



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

GOLDMAN SACHS FINANCIAL MARKETS PTY LTD

Mr. Brian Doyle, Managing Director
200 West Street
New York, NY 10282

**Re: No-Action Position for GOLDMAN SACHS FINANCIAL MARKETS PTY LTD to
File Annual Financial Reports in Accordance with Australian Accounting
Standards Board**

Dear Mr. Doyle:

This is in response to your letter dated December 7, 2021, to the Market Participants Division (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of GOLDMAN SACHS FINANCIAL MARKETS PTY LTD (“Goldman Sachs Australia”), a registered swap dealer (“SD”), relief to prepare its annual audited financial reports required by Regulation 23.105(e) in accordance with the Australian Accounting Standards, and other authoritative pronouncements of the Australian Accounting Standards Board (collectively herein “AASB”) in lieu of generally accepted accounting principles as adopted in the U.S. (“U.S. GAAP”).¹

Regulatory Background

¹ 17 CFR. 23.105(e). Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website: www.cft.gov.

Regulations 23.105(d) and (e)² require SDs that are not subject to a prudential regulator (“nonbank SDs”) to file monthly unaudited financial reports and annual audited financial reports, respectively, with the Commission and with a registered futures association.³ The monthly financial reports and annual financial reports are required to be prepared in accordance with U.S. GAAP, except that a nonbank SD that does not otherwise prepare financial reports in accordance with U.S. GAAP, may instead file reports compliant with International Financial Reporting Standards (“IFRS”) issued by the International Accounting Standards Board. You have represented that Goldman Sachs Australia will file with the Commission and NFA monthly unaudited financial reports that are prepared in accordance with U.S. GAAP.

No-Action Request

You request relief from the requirements of Regulation 23.105(e) for nonbank SDs to prepare annual audited financial reports in accordance with U.S. GAAP or IFRS, if not otherwise required to prepare financial reports in accordance with U.S. GAAP. Specifically, you request confirmation that the Division will not recommend an enforcement action to the Commission if Goldman Sachs Australia files with the Commission and NFA annual audited financial reports that contain all of the financial statements and footnote disclosures required by Regulation 23.105(e) prepared in accordance with AASB in lieu of U.S. GAAP, with two exceptions.⁴

In support of your request, you state that Goldman Sachs Australia is required to file annual statements of financial condition with the Australian Securities and Investments Commission (“ASIC”) prepared in accordance with the AASB. You note that Regulation 23.105(e) permits certain nonbank SDs to file annual audited financial reports prepared in accordance with IFRS in lieu of U.S. GAAP, and you represent for these purposes that AASB is materially identical to IFRS. In this regard, you state that Goldman Sachs Australia believes that differences between US GAAP and IFRS do not result in any material difference in the capital of the entity. Without relief, Goldman Sachs Australia would undergo complicated technology builds to prepare a second set of audited financials creating significant additional burdens and requiring additional time. Moreover, such new processes would not be subject to mature, long standing governance and control procedures.

In further support of your request, you state that Goldman Sachs Australia will provide the Commission and NFA with a reconciliation between the December monthly unaudited financial reports prepared in accordance with U.S. GAAP and the annual audited financial reports prepared in accordance with AASB along with its annual audited financial reports filed

² 17 CFR 23.105(d) and 17 CFR 23.105(e).

³ The National Futures Association (“NFA”) is currently the only registered futures association registered with the Commission pursuant to Section 19 of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 1a *et. seq.*

⁴ The first exception concerns Regulation 23.105(e)(4)(ii), which requires, among other statements, a statement of changes in liabilities subordinated to claims of general creditors. The second exception concerns Regulation 23.105(e)(4)(iv), which requires each nonbank SD’s annual audited financial report to include a statement demonstrating its compliance with and calculation of the applicable regulatory capital requirement under Regulation 23.101. Goldman Sachs Australia will prepare these two statements in accordance with U.S. GAAP and file it with the Commission and NFA as part of its annual audited financial report.

with the Commission and NFA. You also represent that Goldman Sachs Australia will notify the Commission if there are any substantial differences between AASB and IFRS that would result in material differences to its annual audited financial reporting.

Market Participant Division No-Action Position

Based on the facts and representations set forth in your letter and those recited above, and in accordance with Regulation 140.99, the Division will not recommend enforcement action to the Commission under Regulation 23.105(e) if Goldman Sachs Australia files an annual audited financial report with the Commission or NFA prepared in accordance with AASB in lieu of U.S. GAAP. The Division believes Goldman Sachs Australia's use of U.S. GAAP for unaudited monthly financial report filings and both the annual audited capital compliance calculation and statement of changes in liabilities subordinated to claims of general creditors provides sufficient assurance of the reliability of Goldman Sachs Australia's financial information, and further that the representations of Goldman Sachs Australia as to the equivalence of result for financial information provided under AASB and IFRS for the remaining audited annual financial statements mitigate any concerns regarding the use of AASB for the remaining audited annual financial statements. The relief provided by this letter is conditioned on the following:

1. Goldman Sachs Australia prepares its annual statement demonstrating compliance with, and calculation of, its applicable regulatory capital requirement under Regulation 23.101 as required by Regulation 23.105(e)(4)(iv) in accordance with U.S. GAAP;
2. Goldman Sachs Australia prepares the annual financial statements required by Regulation 23.105(e)(4)(i) – (iii) in accordance with AASB; provided, however that the statement of changes in liabilities subordinated to the claims of general creditors required by Regulation 23.105(e)(4)(ii) is prepared in accordance with U.S. GAAP;⁵
3. Goldman Sachs Australia prepares a reconciliation, if applicable, between the annual audited financial statements required by Regulation 23.105(e)(4)(i) – (iii) that are prepared in accordance with AASB and the corresponding December monthly unaudited financial statements required by Regulation 23.105(d)(2) that are prepared in accordance with U.S. GAAP. Goldman Sachs Australia must file the reconciliation with the Commission and with NFA as part of its annual audited financial report; and
4. Goldman Sachs Australia notifies the Commission if there are any substantial differences between AASB and IFRS that would result in material differences to its annual audited financial reporting.

⁵ For clarity, the other statements required by Regulation 23.105(e)(4)(ii) include the following: (i) Statement of Financial Condition; (ii) Statement of Income/Loss; (iii) Statement of Cash Flows; (iv) Statement of Statement of Owner's Equity; and, (v) Appropriate Footnote Disclosures.

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 might 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, or Joshua Beale, Associate Director, 202-418-5446, or jbeale@cftc.gov.

Sincerely,

Amanda L. Olear
Acting Director