7 U.S.C. § 6s(h)
17 C.F.R. § 23.431

March 26, 2025

Mr. Thomas Smith
Acting Director
Market Participants Division
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Relief from the Requirement to Provide a Pre-Trade Mid-Market Mark

Dear Mr. Smith:

The International Swaps and Derivatives Association, Inc. ("**ISDA**), Institute of International Bankers ("**IIB**"), and the Securities Industry and Financial Markets Association ("**SIFMA**") (collectively, "the **Associations**")[1] are writing to the staff of the Market Participants Division (**"MPD"**) of the U.S. Commodity Futures Trading Commission (the **"Commission"** or **"CFTC"**) on behalf of its members that are Swap Dealers (**"SDs"**) to request confirmation that the MPD will not recommend an enforcement action against an SD that does not provide its counterparty with a pre-trade mid-market mark (**"PTMM"**) disclosure under CFTC Regulation § 23.431(a)(3)(i).[2]

As explained in more detail below, a temporary exemption from the PTMM requirement is warranted until the Commission has sufficient time to determine whether to remove the disclosure considering it does not remain relevant or appropriate given the sophisticated nature of SD counterparties and availability of swaps pricing information.

[1] Information regarding the Associations is set forth in Appendix A.
[2] 17 C.F.R. § 23.431(a)(3)(i).

I. Discussion

On February 17, 2012, the Commission published final rules prescribing certain business conduct standards and disclosure obligations for SDs, which included the requirement that an SD, prior to entering into a swap transaction, provide its counterparty with a "mid-market mark" of the swap, in addition to the swap's price.[3] In describing the purpose of requiring a PTMM, the Commission stated that providing such disclosure "provides the counterparty with pricing information that facilitates negotiations and balances historical information asymmetry regarding swap pricing."[4] The Commission also noted that the "mid-market [mark] is a transparent measure that would assist counterparties in calculating valuations for their own internal risk management purposes."[5]

While well-intentioned, the PTMM requirement has not achieved its intended purpose. There is no empirical evidence demonstrating that the PTMM requirement has meaningfully reduced any perceived information asymmetry or facilitated negotiations. SD counterparties are generally sophisticated market participants and already have access to a wide range of pricing data and extremely advanced modeling tools, making the PTMM disclosure of little value to them[6]—so much so that buy-side market participants have advocated for its removal.[7] Further, the swaps market has significantly evolved since 2012, and there is a substantial amount of publicly available information that has contributed to transparency in swaps pricing, including, but not limited to, real-time reporting data.[8] As a result, counterparties frequently request that SDs either refrain from providing the PTMM or ask SDs to send such marks to a rarely monitored e-mail address due to the limited benefits of receiving such disclosure.[9] In short, the PTMM requirement presumes an imbalance between SDs and their counterparties that simply does not exist in practice.

[3] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 77 FR 9734 (Feb. 17, 2012) ["Final Business Conduct Standards"].
[4] Final Business Conduct Standards at 9766.
[5] Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, Proposed Rules, 75 FR 80638, 80646 (Dec. 22, 2010).
[6] *See* ISDA KISS Letter, available at https://www.isda.org/2017/10/19/isda-response-to-cftc-project-kiss/ (noting that PTMMMs are not requested by clients); *see also* SIFMA KISS Letter, available at https://www.sifma.org/resources/submissions/letters/response-to-cftcs-kiss-initiative-regarding-external-business-conduct-requirements/.
[7] *See* SIFMA Asset Management Group Letter in Response to CFTC Project KISS, available at: https://www.sifma.org/wp-content/uploads/2017/10/SIFMA-AMG-Comments-on-CFTCs-Project-KISS.pdf (stating that: (1) the CFTC should eliminate the PTMMM requirement, and instead, "target market needs more efficiently"; and (2) the PTMMM requirement "create[s] unnecessary burden upon dealers" and "costs imposed upon dealers translate into higher costs for investors utilizing swaps for investment strategies.").
[8] 17 C.F.R. Part 43.
[9] *See* SIFMA SEC Comment Letter (Aug. 7, 2015), available at https://www.sec.gov/comments/s7-25-11/s72511-55.pdf (arguing that the SEC should not impose a PTMM requirement given SDs' experience with the CFTC's requirement, and notably, the SEC declined to adopt a PTMM requirement).

In addition, the PTMM requirement continues to impose significant compliance challenges and operational burdens on SDs. SDs utilize complex infrastructure to calculate and deliver the mid-market marks in real-time, which requires a combination of sophisticated pricing models, real-time market data access and legal risk assessment mechanisms. The compliance costs and operational burdens associated with maintaining such an infrastructure far outweigh any perceived transparency benefits of the PTMM disclosure. Further, in certain cases, determining the PTMM of a particular transaction may take additional time. This can adversely affect counterparties by delaying trade time and serving as an impediment to the prompt execution of transactions.

Notably, there are a number of instances where the CFTC has provided relief from the PTMM requirement for different types of swap transactions, citing to the widespread availability of reliable pricing information as a key driver for such relief.[10] In each of those cases, the Associations are not aware of any resulting detrimental impacts to price transparency.

Removing the PTMM would also better align the Commission's requirements with the U.S. Securities and Exchange Commission (**"SEC"**) rules applicable to security-based swaps (**"SBS"**), which do not impose a PTMM disclosure obligation. Thus, granting this relief would further CFTC-SEC harmonization and associated efficiencies. Additionally, there has been no indication that the lack of a PTMM requirement has led to meaningfully less customer protection or price transparency in the SBS market in the three years since the SBS rules have been in place.

Overall, the PTMM does not provide any significant informational value to SD counterparties, imposes significant operational burdens on SDs, and at worst, impedes the prompt execution of swaps transactions. Eliminating the PTMM requirement would create efficiencies in swaps trading without detriment to SD counterparties.

[10] *See* CFTC Letter No. 12-42 (Dec. 6, 2012) (providing relief for certain foreign exchange swaps); CFTC Letter No. 12-58 (Dec. 18, 2012) (providing relief for certain rates transactions); CFTC Letter No. 24-02 (February 22, 2024) (providing relief for certain interest rate swaps referencing SOFR).

II. Request for Relief

For the reasons stated above, the Associations request confirmation that the MPD will not recommend an enforcement action against an SD that does not provide its counterparty with a PTMM. We further ask that MPD provide this relief until such time when the Commission has the opportunity to review the PTMM requirement holistically with an aim toward removing the requirement altogether.

Thank you for your consideration of these important issues. Please do not hesitate to contact Christopher Young (Head of U.S. Public Policy, cyoung@isda.org), Nicolette Cone (Associate General Counsel, ncone@isda.org), Kyle Brandon (Managing Director, Head of Derivatives Policy, kbrandon@sifma.org), and Stephanie Webster (General Counsel, swebster@iib.org) should you have any questions or wish to discuss further.

Sincerely,

Christopher Young
Head of U.S. Public Policy
International Swaps and Derivatives Association, Inc. (ISDA)

Stephanie Webster
General Counsel
Institute of International Bankers (IIB)

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

Appendix A: Information Regarding the Associations

Since 1985, ISDA 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: www.isda.org.

IIB 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.

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 nearly 1 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.

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated March 26, 2025 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

Christopher Young
Head of U.S. Public Policy
International Swaps and Derivatives Association, Inc. (ISDA)

Stephanie Webster
General Counsel
Institute of International Bankers (IIB)

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA