

CLEARY GOTTlieb STEEN & HAMILTON LLP

AMERICAS
NEW YORK
SAN FRANCISCO
SÃO PAULO
SILICON VALLEY
WASHINGTON, D.C.

ASIA
BEIJING
HONG KONG
SEOUL

One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999

clearygottlieb.com

Deborah North
dnorth@cgsh.com

Ferdisha Snagg
fsnagg@cgsh.com

EUROPE & MIDDLE EAST
ABU DHABI
BRUSSELS
COLOGNE
FRANKFURT
LONDON
MILAN
PARIS
ROME

NO-ACTION RELIEF RELATED TO 7 U.S.C. 6s(e) AND 6s(f); 17 CFR 23.100-23.106

September 3, 2024

Thomas J. Smith
Deputy Director, Capital, Margin &
Segregation Market Participant Division
U.S. Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Re: Substituted Compliance for Capital and Financial Requirements for Non-Bank Swap Dealers Domiciled in the European Union; No Action Position Related to 7 U.S.C. 6s(e) and 6s(f); 17 CFR 23.100-23.106

Dear Mr. Smith:

On behalf of a certain swap dealer not subject to capital requirements of a U.S. prudential regulator and licensed as an investment firm (the “**Firm**”), we are writing to request that the staff of the Market Participants Division (the “**Division**”) of the Commodity Futures Trading Commission (“**Commission**” or “**CFTC**”) extend the current time-limited no-action relief¹ on the matters set forth below relating to capital and financial reporting for certain swap dealers (“**SDs**”) and major swap participants not subject to capital requirements of a prudential regulator² (“**Nonbank SDs**”) under sections 4s(e) and (f) of the CEA and CFTC Regulations.

¹ See CFTC Letter No. 21-20, from Amanda L. Olear, Acting Director, Market Participants Division, to Kyle Brandon, Securities Industry and Financial Markets Association, Stephen Kennedy, International Swaps and Derivatives Association, and Stephanie Webster, Institute of International Bankers, Time Limited No-Action Position for Non-Bank Swap Dealers Domiciled in Japan, Mexico, United Kingdom and the European Union (September 30, 2021) (“**NAL 21-20**”), as extended by CFTC Letter No. 22-10 from Amanda L. Olear, Acting Director, Market Participants Division, to Kyle Brandon, Securities Industry and Financial Markets Association, Stephen Kennedy, International Swaps and Derivatives Association, and Stephanie Webster, Institute of International Bankers, Extension of Time Limited No-Action Position for Foreign Based Non-Bank Swap Dealers Domiciled in Japan, Mexico, the United Kingdom and the European Union (August 17, 2022) (“**NAL 22- 10**”).

² The term “prudential regulator” is defined by section 1a(39) (7 U.S.C. 1a(39)) of the Commodity Exchange Act (“**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.

Specifically, we request that Nonbank SDs licensed as investment firms in the European Union (“EU”) (each, an “**Investment Firm SD**”) be permitted to continue to comply with the capital and financial reporting requirements of their home country regulators while the Division and Commission continue their work to review the application for a substituted compliance determination applicable to Investment Firm SDs.

I. **Background**

In September 2021, the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requested that Nonbank SDs be permitted to comply with the capital and financial reporting requirements of their home country regulators while the Division and Commission continue their work to finalize pending applications for substituted compliance determinations. Recognizing that the nonbank SDs subject to pending capital comparability determination applications must comply with applicable home country capital and financial reporting requirements, and that such capital requirements are based on the Basel Committee on Banking Supervision (“**BCBS**”) framework, the Division provided the relief requested on a time-limited basis, subject to the financial reporting and notification conditions, stating that such relief will not materially impact its ability to monitor the financial condition and overall safety and soundness of the covered nonbank SDs.³ NAL 22-10 subsequently extended such relief until the earlier of October 1, 2024 or the issuance of final Capital Comparability Determinations applicable to the certain Nonbank SDs located in the EU, Japan, Mexico, and the United Kingdom (“**Covered Nonbank SDs**”).

In June 2024, the CFTC approved comparability determinations, which became effective on July 18, 2024, for a subset of Covered Nonbank SDs that are subject to prudential regulation by the European Central Bank, the Financial Services Agency of Japan, the National Banking and Securities Commission of Mexico and the Mexican Central Bank, or the United Kingdom Prudential Regulation Authority.⁴ However, the Investment Firm SDs are subject to a separate regulatory framework. Investment Firm SDs are subject to a prudential regime for certain categories of investment firms, Investment Firms Regulation (EU) 2019/2033 (“**IFR**”) and Directive (EU) 2019/2034 (“**IFD**”). The IFR sets forth harmonized requirements in relation to, among other things, own funds, liquidity and reporting requirements for Investment Firms SDs, which are directly applicable in each member state of the EU. The IFD sets forth provisions which are required to be transposed into the domestic laws of each EU member state, in relation notably to prudential supervision by member state regulators. As a result, the Investment Firm SDs continue to rely on the relief pursuant to NAL 21-20, as extended by NAL 22-10.

We understand that the Commission has received and is currently reviewing and

³ See CFTC Letter No. 21-20.

⁴ See 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 Fed. Reg. 58572 (July 18, 2024); 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 Fed. Reg. 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 Fed. Reg. 58505 (July 18, 2024); 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 Fed. Reg. 58535 (July 18, 2024).

assessing a substituted compliance application for comparability determinations for the Investment Firm SDs, and there will need to be ample time for the Commission to review the final application. As such, the final comparability determination is not likely to be completed by the expiration of NAL 22-10. We are concerned that imposing the full rule set at that time, while the Commission's review of the application for a comparability determination remains in progress, would prove to be a significant operational challenge and may ultimately be unnecessary and duplicative.

We further understand that the Investment Firm SDs under the relief continue to be subject to home country capital and financial reporting rules and that there are no known issues with the compliance with the conditions set forth in NAL 21-20, as extended by NAL 22-10, and that the Investment Firm SDs are reporting consistent with that relief.

II. Discussion

As you are aware and noted in the granting of the initial relief and subsequent extension, absent the granting of substituted compliance or an extension of NAL 21-20, as extended by NAL 22-10 ahead of October 1, 2024, Covered Nonbank SDs with pending applications will be required to implement the full scope of the Commission's capital and financial reporting requirements while also complying with the full scope of their respective home country capital and financial reporting requirements during the pendency of the application for comparability determination. Such a result would impose substantial operational and financial burdens on Investment Firm SDs which the Commission sought to address by incorporating a substituted compliance framework into Regulation 23.106. For example, while the Investment Firm SDs are subject to home country financial reporting requirements that are comparable to the Commission's financial reporting requirements set forth in Regulation 23.105, differences do exist between U.S. accounting principles and the applicable accounting principles adopted in the different jurisdictions and in the form and frequency of some of the financial reporting requirements of the relevant jurisdictions, and therefore such SDs would be required to maintain books and records, and to prepare and present financial reports, in accordance with multiple accounting principles and conflicting deadlines.

Further, we maintain that as demonstrated Investment Firm SDs are subject to home country capital requirements that are comparable to the Commission's SD capital requirements. While the aim of the IFD/IFR capital regime is to better align capital requirements with the business model and sources of harm of Investment Firm SDs (and other investment firms subject to the regime) than the BCBS framework for banking institutions, it largely retains certain key elements of the BCBS framework – notably as regards the quality of regulatory capital, the treatment of counterparty credit risk and the capitalization of market risk.

Therefore, we request an extension of the relief to permit the Investment Firm SDs to comply with their applicable home country capital and financial reporting requirements in lieu of the Commission's capital and financial reporting requirements pending the Commission's final assessment of the substituted compliance applications.

Request: The Firm requests that the Division extend the relief granted in NAL 21-20, as extended by NAL 22-10.

This relief would expire upon the issuance of final substituted compliance determinations applicable to the Investment Firm SDs located in the EU.

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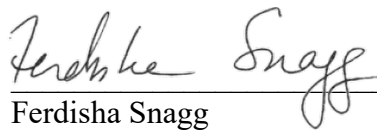
The undersigned hereby certify that the material facts set forth herein are true and complete to the best of their knowledge. Please feel free to reach out to the undersigned should you have any questions.

Sincerely,



Deborah North

Partner, Cleary Gottlieb Steen & Hamilton LLP



Ferdisha Snagg

Counsel, Cleary Gottlieb Steen & Hamilton LLP

CLEARY GOTTlieb STEEN & HAMILTON LLP

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WASHINGTON, D.C.

ASIA
BEIJING
HONG KONG
SEOUL

One Liberty Plaza
New York, NY 10006-1470
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F: +1 212 225 3999
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Re: Substituted Compliance for Capital and Financial Requirements for Non-Bank Swap Dealers Domiciled in the United Kingdom; No Action Position Related to 7 U.S.C. 6s(e) and 6s(f); 17 CFR 23.100-23.106

Dear Mr. Smith:

On behalf of certain swap dealers not subject to capital requirements of a U.S. prudential regulator and licensed as investment firms (the “**Firms**”), we are writing to request that the staff of the Market Participants Division (the “**Division**”) of the Commodity Futures Trading Commission (“**Commission**” or “**CFTC**”) extend the current time-limited no-action relief¹ on the matters set forth below relating to capital and financial reporting for certain swap dealers

¹ See CFTC Letter No. 21-20, from Amanda L. Olear, Acting Director, Market Participants Division, to Kyle Brandon, Securities Industry and Financial Markets Association, Stephen Kennedy, International Swaps and Derivatives Association, and Stephanie Webster, Institute of International Bankers, Time Limited No-Action Position for Non-Bank Swap Dealers Domiciled in Japan, Mexico, United Kingdom and the European Union (September 30, 2021) (“**NAL 21-20**”), as extended by CFTC Letter No. 22-10 from Amanda L. Olear, Acting Director, Market Participants Division, to Kyle Brandon, Securities Industry and Financial Markets Association, Stephen Kennedy, International Swaps and Derivatives Association, and Stephanie Webster, Institute of International Bankers, Extension of Time Limited No-Action Position for Foreign Based Non-Bank Swap Dealers Domiciled in Japan, Mexico, the United Kingdom and the European Union (August 17, 2022) (“**NAL 22-10**”).

(“SDs”) and major swap participants not subject to capital requirements of a prudential regulator² (“**Nonbank SDs**”) under sections 4s(e) and (f) of the CEA and CFTC Regulations 23.100-23.106. Specifically, we request that Nonbank SDs licensed by the Financial Conduct Authority (“**FCA**”) as investment firms in the United Kingdom (“**UK**”) (each, an “**Investment Firm SD**”) be permitted to continue to comply with the capital and financial reporting requirements of their home country regulator (the FCA) while the Division and Commission continue their work to review the draft application for a substituted compliance determination applicable to Investment Firm SDs.

I. Background

In September 2021, the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requested that Nonbank SDs be permitted to comply with the capital and financial reporting requirements of their home country regulators while the Division and Commission continue their work to finalize pending applications for substituted compliance determinations. Recognizing that the nonbank SDs subject to pending capital comparability determination applications must comply with applicable home country capital and financial reporting requirements, and that such capital requirements are based on the Basel Committee on Banking Supervision (“**BCBS**”) framework, the Division provided the relief requested on a time-limited basis, subject to the financial reporting and notification conditions, stating that such relief will not materially impact its ability to monitor the financial condition and overall safety and soundness of the covered nonbank SDs.³ NAL 22-10 subsequently extended such relief until the earlier of October 1, 2024 or the issuance of final Capital Comparability Determinations applicable to the certain Nonbank SDs located in the European Union (“**EU**”), Japan, Mexico, and the UK (“**Covered Nonbank SDs**”).

In June 2024, the CFTC approved comparability determinations, which became effective on July 18, 2024, for a subset of Covered Nonbank SDs that are subject to prudential regulation by the European Central Bank, the Financial Services Agency of Japan, the National Banking and Securities Commission of Mexico and the Mexican Central Bank, or the UK Prudential Regulation Authority.⁴ However, the Investment Firm SDs are subject to a separate regulatory framework, known as the Investment Firms Prudential Regime (“**IFPR**”), which was introduced by the FCA pursuant to powers under the Financial Services Act 2021. The IFPR is broadly based on the EU Investment Firms Regulation (EU) 2019/2033 and Directive (EU) 2019/2034.

² The term “prudential regulator” is defined by section 1a(39) (7 U.S.C. 1a(39)) of the Commodity Exchange Act (“**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.

³ See NAL 21-20.

⁴ See 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 Fed. Reg. 58572 (July 18, 2024); 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 Fed. Reg. 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 Fed. Reg. 58505 (July 18, 2024); 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 Fed. Reg. 58535 (July 18, 2024).

As a result, the Investment Firm SDs continue to rely on the relief pursuant to NAL 21-20, as extended by NAL 22-10.

We understand that the Commission has received and is currently reviewing and assessing a draft substituted compliance application for comparability determinations for the Investment Firm SDs, and there will need to be ample time for the Commission to review the final application. As such, the final comparability determination is not likely to be completed by the expiration of NAL 22-10. We are concerned that imposing the full rule set at that time, while the Commission's review of the application for a comparability determination remains in progress, would prove to be a significant operational challenge and may ultimately be unnecessary and duplicative.

We further understand that the Investment Firm SDs under the relief continue to be subject to home country capital and financial reporting rules and that there are no known issues with the compliance with the conditions set forth in NAL 21-20, as extended by NAL 22-10 and that the Investment Firm SDs are reporting consistent with that relief.

II. Discussion

As you are aware and noted in the granting of the initial relief and subsequent extension, absent the granting of substituted compliance or an extension of NAL 21-20, as extended by NAL 22-10 ahead of October 1, 2024, Covered Nonbank SDs with pending applications will be required to implement the full scope of the Commission's capital and financial reporting requirements while also complying with the full scope of their respective home country capital and financial reporting requirements during the pendency of the application for comparability determination. Such a result would impose substantial operational and financial burdens on Investment Firm SDs which the Commission sought to address by incorporating a substituted compliance framework into Regulation 23.106. For example, while the Investment Firm SDs are subject to UK financial reporting requirements that are comparable to the Commission's financial reporting requirements set forth in Regulation 23.105, differences do exist between UK and U.S. accounting principles and in the form and frequency of some of the financial reporting requirements, and therefore such SDs would be required to maintain books and records, and to prepare and present financial reports, in accordance with multiple accounting principles and conflicting deadlines.

Further, we maintain that as demonstrated Investment Firm SDs are subject to FCA capital requirements that are comparable to the Commission's SD capital requirements. While the aim of the IFPR capital regime is to better align capital requirements with the business model and sources of harm of Investment Firm SDs (and other investment firms subject to the regime) than the BCBS framework for banking institutions, it largely retains certain key elements of the BCBS framework – notably as regards the quality of regulatory capital, the treatment of counterparty credit risk and the capitalization of market risk.

Therefore, we request an extension of the relief to permit Investment Firm SDs to comply with their applicable UK capital and financial reporting requirements in lieu of the Commission's capital and financial reporting requirements pending the Commission's final assessment of the substituted compliance application.

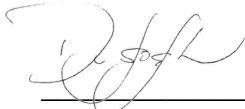
Request: The Firms request that the Division extend the relief granted in NAL 21-20, as extended by NAL 22-10.

This relief would expire upon the issuance of final substituted compliance determinations applicable to the Investment Firm SDs located in the UK.

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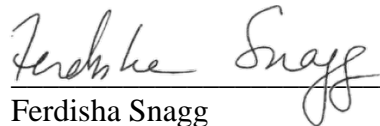
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Sincerely,



Deborah North

Partner, Cleary Gottlieb Steen & Hamilton LLP



Ferdisha Snagg

Counsel, Cleary Gottlieb Steen & Hamilton LLP