



CFTC Rule 23.105(e)

March 20, 2025

Thomas J. Smith, Acting Director
Market Participant Division
U.S. Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Re: Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan (“FSA”)¹

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“**SIFMA**”)² is writing to request that the staff of the Market Participants Division (the “**Division**”) of the Commodity Futures Trading Commission (“**Commission**”) provide an interpretation regarding one of the conditions included in the Japan Order.

I. Background

In 2020 the Commission approved rules setting forth capital and financial reporting requirements for swap dealers (“**SDs**”) with a compliance date of October 6, 2021 (“**Final Rules**”).³ The Final Rules recognized that approximately one-half of the provisionally registered nonbank SDs are organized and domiciled in foreign jurisdictions and possibly subject to comprehensive capital and financial reporting requirements by home country regulators. To address potential duplicative capital and duplicative or inconsistent financial reporting requirements, the Commission adopted a substituted compliance framework to permit such SDs to rely on compliance with their home country regulator’s capital and financial reporting requirements in lieu of meeting all or parts of the

¹ See Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan, 89 FR 58470 (July 18, 2024). (“**Japan Order**”)

² 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>.

³ See Capital Requirements of [SD] and Major Swap Participants, (17 CFR Parts 1, 23, and 140), 85 FR 57462, 576 (Sept. 15, 2020).

Commission's capital adequacy and financial reporting requirements, provided the Commission finds such requirements comparable.

In 2024 the Commission approved the Japan Order, which provides that a nonbank SD organized and domiciled in Japan ("**Covered Nonbank SDs**") may satisfy capital and financial reporting requirements under the Final Rules by complying with certain specified Japanese laws and regulations subject to certain specified conditions.

II. Discussion

One such condition is that the Covered Nonbank SD files with the Commission and National Futures Association ("**NFA**") a copy of its annual business report ("**Annual Business Report**") that is required to be filed with the FSA ("**Condition 9**").⁴ The Annual Business Report is a wide ranging and lengthy compendium of dozens of reports, comprised of tens of thousands of fields of data and narrative, covering the entirety of a financial organization, well beyond the areas typically required for CFTC nonbank swap dealer financial reporting. The full report, which covers items beyond the scope of information relevant to swap dealer financial reporting, would run an estimated 100 pages or more. This would be a substantial burden without commensurate benefit.

The Japan Order itself refers to the need to include information comparable to that required by Rule 23.105e that allows the Commission to monitor a firm's financial condition and compliance with capital requirements, including a balance sheet, profit/loss statement, statement of changes in shareholders' equity, balance of subordinated debt, and a statement of capital adequacy ratio, which are in other, separately required submissions. Further, we note that many of the schedules contained within the Annual Business Report are unrelated to the Covered Nonbank SD's swap dealing activity and/or do not provide information on the Covered Nonbank SD's financial condition.

In December 2024, we provided Division staff with translations of the table of contents and schedule of the Annual Business Report prepared by the FSA. We have held discussions with staff about the information included in the various sections of the Annual Business Report to provide greater context and more granular understanding to support our request below. Further, we understand staff agree that the reports listed below are sufficiently similar to reports produced in other jurisdictions' substituted compliance orders and are more relevant to the CFTC's oversight, including the financial statements and capital adequacy sections.

Request: SIFMA requests that the Division issues an interpretation clarifying that Covered Nonbank SD may comply with Condition 9 by filing with the Commission and NFA the following sections ("**Required Reports**") of the Annual Business Report. Consistent with the terms of Condition 9, the Required Reports must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable yen/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA within 15 business days of the earlier of the date the annual business report (i) is filed or (ii) is required to be filed with the FSA.

⁴ Japan Order, 58501

Required Reports:

1. Status of the business
 - (5) Outline of the business for the current period
 - (11) Status of the capital adequacy ratio
 - (12) Status of the separate management of customer assets
 - (12-2) Status of the separate management pertaining to subject commodity derivatives transaction-related transactions
 - (13) Status of the separate management (excluding separate management pertaining to electronically recorded transferable rights that must be indicated on securities, etc.)
 - (13-2) Status of the separate management (limited to separate management pertaining to Electronically Recorded Transferable Rights that must be indicated on securities, etc.)
 - (17) Status of market derivatives transactions and foreign market derivatives transactions unrelated to Securities
2. Financial information
(Form A)

* * *

Please feel free to reach out to the undersigned should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle Brandon". The signature is fluid and cursive, with the first name "Kyle" and last name "Brandon" clearly distinguishable.

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

Certifications

The undersigned hereby certify that the material facts set forth in this letter are true and complete to the best of our knowledge, information and belief. In addition, we hereby agree that, if at any time prior to the issuance of an interpretation, any material statement made in this letter ceases to be true and complete, we will ensure that Commission Staff is informed promptly in writing of all materially changed facts and circumstances.

A handwritten signature in black ink, appearing to read "Kyle Brandon". The signature is written in a cursive, flowing style.

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA