



DIVISION OF
TRADING AND MARKETS

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

October 27, 2021

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: Financial Reporting Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants ("SBSEs")

Dear Ms. Brandon:

In your October 25, 2021 letter ("Letter") on behalf of the Securities Industry and Financial Markets Association ("SIFMA"), you request written assurance that the staff of the Division of Trading and Markets ("Division") 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") and Rule 18a-7 thereunder ("Rule 18a-7") with respect to the deadline for filing Form X-17A-5 ("FOCUS Report") Part IIC and for making unaudited financial statements publicly available. More specifically, you request a Division no-action position for SBSEs for which there is a prudential regulator ("bank SBSEs") to file the FOCUS Report Part IIC within the deadline to file FFIEC Form 031 (the "Call Report") with its prudential regulators. You also request a Division no-action position for an SBSE that is not also registered with the Commission as a broker-dealer or regulated by a prudential regulator ("stand-alone SBSE") to make its unaudited financial statements publicly available on its website within 55 days of the date of the unaudited financial statements, rather than within 30 days of the date of the unaudited financial statements. We understand the following facts are relevant to your request.

FOCUS Report Part IIC

On September 19, 2019, the Commission adopted recordkeeping, reporting, and notification requirements for SBSEs and additional recordkeeping and reporting requirements for broker-dealers to account for their security-based swap activities.¹ Among other things, the Commission adopted Rule 18a-7(a)(2) that requires bank SBSEs to file FOCUS Report Part IIC on a quarterly basis.² FOCUS Report Part IIC is a new form for bank SBSEs to report unaudited

¹ See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers*, Securities Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019) ("Recordkeeping Adopting Release").

² See 17 CFR 240.18a-7.

financial information and largely contains the same information that banks are required to report in the Call Report. Rule 18a-7(a)(2) states that FOCUS Report Part IIC is due 30 calendar days after the end of the Bank SBSE's fiscal quarter.³ The Recordkeeping Adopting Release states that the 30 calendar day deadline was intended to match the prudential regulators' deadline for filing the Call Report.⁴ However, the staff understands that certain U.S. banks may file the Call Report up to 35 calendar days after the end of the quarter.⁵ The U.S. Commodity Futures Trading Commission ("CFTC") staff has issued a no-action position if a bank swap dealer submits the unaudited financial reports required by CFTC Rule 105(p)(2) within the timeframe permitted by its applicable prudential regulator to file its Call Reports.⁶

Based on the facts and circumstances described in your letter (and without necessarily agreeing with your conclusions and analysis), Division staff will not recommend enforcement action to the Commission under Exchange Act section 15F(f) and Rule 18a-7 thereunder if a bank SBSE files FOCUS Report Part IIC within the deadline to file the Call Report with its applicable prudential regulator or within 35 calendar days of the end of the quarter, whichever is sooner.

Publicly Available Unaudited Financial Statements

The Recordkeeping Adopting Release also adopts Rule 18a-7(b)(2), which requires stand-alone SBSEs to make publicly available on their website the firm's unaudited financial statements as of the date that is six months after the date of the most recent audited financial statements filed with the Commission. These reports must be made publicly available within 30 calendar days of the date of the statements.⁷ In contrast, a broker-dealer must furnish its unaudited midyear financial statements 65 days after the date of the unaudited statements. The Recordkeeping Proposing Release states that the Commission proposed a shorter time period for stand-alone SBSEs' web-based disclosure of their unaudited financial statements, as compared to broker-dealers' mailing to customers of their unaudited financial statements, because posting this

³ See 17 CFR 240.18a-7(a)(2).

⁴ See *Recordkeeping Adopting Release*, 84 FR at 68572 ("In response to the Commission's proposal to require bank SBSDs and MSBSPs to file Form SBS seventeen business days after the end of the quarter, a commenter requested that it change the deadline to match the prudential regulators' requirement to file call reports thirty calendar days after the end of the quarter. To respond to the commenter's concerns, as well as to promote harmonization with prudential regulators' requirements, the Commission is adopting a thirty calendar-day requirement as requested by the commenter.").

⁵ See *Call Report Instructions*, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201406_i.pdf ("Any bank that has more than one foreign office, other than a "shell" branch or an IBF, may take an additional limited period of time to submit its Call Report. The CDR must receive the data file for such a bank's Call Report no more than 35 calendar days after the report date. Such banks are urged to use the additional time only if absolutely necessary and to make every effort to report as soon as possible, preferably within the 30-day submission period.")

⁶ See Letter from Amanda L. Olear, Acting Director, CFTC, to Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA, and Stephen Kennedy, Global Head of Public Policy, International Swaps and Derivatives Association (Aug. 31, 2021), available at <https://www.cftc.gov/csl/21-18/download>.

⁷ See 17 CFR 240.18a-7(b)(2).

information on a website should take less time than mailing documents.⁸ You state that even though stand-alone SBSEs do not need to mail their unaudited financial statements to customers, the 30-day deadline is unduly burdensome because it comes before a stand-alone SBSE's parent company is required to file unaudited financial statements in its Form 10-Q (i.e., 40 or 45 days after its fiscal quarter-end).⁹

Based on the facts and circumstances described in your letter (and without necessarily agreeing with your conclusions and analysis), Division staff will not recommend enforcement action to the Commission under Exchange Act section 15F(f) and Rule 18a-7 thereunder if a stand-alone SBSE makes public on its website the firm's midyear unaudited financial statements within 55 calendar days of the date of the statements.¹⁰

Conclusion

This Division staff position is based strictly on the facts and circumstances stated in your letter, and any different facts or circumstances might require a different response. Furthermore, this response expresses 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 or state laws, or self-regulatory organization rules. 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,

Macchiaroli
, Michael A.

Digitally signed by
Macchiaroli, Michael
A.
Date: 2021.10.27
15:46:15 -04'00'

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets

⁸ See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules*; Exchange Act release no. 71958 (Apr. 17, 2014), 79 FR 25194, 25238, n.649 (May 2, 20214) (“Recordkeeping Proposing Release”).

⁹ See *Commission, Form 10-Q General Instructions*, available at <https://www.sec.gov/files/form10-q.pdf>.

¹⁰ The staff believes a deadline of 55 days is appropriate because it allows stand-alone SBSEs 10 days beyond their Form 10-Q deadline to prepare their unaudited mid-year financial statements, but also allows less time than broker-dealers with a similar requirement because broker-dealers are required to furnish certain information to each customer instead of simply posting it on a website. See 17 CFR 240.17a-5(c)(5) (requiring broker-dealers to send customers a financial disclosure statement containing certain information even if they post unaudited financial statements on their website).



October 25, 2021

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: Financial Reporting Requirements for Security-Based Swap Entities

Dear Mr. Macchiaroli:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is requesting that the staff of the Division of Trading Markets (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) issue a no-action position as described below, relating to financial reporting for security-based swap dealers (“SBSDs”) and major security-based swap participants (together with SBSDs, “SBS Entities”) under the Commission’s new financial reporting rules.

I. Background

On September 19, 2019 the Commission approved rules setting forth financial reporting requirements with a compliance date of October 6, 2021 (“Final Rules”)². Under the Final Rules, the Commission requires limited financial reporting for SBS Entities subject to capital requirements of a prudential regulator (“Bank SBS Entities”), as these SBS Entities are already subject to existing financial reporting requirements by their prudential regulators. Such Bank SBS Entities are required to submit reports in accordance with SEC Rule 18a-7 (“FOCUS Part IIC”), which is intended to be aligned with FFIEC Form 031, “Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices” (the “Call Report”).

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 See Recordkeeping and Reporting Requirements for [SBSDs], Major Security-Based Swap Participants, and Broker-Dealers, 17 CFR Parts 200, 240, and 249, 84 FR 68550, 68733 (Dec. 16, 2019).

These reports are required quarterly, beginning with the end of the first fiscal quarter after the October 6, 2021 compliance date, and due within 30 calendar days of the end of the Bank SBS Entity's fiscal quarter.

For SBS Entities that are not broker-dealers and not subject to capital requirements of a prudential regulator ("Nonbank SBS Entity"), the Commission requires unaudited financial statements as of the date that is six months after the date of the most recent audited statements filed with the Commission under Rule 18a-7(c)(1) to be made publicly available on the Nonbank SBS Entity's website within 30 calendar days of the date of the unaudited statements.

As discussed at greater length below, the Final Rules present two issues: (1) for US Bank SBS Entities, the submission deadlines were misaligned with US prudential regulators' current Call Report requirements and (2) for Nonbank SBS Entities, the website posting deadlines are misaligned with the Commission's own FOCUS Report and quarterly public reporting deadlines.

II. Discussion

Below we describe the issues raised by the two categories of issues described above and the Staff position we would propose to address them.

A. U.S. Bank SBS Entity Requirements – Alignment of Submission Deadline

The Final Rules set the deadline for US Bank SBS Entity reporting for 30 days after quarter end, while the prudential regulators' Call Report deadline for US banks with foreign branches is 35 days. Bank SBS Entities that have designed systems and procedures to report Call Report information with their applicable prudential regulator within 35 calendar days of the quarter end would face unnecessary burdens. For this reason, the CFTC has a similar inadvertent misalignment in its rules which it has addressed via no action position.

Request: We request that the Division confirm that it would not recommend enforcement action to the Commission if a US Bank SBS Entity made its Rule 18a-7(a)(2) financial filing within the timeframe required to file the Call Report with its prudential regulator (e.g., within 35 calendar days after the end of its fiscal quarter if the US Bank SBS Entity had a foreign branch).

B. Timing of Unaudited Financial Report Posting

SEC Rule 18a-7(b)(2) requires a Nonbank SBS Entity to make publicly available on its website unaudited financial statements as of the date that is six months after the date of the most recent audited statements filed with the Commission under Rule 18a-7(c)(1) within 30 calendar days of the date of the unaudited statements. This contrasts with the Commission's 65-day deadline for broker-dealers.

While the proposing release justified the shorter period for SBS Entities vs broker-dealers being appropriate because posting on a website, as would be required for SBS Entities, takes less time than mailing, as is required for broker-dealers, that does not address the core challenge. The 30-day deadline is unduly burdensome because it comes before an SBS Entity's parent company is required to complete and submit Commission required audited financials in its 10-Q filing. Although unaudited, the midyear statement of financial condition must have a full set of

footnotes - at a time when an SBS Entity's financial staff's primary focus will be the parent company's 10-Q filing. A timeframe of 55 days to post unaudited financials would give firms time beyond the 10-Q deadline, but give also less time than broker-dealers, who have to furnish certain information to each customer (instead of simply posting it on a website as required by SEC Rule 18a-7(b)(2)).

Request: We request that the Division confirm that it would not recommend enforcement action to the Commission if a Nonbank SBS Entity made public its unaudited midyear financials within 55 days of the date of the statements.

* * *

SIFMA appreciates your consideration of these important matters. If we may provide further information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Kyle Brandon". The signature is written in a cursive, flowing style.

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA