliate of the non-bank SD, by the SEC, a prudential regulator, a foreign regulatory authority in a jurisdiction that the Commission has found to be eligible for substituted compliance under Regulation 23.106, or a foreign regulatory authority whose capital adequacy requirements are consistent with the capital requirements issued by the Basel Committee on Banking Supervision. Regulation 23.102(f)(1) further requires that a non-bank SD must file with the Commission an application for model approval with its certification.

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[3] 7 U.S.C. 6s(e).

[4] *See* Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020) ("Final SD Capital Rule"). The Final SD Capital Rule became effective on November 16, 2020 with a compliance date of October 6, 2021.

[5] 17 CFR 23.101(a)(1)(i).

[6] 17 CFR 23.101(a)(1)(ii). Alternative capital requirements are available to a non-bank SD "predominantly engaged in non-financial activities," under Regulation 23.101(a)(2). JFSI is not eligible to meet its capital requirements under Regulation 23.101(a)(2).

[7] *See* 17 CFR 23.102. NFA is the only registered futures association.

[8] *See* 17 CFR 23.102(f).

II. No-Action Request

In the Request, you state that JFSI submitted a draft application to register as an Over-the-Counter Derivatives Dealer ("OTCDD") with the SEC on February 2, 2019, and filed an updated application on October 2, 2020. You state that the updated application incorporated feedback from JFSI's initial draft application to use risk-based models to compute market risk and credit risk charges for certain products in calculating capital that the firm must hold as an OTCDD. In addition, you state that JFSI will register as a security-based swap dealer ("SBSD") with the SEC by November 1, 2021. As a dually-registered non-bank SD and SBSD, JFSI will compute its CFTC regulatory capital requirements in accordance with the net liquid assets approach under regulation 23.101(a)(1)(ii).

In the Request, you indicate that JFSI planned to use the certification process under regulation 23.102(f)(1) in order to use SEC approved models to calculate market risk and credit risk charges in computing its CFTC regulatory capital under 23.101(a)(1)(ii) commencing October 6, 2021 pending Commission or NFA review and approval of such models. In this regard, you state that JFSI began discussing this general approach with the SEC in December 2016 and the CFTC in March 2017.

You indicate that although JFSI has submitted a complete application for market risk and credit risk model approval to the SEC, the SEC will not approve the models prior to the October 6, 2021 compliance date of the Final Capital Rule. You state that currently, the SEC's approval process is addressing certain of JFSI's interest rate products, and that you anticipate receiving SEC approval on or before November 1, 2021. Therefore, you request relief to use market risk and credit risk models to calculate regulatory capital for the same interest rate products that are currently subject to the SEC's approval process in lieu of standardized charges required under regulation 23.103. You request this relief for a time-limited period not to exceed November 1, 2021.

III. Market Participant Division No-Action Relief

Based on the facts and representations set forth in your letter and recited above, the Division will not recommend enforcement action to the Commission under CEA Section 4s(e) or regulations 23.102(f)(1) and 23.103 if, commencing on the compliance date of the Final SD Capital Rule, JFSI uses models that are currently pending SEC approval to calculate market risk and credit risk charges in computing regulatory capital under regulation 23.101(a)(1)(ii) in lieu of standardized market and credit risk charges required under regulation 23.103. The relief granted is subject to the following conditions:

1. JFSI submits an application to the NFA for approval to use market risk and credit risk models prior to the October 6, 2021 compliance date of the Final SD Capital Rule.

2. JFSI submits a certification signed by its Chief Executive Officer, Chief Financial Officer, or other appropriate official with knowledge of JFSI's capital requirements and capital models to the Commission and NFA certifying that the market risk and credit risk models for certain interest rate positions that are subject to the pending SEC model approval process are in substantial compliance with the Commission's market risk and credit risk model requirements prior to the October 6, 2021 compliance date of the Final SD Capital Rule.

3. JFSI provides prompt notification to the Division of the SEC's approval or denial of its market risk or credit risk model application.

4. JFSI maintains compliance with the minimum capital requirements under regulation 23.101(a)(1)(ii) computing market risk and credit risk charges using models for the interest rate positions that are subject to the pending SEC model approval process.

5. This relief is limited to the interest rate products that are subject to the pending model approval with the SEC. JFSI must use standardized market risk and credit risk charges for any products that are not included in the interest rate positions that are currently pending SEC approval.

6. The relief provided by this letter expires on the earlier of (i) the SEC's approval or denial of JFSI's market risk and credit risk model application or (ii) November 1, 2021.

This letter and the positions taken herein represent the views of this Division only, and do not necessarily represent the views of the Commission or any other office or division of the Commission. 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 contained herein, are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances may render 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 relief provided herein in its discretion. If you have any questions regarding this letter, please contact Tom Smith, Deputy Director, at 202-418-5495 or tsmith@cftc.gov; Josh Beale, Associate Director, at 202-418-5446 or jbeale@cftc.gov; Rafael Martinez, Associate Director, at 202-418-5462 or rmartinez@cftc.gov; or Jennifer Bauer, Special Counsel, at 202-418-5472 or jbauer@cftc.gov.

Sincerely,

Amanda L. Olear
Acting Director

cc: Michael Otten, National Futures Association
Alessandra Riccardi, National Futures Association