U.S. COMMODITY FUTURES TRADING COMMISSION
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Market Participants Division

Division of Clearing and Risk

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Re: No-Action Position with Respect to Compliance with 17 CFR §§ 23.150 - 23.161 ("CFTC Margin Rule") and Commodity Exchange Act ("CEA") § 2(h)(1)(A) and 17 CFR § 50.2 and § 50.4 (together, the "Clearing Requirement") for Certain Legacy Swaps Transferred under Part VII of The Financial Services and Markets Act of 2000 in Connection with the Integration of UBS Group and Credit Suisse Group

I. Introduction

The Market Participants Division ("**MPD**") and the Division of Clearing and Risk ("**DCR**" and together with MPD, the "**Divisions**") of the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") are issuing this letter in response to UBS AG's request for a no-action letter[1] under Commission regulation 140.99.[2] UBS AG requested the no-action letter on behalf of (a) itself and (b) counterparties ("**Covered Counterparties**") to certain legacy swaps discussed below (together, the "**Residual Portfolio**") that are to be transferred by operation of English law by Credit Suisse International ("**CSI**") to UBS AG London Branch through a Part VII Transfer (as defined below), in connection with the merger of UBS Group AG ("**UBS**") and Credit Suisse Group AG ("**CS"**) ("**UBS-CS Merger**") and the winding down of CSI. Specifically, UBS AG requests that the Divisions provide a no-action letter stating that with respect to this Part VII Transfer of legacy swaps in the Residual Portfolio they will not recommend enforcement action to the Commission for non-compliance with: (a) the CFTC Margin Rule, by Covered Counterparties that are swap dealers ("**SD**s") for which there is no prudential regulator[3] ("**Covered**

[1] Letter from UBS AGto Thomas Smith, Acting Director MPD, and Richard Haynes, Acting Director DCR, dated April 4, 2025 ("**UBS Letter**").

[2] 17 CFR 140.99.

[3] The CFTC Margin Rule applies only to SDs and major swap participants for which there is not a prudential regulator. *See* 7 U.S.C. 6s(e)(1)(B). SDs and major swap participants for which there is a prudential regulator must meet the margin requirements for uncleared swaps established by the applicable prudential regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term "**Prudential Regulator**" to include 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). The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840

SD Counterparties"); and (b) the Clearing Requirement, by UBS AG and Covered Counterparties subject to the Clearing Requirement ("**Covered Clearing Counterparties**").[4]

II. CFTC Regulatory Background

(1) Margin

Section 4s(e) of the CEA directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps[5] that are (i) entered into by an SD for which there is no Prudential Regulator (such SDs are collectively referred to as "**CSEs**") and (ii) not cleared by a registered derivatives clearing organization ("**DCO**") ("**uncleared swaps**").[6] To this end, the Commission promulgated rules in 2016,[7] establishing requirements for a CSE to collect and post initial margin and variation margin for uncleared swaps. These requirements vary based on the type of counterparty to such swaps and the location of the CSE and its counterparty.[8] These requirements also generally apply only to uncleared swaps entered into on or after the compliance date applicable to a particular CSE and its counterparty (each a "**covered swap**").[9] An uncleared

(Nov. 30, 2015). The prudential margin requirements are codified in the regulations of each Prudential Regulator in the Code of Federal Regulations (the "**Prudential Margin Rule**"). The Prudential Margin Rule is similar to the CFTC Margin Rule, including with respect to the CFTC's phasing-in of margin requirements, as discussed below. To the extent that UBS AG or the other parties to a transferred legacy swap are subject to the Prudential Margin Rule, the legacy swap may become subject to the margin requirements of the Prudential Margin Rule as a result of the Part VII Transfer, and they may need relief from that rule from the applicable Prudential Regulator(s) to continue treating such swaps as legacy swaps. Any such relief is outside the scope of this letter, which is limited solely to the no-action positions provided herein.

[4] *See* UBS Letter.

[5] For the definition of swap, *see* section 1a(47) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(47) and 17 CFR 1.3. The "swap" definition includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[6] 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined uncleared swaps to mean those swaps that are not cleared by a registered DCO or a DCO that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[7] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) ("**CFTC Margin Release**"); *see, also* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[8] *See* Commission regulations 23.152 and 23.153, 17 CFR 23.152 and 23.153. For example, the CFTC Margin Rule does not require a CSE to collect margin from, or post margin to, a counterparty that is neither a swap entity nor a financial end user (each as defined in 17 CFR 23.151). Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an eligible contract participant, as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18). *See* Commission regulation 23.160 on the cross-border application of the CFTC Margin Rule. 17 CFR 23.160.

[9] Pursuant to Commission regulation 23.161, compliance dates for the CFTC Margin Rule are staggered such that CSEs must come into compliance in a series of phases. The first phase affected CSEs and their counterparties, each with the largest aggregate outstanding notional amounts of uncleared swaps and certain other financial products. These CSEs began complying with both the initial and variation margin requirements of the CFTC Margin Rule on September 1, 2016. The second phase began March 1, 2017, and required CSEs to comply with the variation margin requirements of Commission regulation 23.153 with all relevant counterparties not covered in the first phase. *See* 17

swap entered into prior to a CSE's applicable compliance date for a particular counterparty (each a "**Margin Legacy Swap**") is generally not subject to the margin requirements in the CFTC Margin Rule.[10]

To the extent that more than one uncleared swap is executed between a CSE and its covered counterparty, the CFTC Margin Rule permits the netting of required margin amounts of each swap under certain circumstances.[11] In particular, the CFTC Margin Rule, subject to certain limitations, permits a CSE to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under the same eligible master netting agreement ("**EMNA**"). Moreover, the CFTC Margin Rule permits swap counterparties to identify one or more separate netting portfolios (*i.e.*, a specified group of uncleared swaps the margin obligations of which will be netted only against each other) under the same EMNA, including having separate netting portfolios for covered swaps and Margin Legacy Swaps.[12] A netting portfolio that contains only Margin Legacy Swaps is not subject to the initial and variation margin requirements set out in the CFTC Margin Rule.[13] However, if a netting portfolio contains any covered swaps, the entire netting portfolio (including all Margin Legacy Swaps) is subject to such requirements.[14]

A Margin Legacy Swap may lose its legacy treatment under the CFTC Margin Rule, causing it to become a covered swap and causing any netting portfolio in which it is included to be subject to the requirements of the CFTC Margin Rule. For reasons discussed in the CFTC Margin Release, the Commission elected not to extend the meaning of Margin Legacy Swaps to include (1) Margin Legacy Swaps that are amended in a material or nonmaterial manner; (2) novations of Margin Legacy Swaps; and (3) new swaps that result from portfolio compression of Margin Legacy Swaps.[15] Therefore, and as relevant here, a Margin Legacy Swap that is novated after the applicable compliance date may become a covered swap subject to the initial and variation margin requirements in the CFTC Margin Rule. In that case, netting portfolios that were intended

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CFR 23.161. On each September 1 thereafter (ending with September 1, 2022), CSEs have been required to comply with the initial margin requirements with counterparties with successively lesser outstanding notional amounts.

[10] *See* CFTC Margin Release, 81 FR at 651, and Commission regulation 23.161. 17 CFR 23.161.

[11] *See* CFTC Margin Release, 81 FR at 651, and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

[12] *See* CFTC Margin Release, 81 FR at 651, and Commission regulations 23.152(c)(2)(ii) and 23.153(d)(2)(ii). 17 CFR 23.152(c)(2)(ii) and 23.153(d)(2)(ii).

[13] *Id.*

[14] *Id.*

[15] *See* CFTC Margin Release, 81 FR at 675. Certain limited relief and no-action positions have been given in relation to this standard. *See, e.g.,* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 83 FR 60341 (Nov. 26, 2018); CFTC Staff Letter No. 17-52 (Oct. 27. 2017), *available at* http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/17-52.pdf; and "CFTC Statement on Swaps Rules Implicated in Recent Bank Failures" (Mar. 16, 2023), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/commissionstatement031623.

to contain only Margin Legacy Swaps and, thus, not be subject to the CFTC Margin Rule may become so subject.

(2) Clearing Requirement

Section 2(h)(1)(A) of the CEA states that "[i]t shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared."[16] In 2012, the Commission issued a Clearing Requirement Determination, which requires market participants to clear two classes of credit default swaps and four classes of interest rate swaps.[17] In 2016, the Commission issued a second Clearing Requirement Determination, which expanded the Clearing Requirement to include additional interest rate swaps.[18]

Like the CFTC Margin Rule, the Commission's Clearing Requirement Determinations established a series of compliance dates to phase-in compliance with the Clearing Requirement.[19] Commission regulation 50.5 provides that swaps entered into before July 21, 2010, or the application of the Clearing Requirement for a particular class of swaps are not subject to the Clearing Requirement so long as such swaps are reported to a swap data repository (**"Clearing Legacy Swaps"** and together with Margin Legacy Swaps, **"Legacy Swaps"**).[20]

The Commission clarified that the Clearing Requirement applies to all new swaps, as well as changes in the ownership of a swap, including assignment, novation, exchange, transfer, or conveyance.[21]

III. Background on UBS-CS Merger and Summary of Request for No-Action Position

Based on the representations made by UBS AG, we understand the relevant facts to be as follows:

(1) In March 2023, CS was under severe financial distress. Therefore, the Swiss Federal Department of Finance, the Swiss National Bank, and the Swiss Financial Market Supervisory Authority requested that UBS and CS consider a takeover of CS by UBS to restore necessary confidence in the stability of the Swiss economy and banking system and to serve the best interests of the shareholders and stakeholders of UBS and CS. On March

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[16] 7 U.S.C. § 2(h)(1)(A).

[17] *See* Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284, 74315-16, 74336-37 (Dec. 13, 2012) (establishing Commission regulation 50.4, which sets forth the classes of swaps that are required to be cleared).

[18] *See* Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016) (expanding the Clearing Requirement to include fixed-to-floating interest rate swaps in nine additional currencies and making certain other modifications to the scope of the 2012 Clearing Requirement).

[19] *See* 77 FR at 74319**-**20; 81 FR at 71226**-**30.

[20] 17 CFR 50.5.

[21] *See* 77 FR at 74316.

19, 2023, the firms subsequently entered into a merger agreement, resulting from further negotiations and support from distinct government guarantees and measures.

(2) On June 12, 2023, UBS acquired CS, succeeding by operation of Swiss law to all assets and liabilities of CS, and became the direct or indirect shareholder of all the former direct and indirect subsidiaries of CS, including CSI. Since that time, UBS has been taking steps to integrate the two groups, principally by consolidating the combined businesses within various pre-existing UBS subsidiaries, including UBS AG. As part of this broader initiative ("**UBS-CS Integration**"), UBS is seeking to wind down various pre-existing CS subsidiaries, including CSI, which is currently in solvent wind down.

(3) In furtherance of its effort to wind down CSI, UBS is pursuing a transfer of trading assets and liabilities (including the Residual Portfolio[22]) from CSI to UBS AG London Branch, pursuant to a court-sanctioned, banking business transfer scheme under Part VII of The Financial Services and Markets Act of 2000 ("**FSMA**")[23] ("**Part VII Transfer**").[24]

(4) The Part VII Transfer requires: (i) extensive engagement with the UK regulators, namely, the Financial Conduct Authority ("**FCA**") and the Prudential Regulation Authority ("**PRA**") in relation to the transfer and related court documents; (ii) a certificate from the PRA (or, in certain circumstances, the FCA or equivalent foreign supervisory authority) to be issued in relation to the transferee's financial resources; and (iii) the approval of the court which has jurisdiction in relation to the UK authorized person (the transferor, i.e., CSI).[25] Upon the court's approval (which takes the form of a court order), all property and all liabilities specified in the court order are transferred by operation of law from the transferor to the relevant transferee by virtue of the court order.[26] In this instance, the transfer under Part VII will take place on a bulk basis in a series of tranches, not trade-by-trade.

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[22] As of March 31, 2025, CSI had 10 Covered Counterparties with respect to its Margin Legacy Swaps, and it had 12 Covered Counterparties with respect to its Clearing Legacy Swaps. Further, it had not more than 545 outstanding Margin Legacy Swaps and not more than 220 outstanding Clearing Legacy Swaps.

[23] Financial Services and Markets Act of 2000 (c.8), Part VII, s. 106 (UK), *available at* https://www.legislation.gov.uk/ukpga/2000/8/part/VII.

[24] A banking business transfer scheme under Part VII of FSMA is a statutory procedure under English law that enables United Kingdom ("**UK**") authorized persons that have permission to accept deposits (such as CSI) (section 106(2)(a) of FSMA) to transfer their business, in whole or in part (provided deposit-taking business is included in the business to be transferred), to one or more other persons without the need to obtain the consent of third parties affected by the transfer (such as the transferor's customers and contractual counterparties). Part VII of FSMA has a similar mechanism for insurance business transfer schemes.

[25] FSMA, s. 111.

[26] FSMA, s. 112(3).

(5) CSI's Covered Counterparties will have the right to participate in the Part VII proceedings, and they will be entitled to object to the Part VII Transfer,[27] but they are not applicants (within the meaning of section 107(2) of FSMA)[28] nor will their consent to or approval of the transfer be required in order for the court to approve and effect the transfer. However, in relation to Covered Counterparties to swaps in the Residual Portfolio that are executed under master agreements that are governed by New York law, UBS AG intends, as a precautionary measure for good counterparty relationship management purposes and without being obliged to do so, to obtain confirmation from the relevant counterparty that it does not object to the inclusion of its master agreement in the Part VII Transfer.

