March 26, 2025

Commission Regulations Parts 45 and 46

Amanda Olear
Acting Director, Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre 1155 21st Street, NW
Washington, DC 20581

Re: Request for Further Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations, for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan, Switzerland or the United Kingdom

Dear Ms. Olear:

The Institute of International Bankers ("IIB"), the International Swaps and Derivatives Association ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA" and, together with IIB and ISDA, the "Associations")[1] are writing on behalf of their member organizations to respectfully request that the Division of Market Oversight (the "Division") re-issue the no-action relief contained in Commodity Futures Trading Commission (the "CFTC" or "Commission") Letter No. 22-14 ("Letter 22-14"),[2] which currently is scheduled to expire on December 1, 2025, without a sunset date.

Letter 22-14 extended certain no-action relief from the requirements of Parts 45[3] and 46[4] of the Commission's regulations (collectively, the "SDR Reporting Rules") to a non-U.S.

[1] Information regarding the Associations is set forth in Appendix A.

[2] CFTC Letter No. 22-14, dated October 28, 2022, available at https://www.cftc.gov/csl/22-14/download.

[3] 17 C.F.R. Part 45; Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012).

[4] 17 C.F.R. Part 46; Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35,200 (June 12, 2012).

swap dealer ("SD") or a non-U.S. major swap participant ("MSP") established in Australia, Canada, the European Union, Japan, Switzerland or the United Kingdom (each, an "Enumerated Jurisdiction"), that is not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company (such a non-U.S. SD or non-U.S. MSP, a "Covered Registrant"), with respect to swaps with non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates, of a U.S. person (as those terms are defined in the Commission's 2013 cross-border guidance (the "Cross-Border Guidance")).[5]

In particular, the Cross-Border Guidance envisioned extraterritorial application of the SDR Reporting Rules, which a Covered Registrant could satisfy by substituting compliance with comparable home country reporting rules, subject to agreement between the Commission and the home country regulator on certain data-sharing arrangements.[6] To date, however, foreign jurisdictions have not taken a similarly extraterritorial approach and the mutual data sharing regime envisioned by the Commission in the Cross-Border Guidance has not materialized.

Notwithstanding that the extraterritorial reporting framework envisioned by the Cross-Border Guidance has not come to pass, the Commission has maintained the relief contained in Letter 22-14 in one form or another since December 20, 2013[7] without any notable negative consequences. Furthermore, Covered Registrants continue to be subject to entity-level risk and financial reporting to U.S. authorities through one or more of: (i) the periodic risk exposure reports under Regulation 23.600(c)(2); (ii) risk metrics reporting to the National Futures Association; and (iii) financial reporting requirements under Regulation 23.105. As a result, from a risk surveillance perspective, applying the SDR Reporting Rules to Covered Registrants' non-U.S. swap transactions is not necessary.

The combination of these factors justifies revisiting the interpretation of Section 2(i) of the Commodity Exchange Act ("CEA") and the Commission's policy statement set forth in the Cross-Border Guidance. Taking this step now would be consistent with the Commission's intent to further address the cross-border application of the SDR Reporting Rules in the future, as stated in 2020 when the Commission adopted rules codifying and modifying certain aspects of the Cross-Border Guidance.[8] In this connection, we believe the Division should extend the relief reflected in Letter 22-14 without a sunset date, as a bridge to the Commission permanently codifying such relief.

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[5] See Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013).

[6] Id. at 45,345.

[7] See Letter 22-14 at page 1.

[8] See Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 Fed. Reg. 56,924, 56,923, n.354 (Sept. 14, 2020).

If Letter 22-14 were to expire without such extension or codification, Covered Registrants would face significant challenges applying the SDR Reporting Rules to their swaps with non-U.S. counterparties that are not guaranteed or conduit affiliates:

- To address conflicts with non-U.S. privacy laws, Covered Registrants would need consent from many of these non-U.S. counterparties to report their swaps in accordance with the SDR Reporting Rules. In addition, to complete required data elements pertaining to the status of those non-U.S. counterparties under U.S. law, such as whether a non-reporting counterparty is a "financial entity" as defined by the CEA, Covered Registrants may need to collect information from those counterparties.[9] On the other hand, those non-U.S. counterparties may be reluctant or unwilling to provide such consents or information, as they may question why their swaps with non-U.S. SDs are subject to U.S. reporting rules. This could lead to market fragmentation, as those counterparties instead elect to trade with non-U.S. firms not registered with the Commission.

- Other jurisdictions' definitions for "OTC derivatives" subject to reporting rules do not match the CEA's "swap" definition. For example, in Europe it is common for foreign exchange and commodity warrants to trade as securities, whereas they might be swaps under the CEA. Because these products trade on exchanges as securities, it is not possible to report them as swaps. The Commission previously granted relief to address this issue for a U.S.-controlled SD,[10] but if Letter 22-14 expired it would become relevant for several Covered Registrants, too.

- Many Covered Registrants' reporting systems are not centralized, but rather use multiple systems for different locations or business lines. Changing these disparate operations and technology systems and processes to address specific details of the SDR Reporting Rules (such as data format, reporting deadlines, treatment of lifecycle events, etc.) would require a significant investment of resources, approaching that required for compliance with existing home country reporting rules.

- Backloading of historical swaps would pose major issues. Depending on how long ago a swap expired, sufficient data to backload it might no longer exist or be accessible. Also, it may not be possible for Covered Registrants to obtain consents required under non-U.S. privacy laws to report expired swaps with counterparties who are no longer clients. Even where reporting is possible, gathering and formatting data for what could be more than 10 years of activity

[9] A similar issue arises with respect to legal entity identifiers for counterparties in jurisdictions where local rules permit other types of counterparty identifiers.

[10] See CFTC Letter No. 20-18, dated May 18, 2020, available at https://www.cftc.gov/csl/20-18/download.

would consume substantial resources and time and likely present bandwidth issues at swap data repositories.[11]

In light of the foregoing, we request that the Division extend the no-action relief contained in Letter 22-14 without a sunset date. In order to allow time for the Commission to complete its ongoing efforts to address the cross-border application of the SDR Reporting Rules, the Associations respectfully request that the Division extend the no-action relief in Letter 22-14 until the adoption and effectiveness of final rules addressing the cross-border application of the SDR Reporting Rules.

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[11] There are also several legal ambiguities in the backloading context. For example, the definition of "transition swap" includes swaps entered into after the enactment of Dodd-Frank and prior to the "applicable compliance date" on which an SD subject to the Commission's jurisdiction is required to commence reporting pursuant to Part 46. To comply with Part 46, Covered Registrants would need guidance on what the Commission would interpret the "applicable compliance date" to be.

Thank you for your consideration of this request. Please do not hesitate to contact Stephanie Webster (swebster@iib.org) or any of the undersigned with any questions you may have. Pursuant to Commission Regulation 140.99(c)(3)(ii), the Associations hereby undertake that, if at any time prior to the issuance of a no-action letter, any material representation made in this letter ceases to be true and complete, they will promptly inform Commission staff in writing of all materially changed facts and circumstances.

Respectfully submitted,

Stephanie Webster
General Counsel
Institute of International Bankers

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

Christopher Young
Head of U.S. Public Policy
ISDA

Appendix A: Information Regarding the Associations

The Institute of International Bankers represents the U.S. operations of internationally headquartered financial institutions from more than 35 countries around the world. The membership consists principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The IIB works to ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers and comprise the majority of U.S. primary dealers. These institutions also enhance the depth and liquidity of U.S. financial markets and contribute significantly to the U.S. economy through direct employment of U.S. citizens, as well as through other operating and capital expenditures. For more information, visit iib.org.

Since 1985, the International Swaps and Derivatives Association has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website.

The Securities Industry and Financial Markets Association is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.