February 13, 2023

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association ("**ISDA**") and Securities and Financial Markets Association ("**SIFMA**", and together with ISDA, the "**Associations**")[1] appreciate the opportunity to comment on the above-captioned notice by the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") regarding an application submitted by on behalf of nonbank swap dealers subject to regulation by the Mexican Comision Nacional Bancaria y Valores (the "**Mexican Commission**") requesting that the CFTC determine that registered nonbank[2] swap dealers ("**SD**s") organized and domiciled in Mexico ("**Mexican SDs**") may comply with certain capital and financial reporting requirements under the Commodity Exchange Act ("**CEA**") and Rules 23.101 and 23.105(d)–(e) thereunder (the "**Commission Capital & Reporting Requirements**")[3] via compliance with corresponding capital and financial reporting requirements in Mexico (the "**Mexican Capital & Reporting Requirements**"), and the proposed order (the "**Mexico Order**") providing for the conditional substituted compliance in connection with the application (together, the "**Proposal**").[4]

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[1] *See* Appendix for more information on the Associations.

[2] As used herein, a "nonbank" SD refers to an SD that does not have a Prudential Regulator as defined in Section 1a(39) of the CEA.

[3] *See Capital Requirements for Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020).

[4] *See Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores*, 87 Fed. Reg. 76374 (Dec. 13, 2022).

The Associations support the Proposal and agree with the Commission's overall analysis of and determination of comparability of the Commission's Capital & Reporting Requirements and the Mexican Capital & Reporting Requirements. The Proposal reflects a thoughtful, holistic approach to substituted compliance. The Proposal includes request for comment on several specific questions, which the Associations address below.

I. The Mexican Capital & Reporting Requirements' Minimum Capital Levels Reflect Similar Regulatory Concerns & Lead to Comparable Regulatory Outcomes as the Commission's Capital & Reporting Requirements

The Commission seeks public comment on whether the capital requirements under the Mexican Capital & Financial Reporting Requirements are comparable in purpose and effect to the Commission's requirement for a nonbank SD to hold regulatory capital equal to or greater than 8 percent of its uncleared swap margin amount.[5] Specifically, the Commission seeks comment on whether the requirement under the Mexican Capital & Reporting Requirements for a Mexican SD to hold qualifying capital in an amount equal to 15 percent of its average annual net positive income from the last three years, taking into account insurance coverage for operational risk, and subject to a floor equal to 5 percent and a ceiling of 15 percent of the monthly average sum of market risk and credit risk exposures amounts, calculated over the prior 36 months, on a rolling basis is sufficiently comparable in purpose and effect to the CFTC's requirement for a nonbank SD to hold qualifying capital in amount equal to at least 8 percent of the nonbank SD's uncleared swap margin amount.[6]

The Commission notes that "in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, [the Commission] stated that the intent of the requirements was to establish a method of developing a minimum amount of required capital for a nonbank SD to meet its obligations as a SD to market participants, and to cover potential operational, legal and liquidity risks."[7] The Associations believe the Mexican Capital & Reporting Requirements' minimum capital levels are sound, reflect similar regulatory concerns and lead to comparable regulatory outcomes as the Commission Capital & Reporting Requirements.

Mexico's capital framework requires that a Mexican SD calculate risk weighted assets incorporating risk exposure amounts composed of market, credit and equity exposures, and operational risk. Mexican SDs are also subject to liquidity requirements that are designed to ensure that an SD has sufficient liquid assets to meet its ongoing obligations. Furthermore, Mexican SDs are subject to leverage limitations that, similar to the uncleared swap margin requirement, are based principally on volume and

[5] *See* 87 Fed. Reg. at 76390.

[6] *See Id*. at 76391.

[7] *See Id*. at 76390.

counterparties without regard to risk-weighting. Lastly, Mexican SDs must conduct regular stress tests to ensure that they have sufficient resources to withstand adverse economic scenarios. As a result, although Mexico's capital framework does not have a direct analogue to the 8 percent uncleared swap margin requirement, it has various other measures that achieve the same regulatory objective of ensuring that an SD maintains an amount of capital that is sufficient to cover the full range of risks a Mexican SD may face.[8]

A. Similar Analysis Applies to Pending Substituted Compliance Applications for Japan, the EU and UK

The Associations believe a similar analysis leads to the same answer in reference to the currently pending capital substituted applications for Japan, the European Union ("**EU**") and the United Kingdom ("**UK**")[9]. For example, the minimum capital levels required by the EU capital framework may be compared in some respects to the 8 percent of the uncleared swap margin requirement. As noted in our submitted application, in calculating its risk weighted assets for purposes of the EU capital framework's risk-based ratios, an EU SD must incorporate risk exposure amounts composed of market, credit, settlement, credit valuation adjustment, and operational risk. Because they cover the full range of a firm's exposures, not just those related to swaps, these exposure amounts will generally yield capital requirements that substantially exceed 8 percent of the SD's uncleared swap margin amount. In addition, the EU framework mandates a leverage ratio floor that, similar to the uncleared swap margin requirement, is based principally on volume and counterparties without regard to risk-weighting. EU SDs are also subject to comprehensive liquidity requirements that are designed to ensure that an SD has sufficient liquid assets to meet its ongoing obligations. As a result, although the EU capital framework does not have a direct analogue to the 8 percent uncleared swap margin requirement, it has various other measures that achieve the same regulatory objective.[10]

II. Technical Comments on Notice Filing Conditions: Current Language Might Require Regulatory Filing Prior to Discovery of Triggering Event

[8] *See Application for a Capital Comparability Determination Order Submitted on behalf of Nonbank Swap Dealers subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores*.

[9] *See Substituted Compliance Application for EU Swap Dealers from CEA Sections 4s(e)–(f)and Rules 23.101 and 23.105(d)–(e), (p)(2)* and *Substituted Compliance Application for UK Swap Dealers from CEA Sections 4s(e)–(f) and Rules 23.101 and 23.105(d)–(e), (p)(2)*. Also please see *SIFMA-ISDA-IIB Letter dated October 7, 2022,* commenting on the CFTC's *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination From the Financial Services Agency of Japan,* 87 Fed. Reg. 48092 (Aug. 8, 2022).

[10] A similar analysis applies to the UK minimum capital requirements.

In its proposed order, the Commission requires a Mexican SD to comply with certain specified Mexican laws and regulations, as well as enumerated conditions, to be able to rely on substituted compliance. Below the Associations provide technical comments on two of those conditions, numbers 16 and 17, addressing practical challenges of the current wording, which could require notification prior to the discovery of the relevant failure. Condition 15 already contains our suggested language, "when it knows" to address that practical challenge.[11] The Associations have included a reference to condition 15 in the below chart.

No.	Condition
15	The Mexican nonbank SD files a notice with the Commission and NFA within 24 hours of **when it knows** that its regulatory capital is below 120 percent of the minimum capital requirement under the Mexican Capital Rules. The Notice must be prepared in the English language. [**emphasis added**]
16	The Mexican nonbank SD files a notice with the Commission and NFA when it knows that ~~if~~ it ~~experiences~~ experienced a 30 percent or more decrease in its excess regulatory capital as compared to that last reported in the financial information filed with the Mexican Commission pursuant to Article 202 and Exhibit 9 of the General Provisions Applicable to Broker-Dealers. The notice must be prepared in the English language and filed within two business days of the firm being aware of ~~experiencing~~ the 30 percent or more decrease in excess regulatory capital.
17	The Mexican nonbank SD files a notice with the Commission and NFA within 24 hours of when it knows ~~or should have known~~ that it has failed to make or keep current the books and records required by the Mexican Commission. The notice must be prepared in the English language.

III. Compliance Date: At Least 6 Months from Issuance of Comparability Order

The Commission also seeks public comment on the compliance dates for the reporting conditions that the Mexico Order imposes on Mexican SDs. The Associations respectfully request the Commission set the compliance date at least six months following the issuance of the final comparability determination order. We believe a six-month period is necessary to adequately prepare for compliance with the reporting conditions.

[11] Similar comments were made by the International Bankers Association of Japan in its letter commenting on the proposed Japan Order dated Oct. 6, 2022 (p.7).

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The Associations appreciate the opportunity to comment on the Proposal and the Commission's consideration of our views. We look forward to continuing dialogue with the Commission regarding substituted compliance. If you have questions or would like additional information, please contact the undersigned.

Very truly yours,

Steven Kennedy
Global Head of Public Policy
ISDA

Kyle L Brandon
Managing Director, Head of Derivatives Policy
SIFMA

cc: The Honorable Rostin Behnam, Chair, Commodity Futures Trading Commission
The Honorable Kristin N. Johnson, Commissioner
The Honorable Christy Goldsmith Romero, Commissioner
The Honorable Summer K. Mersinger, Commissioner
The Honorable Caroline D. Pham, Commissioner
Ms. Amanda Olear, Director, Market Participants Division
Mr. Thomas Smith, Deputy Director
Mr. Joshua Beale, Associate Director
Mr. Rafael Martinez, Associate Director

Appendix

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 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: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube

SIFMA 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.