



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 23, 2022

Ms. Kyle Brandon
Managing Director, Head of Derivatives Policy
Securities Industry and Financial Markets Association
120 Broadway, 35th Floor
New York, NY 10271-0080

Re: Timing of Initial Submission of Certain Annual Reports and Reviews

Dear Ms. Brandon:

In your February 23, 2022 letter (“Letter”), on behalf of the Securities Industry and Financial Markets Association, you request written assurance that the staff of the Division of Trading and Markets (“Division staff”) of the U.S. Securities and Exchange Commission (“Commission”) will not recommend enforcement action to the Commission under section 15F(f) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and the SBSB risk management rule (“Rule 15c3-4”),² the SBSB capital rule (“Rule 18a-1”),³ and the SBSB reporting rule (“Rule 18a-7”)⁴ thereunder if a security-based swap dealer (“SBSB”) that registered as such in calendar year 2021 and that were not subject to ongoing requirements to undergo these reviews and reports prior to registration incorporates certain annual reviews and reports for the first fiscal year after the SBSB’s registration with the Commission as an SBSB into the reviews and reports for the SBSB’s second fiscal year after registration with the Commission as an SBSB. Based on the Letter, I understand the following facts and circumstances are relevant to your request.

Background

Rules 15c3-4, 18a-1, and 18a-7 require certain SBSBs to undergo reviews or file reports shortly after the end of their fiscal year. In particular, under these rules:

1. SBSBs that do not have a prudential regulator, are not registered as a broker-dealer (other than an over-the-counter (“OTC”) derivatives dealer), and are not applying substituted

¹ 15 U.S.C. 78o-10.

² 17 CFR 240.15c3-4.

³ 17 CFR 240.18a-1.

⁴ 17 CFR 240.18a-7.

compliance with respect to Rule 18a-1 must retain an independent public accountant to conduct an annual review of the firm's risk management systems;⁵

2. SBSBs that do not have a prudential regulator, are not registered as a broker-dealer (other than an OTC derivatives dealer), use a value-at-risk model to compute their net capital requirements, and are not applying substituted compliance with respect to Rule 18a-1 must have their model reviewed annually by an independent public accounting firm;⁶ and
3. SBSBs that do not have a prudential regulator and are not registered as a broker-dealer (other than an OTC derivatives dealer) must file an annual compliance report or exemption report, as applicable, and a report covering the compliance report or exemption report prepared by an independent public accountant.⁷

Certain SBSBs have been registered as OTC derivatives dealers for a number of years and, therefore, are subject to ongoing requirements to undergo the reviews identified in Items 1 and 2 above.⁸ While these OTC derivatives dealers are newly registered as SBSBs, the reviews will cover the entire 12 months of their first fiscal year ending after their registration as an SBSB. However, certain other SBSBs have not been subject to ongoing requirements to undergo these reviews because they were not previously registered as OTC derivatives dealers. Therefore, the reviews identified in Items 1 and 2 above would cover the period from the date of their registration as an SBSB to the end of their first fiscal year after registration. Further, these reviews are conducted pursuant to agreed-upon procedures, which will need to be developed.

The compliance or exemption report requirements identified in Item 3 above are new requirements for all SBSBs subject to these requirements (i.e., SBSBs without a prudential regulator), except for SBSBs that are also registered as broker-dealers (other than OTC derivatives dealers).⁹ Further, certain of the compliance or exemption report requirements are linked to the SBSB segregation rule ("Rule 18a-4").¹⁰ Substituted compliance is not available for Rule 18a-4 and, therefore, also is not available for the compliance or exemption report requirements linked to

⁵ See paragraph (f) of Rule 18a-1 (requiring SBSBs to comply with most of the provisions of Rule 15c3-4, including paragraph (c)(3) of Rule 15c3-4 requiring these periodic reviews).

⁶ See paragraph (d)(9)(i)(B) of Rule 18a-1.

⁷ See paragraphs (c)(1)(i)(B) and (C) of Rule 18a-7.

⁸ OTC derivatives dealers are subject to Rule 15c3-4 requiring the review identified in Item 1 and, prior to registering as SBSBs were subject to the broker-dealer capital rule (17 CFR 240.15c3-1) and Appendix F of that rule (17 CFR 240.15c3-1f), which requires the review identified in Item 2.

⁹ Broker-dealers (other than OTC derivatives dealers), including broker-dealers registered as SBSBs, are subject to the compliance or exemption report requirements pursuant to the broker-dealer reporting rule (17 CFR 240.17a-5). This letter does not address the review and reporting requirements of broker-dealers (other than OTC derivatives dealers).

¹⁰ 17 CFR 240.18a-4. See also paragraphs (c)(3) and (4) of Rule 18a-7 (setting forth certain compliance and exemption report requirements that are linked to Rule 18a-4).

Rule 18a-4. This means both domestic and foreign SBSDs that are subject to the compliance or exemption report requirements would need to file a compliance or exemption report and a report of an independent public accountant covering the compliance or exemption report for the period beginning on the date of their registration as an SBSD through the end of their first fiscal year after registration. Generally, most, if not all of these SBSDs, would be filing the exemption report and the report of the independent public accountant covering the exemption report because they are operating pursuant to the exemption from Rule 18a-4.

Under the Commission's newly implemented security-based swap regime, 44 SBSDs are registered as such with the Commission.¹¹ Of these 44 SBSDs, 43 registered with the Commission between October 27, 2021 and December 13, 2021.¹² Further, five of these SBSDs have a fiscal year end of November 30, 35 of these SBSDs have a fiscal year end of December 31, and four of these SBSDs have a fiscal year end of March 31. Consequently, the reports and reviews identified above for the first fiscal year ends of the 43 SBSDs that registered in 2021 would cover a period of approximately one or two months in the case of 39 SBSDs and five months in the case of four SBSDs.

Your Request

Given the relatively short time frame (one to five months as opposed to twelve months) that the reviews and reports identified in Items 1 through 3 above would cover and, in the case of the reviews identified in Items 1 and 2, the need to develop agreed-upon procedures, the Letter requests that SBSDs that registered as SBSDs with the Commission in calendar year 2021 and that were not subject to ongoing requirements to undergo these reviews and reports prior to registration be permitted to incorporate these reviews and reports for their first fiscal year ending after the date they registered as an SBSD into the reviews and reports for their second fiscal year. This would mean that the reviews and reports for the second fiscal year would cover a period of 13 to 17 months depending on the SBSD's fiscal year end.

Response

Based on the facts and circumstances described in the Letter (and without necessarily agreeing with any conclusions or analysis set forth therein), Division staff will not recommend enforcement action to the Commission under Rule 15c3-4, Rule 18a-1, and Rule 18a-7 thereunder if an SBSD incorporates the reviews and reports identified in Items 1 through 3 above for its first fiscal year ending after the date it registered as an SBSD into the reviews and reports for the second fiscal year; provided:

1. The SBSD registered as an SBSD with the Commission in calendar year 2021;

¹¹ See *List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants*, available at: <https://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants>.

¹² *Id.* The remaining SBSD registered on January 3, 2022.

2. With respect to the reviews identified in Items 1 and 2, the SBSB was not registered as an OTC derivatives dealer prior to registering as an SBSB; and
3. The period of the first fiscal year reviews and reports incorporated into the second fiscal year reviews and reports is not greater than five months.

This Division staff position is based strictly on the facts and circumstances stated in the Letter. Any different facts or circumstances from those set forth in the Letter may require a different response. Furthermore, this response expresses the Division staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Division staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal, state, or foreign laws. This position is subject to modification or revocation at any time.

If you have any questions regarding this letter, please contact Valentina Deng, Special Counsel at (202) 551-5778, Randall W. Roy, Deputy Associate Director at (202) 551-5522, or me at (202) 551-5525.

Sincerely,

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets



February 23, 2022

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Timing of Initial Submission of Certain Annual Reports

Dear Mr. Macchiaroli:

The Securities Industry and Financial Markets Association (“**SIFMA**”)¹ is writing to request written assurance that the staff of the Division of Trading and Markets of the Securities and Exchange Commission (“**Commission**” or “**SEC**”) will not recommend enforcement action to the Commission under section 15F(f) of the Securities Exchange Act of 1934 (“**Exchange Act**”)² and the SBSD risk management rule (“**Rule 15c3-4**”),³ the SBSD capital rule (“**Rule 18a-1**”),⁴ and the SBSD reporting rule (“**Rule 18a-7**”)⁵ thereunder if a security-based swap dealer (“**SBSD**”) that registered as such in calendar year 2021 and that was not subject to ongoing requirements to undergo these reviews and reports prior to registration incorporates certain annual reviews and reports for the first fiscal year after the SBSD’s registration with the Commission as an SBSD into the reviews and reports for the SBSD’s second fiscal year after registration with the Commission as an SBSD.

I. Background

Rules 15c3-4, 18a-1, and 18a-7 require certain SBSDs to undergo reviews or file reports shortly after the end of their fiscal year. In particular, under these rules:

¹ 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>.

² 15 U.S.C. 78o-10.

³ 17 CFR 240.15c3-4.

⁴ 17 CFR 240.18a-1.

⁵ 17 CFR 240.18a-7.

1. SBSDs that do not have a prudential regulator, are not registered as a broker-dealer (other than an over-the-counter (“OTC”) derivatives dealer), and are not applying substituted compliance with respect to Rule 18a-1 must retain an independent public accountant to conduct an annual review of the firm’s risk management systems;⁶
2. SBSDs that do not have a prudential regulator, are not registered as a broker-dealer (other than an OTC derivatives dealer), use a value-at-risk model to compute their net capital requirements, and are not applying substituted compliance with respect to Rule 18a-1 must have their model reviewed annually by an independent public accounting firm;⁷ and
3. SBSDs that do not have a prudential regulator and are not registered as a broker-dealer (other than an OTC derivatives dealer) must file an annual compliance report or exemption report, as applicable, and a report covering the compliance report or exemption report prepared by an independent public accountant.⁸

Certain SBSDs have been registered as OTC derivatives dealers for a number of years and, therefore, are subject to ongoing requirements to undergo the reviews identified in Items 1 and 2 above.⁹ While these OTC derivatives dealers are newly registered as SBSDs, the reviews will cover the entire 12 months of their first fiscal year ending after their registration as an SBSD. However, certain other SBSDs have not been subject to ongoing requirements to undergo these reviews because they were not previously registered as OTC derivatives dealers. Further, these reviews are conducted pursuant to agreed-upon procedures, which will need to be developed.

The compliance or exemption report requirements identified in Item 3 above are new requirements for all SBSDs subject to these requirement (i.e., SBSDs without a prudential regulator), except for SBSDs that are also registered as broker-dealers (other than OTC derivatives dealers).¹⁰ Further, certain of the compliance or exemption report requirements are linked to the SBSD segregation rule (“**Rule 18a-4**”).¹¹ Substituted compliance is not available for Rule 18a-4 and,

⁶ See paragraph (f) of Rule 18a-1 (requiring SBSDs to comply with most of the provisions of Rule 15c3-4, including paragraph (c)(3) of Rule 15c3-4 requiring these periodic reviews).

⁷ See paragraph (d)(9)(i)(B) of Rule 18a-1.

⁸ See paragraphs (c)(1)(i)(B) and (C) of Rule 18a-7.

⁹ OTC derivatives dealers are subject to Rule 15c3-4 requiring the review identified in Item 1 and, prior to registering as SBSDs, were subject to the broker-dealer capital rule (17 CFR 240.15c3-1) and Appendix F of that rule (17 CFR 240.15c3-1f), which requires the review identified in Item 2.

¹⁰ Broker-dealers (other than OTC derivatives dealers), including broker-dealers registered as SBSDs, are subject to the compliance or exemption report requirements pursuant to the broker-dealer reporting rule (17 CFR 240.17a-5). This letter does not address the review and reporting requirements of broker-dealers (other than OTC derivatives dealers).

¹¹ 17 CFR 240.18a-4. See also paragraphs (c)(3) and (4) of Rule 18a-7 (setting forth certain compliance and exemption report requirements that are linked to Rule 18a-4).

therefore, also is not available for the compliance or exemption report requirements linked to Rule 18a-4. This means both domestic and foreign SBSDs that are subject to the compliance or exemption report requirements would need to file a compliance or exemption report and a report of an independent public accountant covering the compliance or exemption report for the period beginning on the date of their registration as an SBSD through the end of their first fiscal year after registration. Generally, most, if not all of these SBSDs, would be filing the exemption report and the report of the independent public accountant covering the exemption report because they are operating pursuant to the exemption from Rule 18a-4.

Under the Commission's newly implemented security-based swap regime, 44 SBSDs are registered as such with the Commission.¹² Of these 44 SBSDs, 43 registered with the Commission between October 27, 2021 and December 13, 2021.¹³ Further, five of these SBSDs have a fiscal year end of November 30, 35 of these SBSDs have a fiscal year end of December 31, and four of these SBSDs have a fiscal year end of March 31. Consequently, the reports and reviews identified above for the first fiscal year ends of the 43 SBSDs that registered in 2021 would cover a period of approximately one or two months in the case of 39 SBSDs and five months in the case of four SBSDs.

II. Request for Relief

Given the relatively short time frame (one to five months as opposed to twelve months) that the reviews and reports identified in Items 1 through 3 above would cover and, in the case of the reviews identified in Items 1 and 2, the need to develop agreed-upon procedures, SIFMA requests that SBSDs that registered as SBSDs with the Commission in calendar year 2021 and that were not subject to ongoing requirements to undergo these reviews and reports prior to registration be permitted to incorporate these reviews and reports for their first fiscal year ending after the date they registered as an SBSD into the reviews and reports for their second fiscal year. This would mean that the reviews and reports for the second fiscal year would cover a period of 13 to 17 months depending on the SBSD's fiscal year end.

* * *

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

Sincerely,



Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA

¹² See *List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants*, available at: <https://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants>.

¹³ *Id.* The remaining SBSD registered on January 3, 2022.