



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

Thomas J. Smith

Acting Director

Re: Staff Interpretation Regarding Financial Reporting Requirements for Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan

The Market Participants Division (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) is issuing this interpretation to clarify certain financial reporting requirements in Commission regulation 23.105(e)¹ that are applicable to nonbank swap dealers organized and domiciled in Japan that are registered with the Financial Services Agency of Japan (“FSA”) as Type I Financial Instruments Business Operators (“Japanese nonbank SDs”).²

Specifically, this interpretation clarifies the Division’s views that Japanese nonbank SDs that have been granted conditional substituted compliance pursuant to the Japanese Comparability Order (as defined below) may satisfy one of the financial reporting conditions listed therein by filing with the Commission and the National Futures Association (“NFA”) certain enumerated schedules contained in the annual business report that Japanese nonbank SDs are required to submit to the FSA pursuant to Article 46-3(1) of the Japanese Financial Instruments and Exchange Act and Article 172 of the related Cabinet Office Order on Financial Instruments Business (“Annual Business Report”). Japanese nonbank SDs may, but are not required to, file the Annual Business Report in its entirety to satisfy the relevant financial reporting condition set forth in the Japanese Comparability Order.

Regulatory Background

On July 22, 2020, pursuant to Section 4s(e) and 4s(f) of the Commodity Exchange Act (“CEA”),³ the Commission adopted comprehensive capital and financial reporting requirements applicable to, among other entities, swap dealers that are not subject to regulation by a prudential

¹ The Commission’s regulations may be found at 17 CFR Chapter I, and are also available through the Commission’s website, www.cftc.gov.

² There are three Japanese nonbank SDs currently registered with the Commission: BofA Securities Japan Co., Ltd.; Goldman Sachs Japan Co., Ltd.; and Morgan Stanley MUFG Securities Co., Ltd.

³ U.S.C. 6s(e) and 6s(f).

regulator (“nonbank SDs”).⁴ 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”).⁵ A person requesting a Comparability Determination is required to submit an application to the Commission describing certain elements of the applicable foreign regulatory regime.⁶ 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 a Comparability Determination and related Comparability Order granting substituted compliance in connection with the CFTC’s capital and financial reporting requirements to certain CFTC-registered nonbank SDs organized and domiciled in Japan, subject to certain conditions set forth in the order (the “Japanese Comparability Order”).⁷

One of the conditions contained in the Japanese Comparability Order, condition 9, requires each Japanese nonbank SD to file a copy of its Annual Business Report with the Commission and the NFA.⁸ The Commission based this requirement on an understanding that information included

⁴ 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).

⁵ 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.

⁶ 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).

⁷ 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) (the “Japanese Comparability Order”). The Japanese Comparability Order contains 23 conditions.

⁸ Id. at 58492. Condition 9 of the Japanese Comparability Order requires Japanese nonbank SDs to file with the Commission and with NFA “a copy of its Annual Business Report that is required to be filed with the Financial Services Agency in accordance with Article 46–3(1) of the Financial Instruments and Exchange Act and Article 172 of the Cabinet Office Order on Financial Instruments Business. The Annual Business Report must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report. The Annual Business Report must be filed with the Commission and NFA within 15 business days of the earlier of the date the Annual Business Report is filed with the Financial

in the Annual Business Report is comparable to the information required under Commission regulation 23.105(e). Specifically, the Commission noted that the Annual Business Report is comparable to the annual audited financial report that each nonbank SD is required to file with the Commission under Commission regulation 23.105(e) in that both reports include statements of financial condition, statements of income or loss, statements demonstrating the SD's capital levels and compliance with applicable capital requirements, statements of changes in ownership equity, and statements of subordinated debt (collectively, the "In Scope Statements").⁹

In December 2024, the Securities Industry and Financial Markets Association ("SIFMA"), provided the Division with translations of the table of contents and the templates of the Annual Business Report prepared by the FSA. In March 2025, SIFMA submitted a request that Japanese nonbank SDs be permitted to file with the Commission and NFA certain enumerated schedules of the Annual Business Report to comply with condition 9 of the Japanese Comparability Order.¹⁰ In support, SIFMA states that the Annual Business Report is a wide ranging and lengthy compendium of dozens of reports, comprised of tens of thousands of fields of data and narrative, covering the entirety of a financial organization, well beyond the areas typically required for nonbank SD financial reporting specified in Commission regulation 23.105(e).¹¹ SIFMA further notes that many of the schedules contained within the Annual Business Report are unrelated to the Japanese nonbank SD's swap dealing activity and/or do not provide information on the Japanese nonbank SD's financial condition. SIFMA argues that requiring Japanese nonbank SDs to translate and file these additional 100 pages or more of schedules and narrative would create a burden for the firms without contributing to achieving the Commission's regulatory objectives.¹²

Staff Interpretation

The Division is issuing this interpretation in response to a request submitted by SIFMA¹³ regarding condition 9 of the Japanese Comparability Order, which, as noted above, requires each Japanese nonbank SD to file a copy of its Annual Business Report with the Commission and the NFA.

The requirement for Japanese nonbank SDs to submit an Annual Business Report was designed to provide the Commission with the information necessary to monitor each Japanese nonbank SD's financial condition and compliance with capital requirements, and to assess the overall safety and soundness of the Japanese nonbank SDs. The Commission, however, did not intend to request information that is extraneous to these regulatory objectives or information that otherwise exceeds the purpose and scope of Commission regulation 23.105.

Services Agency or the date that the Annual Business Report is required to be filed with the Financial Services Agency." Id. at 58500-01.

⁹ Id. at 58492.

¹⁰ Letter by Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA, dated March 20, 2025 ("SIFMA Letter").

¹¹ SIFMA Letter at 2.

¹² Id.

¹³ SIFMA Letter.

As noted above, the requirement was based on a finding that information included in the Annual Business Report would be comparable to the information required under Commission regulation 23.105(e). Specifically, in requesting a copy of each Japanese nonbank SD's Annual Business Report, the Commission expected that each report would contain the In Scope Statements, as well as information providing background related to the In Scope Statements and the Japanese nonbank SD's swap dealing operations (collectively, the "In Scope Information").¹⁴

After reviewing translations of the table of contents and the templates of the Annual Business Report, the Division understands that the Annual Business Report contains extraneous information,¹⁵ and that the In Scope Information is limited to certain schedules of the report. The Division, therefore, clarifies that, to comply with condition 9 of the Japanese Comparability Order, Japanese nonbank SDs must file with the Commission and the NFA the following schedules contained within the Annual Business Report (collectively, the "In Scope Schedules"):

i. Status of the Business:

1. Schedule (5) Outline of the business for the current period;
2. Schedule (11) Status of capital adequacy ratio;
3. Schedule (12) Status of the separate management of customer assets, including (12-2) Status of the separate management pertaining to subject commodity derivatives transaction-related transactions;
4. Schedule (13) Status of separate management (excluding separate management pertaining to electronically recorded transferable rights that must be indicated on securities, etc.), including (13-2) Status of separate management (limited to separate management pertaining to Electronically Recorded Transferable Rights that must be indicated on securities, etc.);
5. Schedule (17) Status of market derivatives transactions and foreign market derivatives transactions unrelated to securities; and

ii. Financial Information (Form A)

¹⁴ The Commission expressed its intent for Japanese nonbank SDs to file with the Commission financial information comparable to the information required under Commission regulation 23.105. In this regard, the Commission modified final condition 8 of the Japanese Comparability Order to require a Japanese nonbank SD to file specified financial schedules from its Monthly Monitoring Report that were comparable to the financial schedules required under Commission regulation 23.105(d) in lieu of the full Monthly Monitoring Report that is required to be filed with the FSA pursuant to Article 56- 2(1) of the Japanese Financial Instruments and Exchange Act. Specifically, final condition 8 requires a Japanese nonbank SD to file a copy of only forms 1-1 Capital Ratio Summary, 1-2 Capital Ratio: Deductible Assets, 1-3 Market Risk, 1-4 Counterparty Risk, 2-1 Monthly Financial Statement (1), and 2-2 Monthly Financial Statement (2) of its Monthly Monitoring Report. This modification was adopted to align the Japanese nonbank SD's financial reporting requirements more closely to Commission regulation 23.105(d). 89 FR 58492, 58501.

¹⁵ After reviewing translations of the Annual Business Report, the Division confirmed that certain information contained in the Annual Business Report does not relate to swap dealing activity, including asset management business status reports.

Each Japanese nonbank SD may, but is not required to, file its Annual Business Report in its entirety to comply with condition 9 of the Japanese Comparability Order.

The Division believes that the information contained in the In Scope Schedules will provide the Commission with the information necessary to monitor a Japanese nonbank SD's financial condition and compliance with capital requirements, and to assess the overall safety and soundness of the Japanese nonbank SD, without requesting information that is extraneous to the Commission's regulatory objectives.

The Division, therefore, considers that providing the In Scope Schedules would satisfy condition 9 of the Japanese Comparability Order. For full clarity, per condition 9 of the Japanese Comparability Order, the In Scope Schedules must be: (i) translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report and (ii) filed with the Commission and NFA within 15 business days of the earlier of the date the Annual Business Report is filed with the FSA or the date that the Annual Business Report is required to be filed with the FSA. The Division's position continues to remain subject to all other conditions outlined in the Japanese Comparability Order in their entirety.

This interpretation represents the views of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission. Questions regarding this interpretation may be directed to Liliya Bozhanova, Associate Director, at lbozhanova@cftc.gov or Christine McKeveny, Attorney Advisor, at cmckeveny@cftc.gov.

Sincerely,

Thomas J. Smith
Acting Director