(6) As a result of the Part VII Transfer, CSI's Legacy Swaps will be transferred to and remain within UBS, and their transfer will not be accompanied by any changes to contractual terms that are significant to the economic substance or market value of the swaps (other than the replacement of CSI with UBS AG London Branch as a party thereto), including payment amount calculation methods, maturity dates or notional amounts.[29]

(7) The Part VII Transfer is proposed to minimize disruption to and impact on Covered Counterparties and their Legacy Swaps, including reducing costs and liquidity concerns in a manner that would not increase systemic risk or impact markets. UBS AG expects that most Covered Counterparties will view the transfer under Part VII as a risk reduction, as a UBS group entity will be their counterparty instead of CSI. If Covered Counterparties' Legacy Swaps were to remain in CSI, they would be facing an entity that is not conducting new business. According to UBS AG, this could be detrimental to these counterparties because they would not be able to benefit from advantages such as consolidated netting sets or streamlined operational processes (e.g., periodic client reviews or margin calls against a single entity) that may be available to them in the medium term if they were facing UBS AG. Further, UBS AG stated that this would also not be a desirable outcome for them as keeping the Legacy Swaps in CSI would impede UBS's ability to execute on its legal entity integration and simplification plan centered around its core, on-going entities.

(8) The proposed Part VII Transfer will not involve any exercise of discretion by or require any bilateral agreement or consent by Covered Counterparties; instead, their Legacy Swap positions will move to UBS AG by operation of English law.

In light of the foregoing and in order to facilitate the UBS-CS Integration and the related winddown of CSI, in relation to the transfer of the Residual Portfolio, UBS AG has requested that the Divisions issue a no-action letter pursuant to 17 CFR 140.99 confirming that the Divisions will not recommend that the Commission commence enforcement action against UBS AG or its

[27] *See* FSMA, s. 110(1)(b).

[28] FSMA, s. 107(2).

[29] The court may, however, approve minor, administrative changes to the contracts.

Covered Counterparties for failure to comply with the CFTC Margin Rule or the Clearing Requirement to the extent that those requirements would apply to a Legacy Swap solely as a result of the Part VII Transfer.

IV. MPD Staff Position

After carefully considering the request and the related facts and circumstances, MPD believes that a no-action position is warranted. Specifically, MPD believes that, given the unique circumstances surrounding and motivating the UBS-CS Merger and the Part VII Transfer, it is appropriate to provide a no-action position for Margin Legacy Swaps with respect to the CFTC Margin Rule to the extent any amendments thereto are made solely to transfer such swaps from CSI to UBS AG London Branch in connection with the UBS-CS Integration via the described Part VII Transfer. Accordingly, MPD will not recommend that the Commission take an enforcement action against a Covered SD Counterparty for failure to comply with the CFTC Margin Rule with respect to a Margin Legacy Swap in the Residual Portfolio solely to the extent that such compliance would be required as a result of a transfer of the swap from CSI to UBS AG London Branch, entered into under the following conditions:

(1) The transfer is made pursuant to the Part VII Transfer relating to the winddown of CSI;

(2) A Covered SD Counterparty is a remaining party to the swap;

(3) No amendment is made to the swap other than (a) as approved by a UK court under the Part VII Transfer and (b) immaterial amendments necessary to facilitate the Part VII Transfer; and

(4) The transfer takes effect no earlier than the date of this letter.

V. DCR Staff Position

After carefully considering the request and the related facts and circumstances, DCR also believes that, given the unique circumstances surrounding and motivating the UBS-CS Merger and the Part VII Transfer, a no-action position is appropriate for Clearing Legacy Swaps with respect to the Clearing Requirement to the extent any amendments thereto are made solely to transfer such swaps from CSI to UBS AG London Branch in connection with the UBS-CS Integration via the described Part VII Transfer. Accordingly, DCR will not recommend that the Commission take an enforcement action against UBS AG or any Covered Clearing Counterparty for failure to comply with the Clearing Requirement with respect to a Clearing Legacy Swap solely to the extent that such compliance would be required as a result of a transfer of the swap from CSI to UBS AG London Branch, entered into under the following conditions:

(1) The transfer is made pursuant to the Part VII Transfer relating to the winddown of CSI;

(2) No amendment is made to the swap other than (a) as approved by a UK court under the Part VII Transfer and (b) immaterial amendments necessary to facilitate the Part VII Transfer; and

(3) The transfer takes effect no earlier than the date of this letter.

This letter, and the positions taken herein, represent the views of the Divisions 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.[30] Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to staff of the Divisions. Any different, changed or omitted material facts or circumstances might render the position taken in this letter void. Finally, as with all staff letters, each 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 contact Frank Fisanich, Chief Counsel, MPD, at (202) 418-5949 or ffisanich@cftc.gov; Jacob Chachkin, Associate Chief Counsel, MPD, at (202) 418-5496 or jchachkin@cftc.gov; or Sarah Josephson, Deputy Director, DCR, at (202) 418-5864 or sjosephson@cftc.gov.

Sincerely,

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Richard Haynes
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cc: Kathleen Clapper, Compliance
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Michael Otten, OTC Derivatives
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[30] *See* § 140.99(a)(2), 17 CFR 140.99(a)(2) ("A no-action letter binds only the issuing Division . . . and not the Commission or other Commission staff.").