



U.S. COMMODITY FUTURES TRADING COMMISSION

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Market Participants
Division

Amanda L. Olear
Acting Director

Ms. Meghan Sullivan
Executive Director
Nomura Global Financial Products Inc.
World Wide Plaza
309 West 49th Street
New York, NY 10019-7316

Re: Time-Limited No-Action Position for Registered Swap Dealer to use Models to Compute Credit Risk Capital Charges In Lieu of Standardized Charges

Dear Ms. Sullivan:

This is in response to your letter (the “Request”) dated September 24, 2021, to the Market Participants Division (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”). In your letter, you request on behalf of Nomura Global Financial Products Inc. (“NGFP”), a swap dealer (“SD”) provisionally registered with the Commission, that the Division confirm that it will not recommend an enforcement action to the Commission if NGFP, in computing its regulatory capital under regulation 23.101,¹ calculates its credit risk charges using internal models that have not been approved for use by the Commission, the National Futures Association (“NFA”), the Securities and Exchange Commission (“SEC”), a prudential regulator,² or a foreign regulatory authority in lieu of the standardized credit risk charges required under regulation 23.103(b). You request this relief for a time-limited period not to exceed November 1, 2021.

¹ Commission regulations are found at 17 CFR Ch. I, and are available at the Commission’s website, <http://www.cftc.gov>.

² The term “prudential regulators” is defined in section 1a(39) of the Commodity Exchange Act (“CEA”) to mean the Board of Governors of the Federal Reserve System (“Federal Reserve Board”); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. *See* 7 U.S.C. 1a(39).

I. Regulatory Background

Section 4s(e) of the CEA directs the Commission to adopt rules imposing minimum capital requirements for SDs that are not subject to a prudential regulator (“non-bank SDs”).³ Pursuant to section 4s(e), the Commission adopted regulation 23.101,⁴ which generally requires a non-bank SD to maintain minimum capital in accordance with an approach tracking requirements established by the prudential regulators (“bank-based approach”)⁵ or pursuant to the capital requirements established by the SEC for security-based SDs (“net liquid assets approach”).⁶ Regardless of the choice of the bank-based approach under Regulation 23.101(a)(1)(i) or the net liquid assets approach under Regulation 23.101(a)(1)(ii), a non-bank SD that elects to use internal models to compute market risk or credit risk charges must have its models approved by the Commission or a registered futures association in accordance with Regulation 23.102.⁷ Alternatively, a nonbank SD that does not have model approval must use standardized charges for computing market risk and credit risk.

A non-bank SD, however, that has market risk or credit risk models that have been previously approved by the SEC, a prudential regulator, or a foreign regulatory authority, for use by the non-bank SD or its affiliate, is permitted to use such models at the compliance date of the Final SD Capital Rule pending the subsequent approval or denial of the non-bank SD’s models by the Commission or the NFA.⁸ Specifically, Regulation 23.102(f)(1) provides that a non-bank SD may use internal market risk or credit risk models upon the submission of a certification to the Commission and the NFA, signed by the Chief Executive Officer, Chief Financial Officer, or other appropriate official with knowledge of the non-bank SD’s capital requirements and the capital models, that such models are in substantial compliance with Commission’s model requirements and have been approved for use in computing capital by the non-bank SD, or an affiliate of the non-bank SD, by the SEC, a prudential regulator, a foreign regulatory authority in a jurisdiction that the Commission has found to be eligible for substituted compliance under Regulation 23.106, or a foreign regulatory authority whose capital adequacy requirements are consistent with the capital requirements issued by the Basel Committee on Banking Supervision. Regulation 23.102(f)(1) further requires that a non-bank SD must file with the Commission an application for model approval with its certification.

³ 7 U.S.C. 6s(e).

⁴ See Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020) (“Final SD Capital Rule”). The Final SD Capital Rule became effective on November 16, 2020 with a compliance date of October 6, 2021.

⁵ 17 CFR 23.101(a)(1)(i).

