



# Commodity Futures Trading Commission

## Office of Public Affairs

Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

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### **Fact Sheet – Request for Comment on Proposed Comparability Determination for Japan Non-Bank Swap Dealer Capital and Financial Reporting Requirements for Substituted Compliance Purposes**

In response to an application submitted by the Japan Financial Services Agency (JFSA) the Commodity Futures Trading Commission (CFTC or Commission) is requesting comment on a proposed comparability determination that would permit substituted compliance of Japan's capital and financial reporting requirements for nonbank swap dealers as compared to the capital and financial reporting requirements adopted by the Commission pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

#### **Swap Dealer Capital and Financial Reporting Requirements**

On July 24, 2020, pursuant to sections 4s(e) and 4s(f) of the Commodity Exchange Act (CEA), the CFTC adopted final swap dealer (SD) capital and financial reporting rules (SD Capital Rule) applicable to SDs that are not otherwise subject to regulation by a prudential regulator (nonbank SDs). The regulations had a compliance date of October 6, 2021, and are designed generally to ensure the safety and soundness of nonbank SDs by requiring the firms to maintain appropriate levels of capital in order to operate as CFTC-registered SDs.

The CFTC Capital Rule provides nonbank SDs with an option to elect a bank-based capital approach (Bank-Based Approach), which is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.

As part of the overall assessment and monitoring of nonbank SDs for compliance with the Commission's capital requirements, the SD Capital Rule also requires nonbank SDs to file with the Commission and National Futures Association financial information, including periodic unaudited and annual audited financial statements, specific financial position information, and notices of certain events that may indicate a potential financial or operational issue that may adversely impact a nonbank SD's ability to meet its obligations to counterparties and other creditors in the swaps market.

The Commission also established a substituted compliance framework as part of the SD Capital Rule that permits a non-U.S. domiciled nonbank SD, trade association, or foreign-country regulator to submit an application to the Commission for a determination that compliance with applicable home country capital and financial reporting requirements will satisfy all or parts of the Commission's capital rules and financial reporting rules.

#### **Standard of Review for Comparability Determinations**

The Commission's review process reflects a principles-based, holistic approach that focuses on whether the applicable foreign jurisdiction's SD capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs and whether such requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements. In making a preliminary comparability determination, the Commission considers, among others, the scope and objectives of the foreign jurisdiction's capital and financial reporting requirements; whether the foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; and the ability of the foreign regulatory authority or authorities to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements.

## Summary of Comparability Determination for Japan

On September 21, 2021, the JFSA submitted a request (JFSA Application) that the Commission determine that registered nonbank SDs organized and domiciled in Japan may satisfy certain capital and financial reporting requirements under the CEA by being subject to and complying with corresponding capital and financial reporting requirements under Japanese laws and regulations.

The Commission's preliminary view, based on the JFSA Application and the Commission's review of applicable Japanese laws and regulations, is that the Japanese capital rules and the financial reporting rules generally achieve comparable outcomes and are comparable in purpose and effect to the CFTC capital rules and financial reporting rules, subject to various conditions specified in the Commission's proposed comparability order. While certain differences between the Japanese capital rules and financial reporting rules and those of the CFTC exist, in the Commission's preliminary view, the differences generally would not be inconsistent with providing a substituted compliance framework for Japanese nonbank SDs, subject to the specified conditions.

The Commission's proposed order is limited to the comparison of the Japanese capital rules to the Bank-Based Approach under the CFTC capital rules. The Japanese capital rules, as understood by the Commission, impose bank-like capital requirements on a Japanese nonbank SD that are consistent with the Basel Committee on Banking Supervision's (BCBS) international framework for bank capital requirements.

## Comment Period

The CFTC is inviting public comment on its analysis and proposed comparability determination order, including its proposed conditions, as well as on the JFSA Application and relevant Japanese laws.

The public comment period will be open for 60 days. Comments, identified by "Japan Swap Dealer Capital Comparability Determination" may be submitted via the CFTC Comments Portal at: <https://comments.cftc.gov>

Comments may also be submitted by mail or by hand delivery to the Commission's address at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, although submission through the CFTC Comments Portal is encouraged to avoid possible delays.