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May 22, 2024

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 Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union

Dear Mr. Kirkpatrick:

The Institute of International Bankers, International Swaps and Derivatives Association and Securities Industry and Financial Markets Association¹ appreciate the opportunity to provide supplemental comments to our prior comment letter on the above-captioned proposal.² The comments in this supplemental letter address technical recommendations on three conditions that were developed while responding to the CFTC's subsequent proposal regarding an application for capital comparability submitted on behalf of nonbank swap dealer subject to the capital and financial reporting requirements of the United Kingdom Prudential Regulation Authority.³

Technical Comments on Notice Filing Conditions

Condition 21 sets an “early warning” level of 120 percent of regulatory capital to trigger a notification requirement. As drafted, however, a EU nonbank SD would calculate the early warning level by applying a buffer of 20 percent in excess capital, in the form of common equity tier 1 capital, on top of the roughly 30 percent capital conservation buffer (2.5 percent of total risk exposure also in the form of common equity tier 1 capital) above 8 percent of total risk exposure, the minimum total capital

¹ See Appendix for more information on the Associations.

² See IIB, ISDA and SIFMA letter in response to the Commission's proposal regarding the European Union dated Aug. 24, 2023. For brevity, we are incorporating the Aug. 24, 2023 letter, including its defined terms, into this letter by reference.

³ See IIB, ISDA and SIFMA letter in response to the Commission's proposal regarding United Kingdom Prudential Regulatory Authority dated Mar. 22, 2024.

requirement under Pillar 1 under the EU capital rules.⁴ We believe that an aggregate notification trigger of 12.6 percent of total risk exposure is too high to achieve the very important regulatory goal of ensuring the CFTC and NFA are provided with sufficient warning if a EU nonbank SD becomes undercapitalized or experiences a decrease in its excess regulatory capital below a defined level. We therefore recommend that the CFTC set its trigger for notification level at 120 percent of the minimum total capital requirement, as it did in its proposed orders for Japan and Mexico.^{5, 6}

No.	Condition
21	The EU nonbank SD files a notice with the Commission and NFA within 24 hours of when the firm knew or should have known that its regulatory capital fell below 120 percent of its minimum <u>total</u> capital requirement, comprised of the firm's core capital requirements and any applicable capital buffer requirements . For purposes of the calculation, the 20 percent excess capital must be in the form of common equity tier 1 capital. The notice filed with Commission and NFA must be prepared in the English language.

Condition 23 establishes a notification requirement for the occurrence of four instances (sub paragraphs (i) – (iv)) of failures to post or pay initial and/or variation margin measured as a percent to a EU nonbank SD’s minimum capital requirement. We understand the term used - “minimum capital requirement” - to mean an amount equal to 8 percent of total risk exposure as required under Pillar 1 under the EU capital rules and recommend using the term “minimum total capital requirement” for clarity.

⁴ In addition, EU nonbank SDs are also subject to firm specific and other buffers, which would, under the requirement as drafted, result in an early warning level considerably higher than the 12.6 percent in our example.

⁵ See Proposed Japan Order at 48115 and Proposed Mexico Order at 76399. We will submit supplemental comments to our EU Capital Sub Comp Letter on the parallel condition 21 in the Proposed EU Order.

⁶ The comments on condition 21 included in this letter should be read as in addition to those included in the Aug. 24, 2023 letter (p.5).

No.	Condition
23	<p>The EU nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following:</p> <ul style="list-style-type: none"> (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the EU nonbank SD’s minimum <u>total</u> capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU nonbank SD for uncleared swap and non-cleared security based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD’s minimum <u>total</u> capital requirement; (iii) the EU nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the EU nonbank SD’s minimum <u>total</u> capital requirement; or (iv) the EU nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the EU nonbank SD’s minimum <u>total</u> capital requirement. The notice must be prepared in the English language;

In regard to Condition 25, we reiterate our previous recommendation⁷ and, upon further consideration, note that it is confusing to differentiate between rules that are “imposed on” and those that “apply to” EU nonbank SDs, and therefore recommend deleting the duplicative clause as provided below.⁸

⁷ See Aug. 24, 2023 Letter, where we previously recommended to remove “proposed or final” before “material changes” because the notification should be triggered by actual material changes to the relevant rules (p. 5).

⁸ We note that similar edits should be made to condition 20 in the Proposed Mexico Order and condition 21 in the Proposed Japan Order, in addition to the recommendation included in our March 22, 2024 letter regarding condition 24 in the proposed UK-PRA proposal.

No.	Condition
25	The EU nonbank SD or an entity acting on its behalf notifies the Commission of any material changes to the information submitted in the application for capital comparability determination, including, but not limited to, material changes to the EU Capital Rules or EU Financial Reporting Rules imposed on EU nonbank SDs, the ECB or relevant EU Member State authority's supervisory authority or supervisory regime over EU nonbank SDs, and proposed or final material changes to the EU Capital Rules or EU Financial Reporting Rules as they apply to EU nonbank SDs;


* * *

The Associations appreciate the opportunity to submit this supplemental comment letter on the Proposal. If you have questions or would like additional information, please contact the undersigned.

Very truly yours,



Stephanie Webster
General Counsel
IIB



Steven Kennedy
Global Head of Public Policy
ISDA



Kyle L. Brandon
Managing Director, Head of Derivatives Policy
SIFMA

Appendix

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