⁶ 17 CFR 23.101(a)(1)(ii). Alternative capital requirements are available to a non-bank SD “predominantly engaged in non-financial activities,” under Regulation 23.101(a)(2). NGFP is not eligible to meet its capital requirements under Regulation 23.101(a)(2).

⁷ See 17 CFR 23.102. NFA is the only registered futures association.

⁸ See 17 CFR 23.102(f).

II. No-Action Request

In the Request, you state that NGFP is registered with the SEC as an Over-the-Counter Derivatives Dealer (“OTCDD”) and intends to register with the SEC as a security-based swap dealer (“SBSD”) on November 1, 2021. As a dually-registered non-bank SD and SBSB, NGFP will compute its CFTC regulatory capital requirements in accordance with the net liquid assets approach under regulation 23.101(a)(1)(ii).

In the Request, you also represent that NGFP planned to use the certification process under regulation 23.102(f)(1) in order to use models to calculate market risk and credit risk charges in computing its regulatory capital under 23.101(a)(1)(ii) pending Commission or NFA approval of its market risk and credit risk models. In this regard, you represent that NGFP has previously obtained approval from the SEC to use market risk models to compute VaR charges. You further represent that NGFP’s affiliate, Nomura Holding Inc. (“NHI”), has obtained the approval of the Financial Services Agency of Japan to use market risk models to compute VAR, Stressed VAR, and incremental risk charges.

You further represent that NGFP has been working diligently with the SEC to obtain approval to use its credit risk model to compute regulatory capital. While the credit risk models are currently pending SEC review, you represent that a complete credit risk model application has been submitted to the SEC and that NGFP anticipates receiving SEC approval on or before November 1, 2021. Accordingly, you request relief from regulations 23.102(f)(1) and 23.103 for NGFP to use its credit risk model that is currently pending approval with the SEC to compute its regulatory capital under CFTC regulation 23.101(a)(1)(ii) in lieu of the standardized charges required under regulation 23.103. You request this relief on a time-limited period not to exceed November 1, 2021.

III. Market Participant Division No-Action Relief

Based on the facts and representations set forth in your letter and recited above, the Division will not recommend enforcement action to the Commission under CEA Section 4s(e) or regulations 23.102(f)(1) and 23.103 if, commencing on the compliance date of the Final SD Capital Rule, NGFP uses its credit risk model that is currently pending SEC approval to calculate credit risk charges in computing regulatory capital under regulation 23.101(a)(1)(ii) in lieu of standardized credit risk charges required under regulation 23.103. The relief granted is subject to the following conditions:

1. NGFP submits an application to the NFA for approval to use a credit risk model on or prior to the October 6, 2021 compliance date of the Final SD Capital Rule.
2. NGFP submits a certification signed by its Chief Executive Officer, Chief Financial Officer, or other appropriate official with knowledge of NGFP’s capital requirements and capital models to the Commission and NFA certifying that the credit risk model pending approval with the SEC is in substantial compliance with the Commission’s

credit risk model requirements prior to the October 6, 2021 compliance date of the Final SD Capital Rule.

3. NGFP provides prompt notification to the Division of the SEC's approval or denial of its credit risk model application.
4. NGFP maintains compliance with the minimum capital requirements under regulation 23.101(a)(1)(ii) computing credit risk charges using models pending approval by the SEC.
5. The relief provided by this letter expires on the earlier of (i) the SEC's approval or denial of NGFP's credit risk model application or (ii) November 1, 2021.

This letter and the positions taken herein represent the views of this Division only, and do not necessarily represent the views of the Commission or any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions contained herein, are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances may render this letter void.

Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion. If you have any questions regarding this letter, please contact Tom Smith, Deputy Director, at 202-418-5495 or tsmith@cftc.gov; Josh Beale, Associate Director, at 202-418-5446 or jbeale@cftc.gov; Rafael Martinez, Associate Director, at 202-418-5462 or rmartinez@cftc.gov; or Jennifer Bauer, Special Counsel, at 202-418-5472 or jbauer@cftc.gov.

Sincerely,

Amanda L. Olear
Acting Director

cc: Michael Otten, National Futures Association
Alessandra Riccardi, National Futures Association