



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
www.cftc.gov

Market Participants
Division

Amanda L. Olear
Director

Kyle Brandon
Managing Director, Head of Derivatives Policy
Securities Industry and Financial Markets Association
120 Broadway, 35th Floor
New York, NY 10271

Stephen Kennedy
Global Head of Public Policy
International Swaps and Derivatives Association
10 E. 53rd Street, 9th Floor
New York, NY 10022

Re: Extension of Time-Limited No-Action Position for Bank Swap Dealers from Certain Financial Reporting Requirements

Dear Ms. Brandon and Mr. Kennedy:

The Market Participants Division (the “Division”) of the U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) is extending its time-limited no-action position taken in CFTC Staff Letter 21-18 (“Letter 21-18”),¹ regarding financial reporting requirements for eligible swap dealers (“SDs”). Letter 21-18 was issued in response to your joint letter dated August 20, 2021 to the Division. The Division has subsequently received from you a second request letter dated June 15, 2023 asking for extension of the position taken in Letter 21-18. Letter 21-18 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, 2023 if certain SDs subject to capital requirements of a prudential regulator (“Bank SDs”) fail to comply with financial reporting requirements set forth in Regulation 23.105(p)(2)² as described below.

I. Regulatory Background

¹ CFTC Staff Letter No. 21-18, August 31, 2021.

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

Section 4s of the Commodity Exchange Act (the “CEA”) authorizes the Commission to adopt rules imposing minimum capital requirements on SDs that are not subject to rules of a prudential regulator (“Nonbank SDs”),³ as well as financial reporting requirements for Bank SDs and Nonbank SDs.⁴ Pursuant to Section 4s(f), the Commission adopted Regulation 23.105(p)(2),⁵ which requires each Bank SD to file unaudited quarterly financial information with the Commission within 30 calendar days of the end of the Bank SD’s fiscal quarter. The required financial information for a Bank SD consists of a statement of financial condition (“Balance Sheet”), a statement of regulatory capital (“Statement of Regulatory Capital”), and a schedule of the Bank SD’s aggregate positions in security-based swaps, mixed swaps, swaps, and other derivatives (“Schedule 1”).⁶ The Bank SD is required to submit its Financial Reports on the specific forms set forth in Appendix C to Subpart E of Part 23 of the Commission’s regulations (“Appendix C”).⁷

The Balance Sheet and Statement of Regulatory Capital contained in Appendix C were intended to be identical to the Federal Financial Institutions Examination Council (“FFIEC”) Form 031 (“Call Report”) generally filed by banks, including certain Bank SDs, with their respective prudential regulator.⁸ In this regard, the Balance Sheet was designed to be identical with Schedule RC—Balance Sheet of the Call Report, and the Statement of Regulatory Capital was designed to be identical to Schedule RC-R—Regulatory Capital of the Call Report. The use of identical forms was intended to allow Bank SDs to file the same financial information with the Commission that they file with their applicable prudential regulators.

Schedule 1, however, was not based on a corresponding statement or schedule contained in the Call Report. Schedule 1 contains position information that the Commission requested to monitor the activities of Bank SDs in the derivatives markets. The Financial Reports were also identical to corresponding statements and schedule required by the Securities and Exchange Commission (“SEC”) for security-based swap dealers that are subject to the capital requirements of a prudential regulator.⁹

II. Extension of Time-Limited No-Action Position

The Division issued Letter 21-18 on August 31, 2021. Letter 21-18 provides that the Division will not recommend enforcement action if Bank SDs, subject to certain conditions, do

³ 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.

⁴ See 7 U.S.C. 6s.

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

⁶ The Balance Sheet, Regulatory Capital Statement, and Schedule 1 are collectively referred to in this letter as a Bank SD’s “Financial Reports.”

⁷ The Division acknowledges an error in Regulation 23.105(p)(2) that provides that a Bank SD is required to file the information contained in Appendix B to Subpart E of Part 23 with the Commission within 30 calendar days of the end of each quarter. The reference should be to Appendix C to Subpart E of Part 23 of the Commission’s regulations.

⁸ See, 85 FR 57462, 57516-57517.

⁹ See SEC Rule 18a-7(a)(2) (17 CFR 240.18a-7(a)(2)) and Rule 249.617 (17 CFR 249.617).

not comply with the financial reporting requirements under Commission Regulation 23.105(p). The time-limited no-action position set forth in Letter 21-18 will expire on October 6, 2023.¹⁰

Letter 21-18 permits Bank SDs to submit a Schedule RC—Balance Sheet and a Schedule RC-R—Regulatory Capital from the Call Report with the Commission in lieu of the Balance Sheet and Statement of Regulatory Capital required by Regulation 23.105(p)(2) and Appendix C. Letter 21-18 also allows certain non-U.S. domiciled Bank SDs subject to home country capital standards in a G-20 jurisdiction or to capital standards that are consistent with the Capital Accord of the Basel Committee on Banking Supervision (a “Covered Non-U.S. Bank SD”) to provide the Commission with financial reports submitted to home country regulators subject to certain conditions, and further provides that such Covered Non-U.S. Bank SDs are permitted to file with the Commission balance sheet and statement of regulatory capital information in accordance with home country requirements provided the information is in English, converted to US dollars, and filed within 15 days of the earlier of the date such financial statements are filed or required to be filed with the home country regulator.¹¹ Finally, recognizing additional limitations imposed by the SEC following adoption of Regulation 23.105(p)(2), dually-registered Covered Non-U.S. Bank SDs are permitted to file comparable SEC approved financial reports and schedules.¹²

As mentioned above, you have requested that the Division extend the position set forth in Letter 21-18. In your request, you indicate that you are concerned that imposing the full rule set at the time of the expiration of Letter 21-18 while the Commission’s actions remain pending would prove to be a significant operational challenge for Bank SDs and may ultimately be unnecessary and duplicative. Further, you indicate that there are no known issues with compliance of the conditions within Letter 21-18 and that Bank SDs are reporting consistent with that position.

Due to the time required for the Commission to issue a proposed rulemaking revising the financial reporting requirements for Bank SDs under Regulation 23.105(p), and address any comments received, the Division believes that an extension of the expiration date of Letter 21-18 is necessary and appropriate. The Division is currently unaware of any instances where eligible Bank SDs are not complying with or are inappropriately relying upon Letter 21-18. Further, the Division has received and reviewed financial reporting in accordance with Letter 21-18 without issue, and does not anticipate any issues with the approach taken with Letter 21-18 at this time.

The Division hereby extends the expiration of Letter 21-18 until the earlier of **October 6, 2025** or the adoption of any revised financial reporting requirements applicable to Bank SDs under Regulation 23.105(p). In light of its analysis preformed to date, the Division believes that the extension of the no-action position, subject to the conditions below, on a time-limited basis would not limit its ability to monitor the capital position of Bank SDs. For full clarity, the Division’s No-Action Position of Letter 21-18, with all the conditions and the newly revised time-limited date of the earlier of **October 6, 2025** or the adoption of any revised financial

¹⁰ See CFTC Staff Letter No. 21-18.

¹¹ *Id.* at 5, Conditions 2-4.

¹² *Id.*, Condition 5. In comparison to the SEC’s approach to similarly situated Bank SBSBs, the Commission’s capital comparability process adopted in Commission Regulation 23.106 does not extend to Bank SDs.

reporting and notification requirements applicable to such SDs under Regulation 23.105(p), is fully restated herein below.

III. Division No-Action Position

The Commission adopted limited financial reporting requirements for Bank SDs in recognition that prudential regulators have an obligation to impose capital requirements on Bank SDs and have primary responsibility under the CEA to monitor Bank SD capital.¹³ The limited financial reporting required by Regulation 23.105(p) is intended to provide the Commission with information necessary to monitor the overall financial condition of Bank SDs at a high level due to their status as dealers in the swaps market and as counterparties to market participants, including Nonbank SDs. The Division believes that extending the no-action position, subject to the conditions below, on a time-limited basis while potential rule amendments are considered by the Commission would not adversely impact the Division's ability to monitor the capital position of Bank SDs.

Based on the facts and representations set forth in the request letters dated August 20, 2021 and June 15, 2023, and those summarized above, the Division will not recommend that the Commission take an enforcement action against a Bank SD for failure to comply with certain financial reporting requirements of Regulation 23.105(p)(2) if:

1. A Bank SD that files a Call Report with its applicable U.S. prudential regulator files the Schedule RC—Balance Sheet and the Schedule RC-R—Regulatory Capital from the Call Report, and Schedule 1 from Appendix C, with the Commission on a quarterly basis in lieu of the Balance Sheet and Statement of Regulatory Capital required under Appendix C, provided that the Bank SD files the above schedules with the Commission within the timeframe permitted by its applicable prudential regulator to file its Call Report.
2. A Covered Non-U.S. Bank SD that does not file a Call Report with a U.S. prudential regulator files a statement of financial condition and a statement of regulatory capital in lieu of the Balance Sheet and Statement of Regulatory Capital required under Appendix C, provided that the statements filed with the Commission: (i) contain comparable financial information to the information contained in the Balance Sheet and Statement of Regulatory Capital, and such statements are filed with the Covered Non-U.S. Bank SD's home country regulator; and (ii) include Schedule 1 of Appendix C with its balance sheet and statement of regulatory capital when filed with the Commission.
3. A Covered Non-U.S. Bank SD that prepares and presents the statement of financial condition, the statement of regulatory capital, and Schedule 1 in accordance with the accounting standards permitted by its applicable home country regulator, including the accounting principles established in its home jurisdiction, provided the statement of financial condition, statement of regulatory capital, and Schedule 1 are submitted to the Commission in the English language, with balances converted to U.S. dollars.

¹³ See 7 U.S.C. 6s(e)(2)(i).

4. A Covered Non-U.S. Bank SD files the statement of financial condition, statement of regulatory capital, and Schedule 1 within 15 days of the earlier of the date such financial statements are filed with its home country regulator or the date such financial statements are required to be filed with its home country regulator. A Covered Non-U.S. Bank SD is required to file the financial statements and Schedule 1 with the Commission as of the end of each quarter, unless the Covered Non-U.S. Bank SD is only required to file such financial statements with its home country regulator on a semi-annual basis, in which case its financial statements and Schedule 1 must be filed with the Commission on a semi-annual basis.
5. A Covered Non-U.S. Bank SD that is dually-registered with the SEC as a security-based swap dealer files a FOCUS Report Part IIC, or other SEC approved financial reports and schedules, with the Commission in lieu of its reporting obligation under Regulation 23.105(p)(2), provided that (i) the FOCUS Report Part IIC, or other SEC-approved financial reports and schedules, are filed with the Commission on the earlier of the due date for the reports under the SEC rules, or (ii) the date the reports were filed with the SEC. The FOCUS Report Part IIC or other SEC-approved financial reports and schedules must be filed with the Commission in the English language with balances converted to U.S dollars.

The no-action position set forth in this letter is time-limited and will expire the earlier of **October 6, 2025** or the adoption of any revised financial reporting and notification requirements applicable to Bank SDs under Regulation 23.105(p).

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.¹⁴ The position taken in 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 position taken in 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 position taken 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, Jennifer Bauer, Special Counsel at 202-418-5472, or Andrew Pai, Attorney Advisor at 646-746-9893.

Sincerely,

Amanda L. Olear
Director

¹⁴ See 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).