



DIVISION OF
TRADING AND MARKETS

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

November 1, 2021

Angelina Mason
General Counsel & Vice-President, Legal
Canadian Bankers Association
Box 348, Commerce Court West
199 Bay Street, 30th Floor
Toronto, Ontario M5L 1G2
Canada

Re: Reporting Requirements for Registered Non-U.S. Security-Based Swap Dealers with a Prudential Regulator

Dear Ms. Mason:

In your November 1, 2021 letter (“Letter”), on behalf of Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada, and The Toronto-Dominion Bank (collectively, the “Six Canadian Banks”), 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 Rule 18a-7 thereunder (“Rule 18a-7”)² if the Six Canadian Banks are registered with the Commission as security-based swap dealers (“SBSDs”) and file required periodic unaudited financial and operational information with the Commission or its designee in the same manner and format as certain prudentially-regulated SBSBs applying substituted compliance with respect to Rule 18a-7, as described below. Based on the Letter, I understand the following facts and circumstances are relevant to your request.

Background

The Canadian Banks

The Letter states that the Six Canadian Banks are headquartered in Canada and their primary domestic regulator is the Office of the Superintendent of Financial Institutions (“OSFI”).

¹ 15 U.S.C. 78o-10.

² 17 CFR 240.18a-7.

The Letter also states that the generally accepted accounting principles used by the Six Canadian Banks to prepare general purpose publicly available or available to be issued financial statements are consistent with the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) (“Canadian GAAP”).

Security-Based Swap Dealer Reporting Requirements

Section 15F(f)(1)(A) of the Exchange Act requires SBSDs to “make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition” of the SBSD. In addition, paragraph (a)(2) of Rule 18a-7 (“Rule 18a-7(a)(2)”) requires SBSDs for which there is a prudential regulator to file with the Commission or its designee Part IIC of Form X-17A-5 (“FOCUS Report Part IIC”) within 30 calendar days after the end of each calendar quarter.³

Substituted Compliance Determinations with Respect to Rule 18a-7(a)(2)

The Commission has issued orders granting conditional substituted compliance in connection with certain requirements applicable to non-U.S. SBSDs subject to regulation in various European jurisdictions.⁴ The substituted compliance orders permit certain SBSDs with a prudential regulator (“European Bank SBSDs”) to apply substituted compliance with respect to the requirement of Rule 18a-7(a)(2) to file the FOCUS Report Part IIC on a quarterly basis subject to two conditions. The first condition is that the European Bank SBSD is subject to and complies with certain specified European home jurisdiction reporting laws. The second condition is that the European Bank SBSD files periodic unaudited financial and operational information with the

³ 17 CFR 240.18a-7(a)(2).

⁴ *See Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany*, Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic*, Exchange Act Release No. 92484 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom*, Exchange Release No. 92529 (June 30, 2021), 86 FR 43318 (Aug. 6, 2021); *Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation*, Exchange Act Release No. 93284 (Oct. 8, 2021); *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin*, Exchange Act Release No. 93411 (Oct. 22, 2021); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Kingdom of Spain*, Exchange Act Release No. 93412 (Oct. 22, 2021) (collectively, the “substituted compliance orders”).

Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the European Bank SBSBs use to prepare general purpose publicly available or available to be issued financial statements in their home jurisdictions (the “manner and format condition”).

On October 14, 2021, the Commission issued an order specifying how an SBSB must meet the manner and format condition in a substituted compliance order.⁵

Notices of Changes in Regulatory Capital

The substituted compliance orders have a general condition that European Bank SBSBs apply substituted compliance with respect to the requirements of paragraph (c) of Exchange Act Rule 18a-8 (“Rule 18a-8(c)”) ⁶ and the requirements of paragraph (h) of Exchange Act Rule 18a-8 (“Rule 18a-8(h)”) ⁷ as applied to Rule 18a-8(c). Rule 18a-8(c) requires every SBSB with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact on the same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Rule 18a-8(h). Applying substituted compliance to Rules 18a-8(c) and (h) requires the European Bank SBSBs, among other things, to send the Commission copies of the notices about their capital situation that they send to European authorities.

Your Request

The Letter requests that the Division not recommend enforcement action to the Commission under Exchange Act Section 15F and Rule 18a-7(a)(2) thereunder if the Six Canadian Banks are registered with the Commission as SBSBs and: (1) file periodic financial and operational information with the Commission pursuant to the terms and conditions of the Manner and Format Order as if the Six Canadian Banks were applying substituted compliance with respect to Rule 18a-7(a)(2); (2) present the financial information in the filing in accordance with generally accepted accounting principles that the Six Canadian Banks use to prepare general purpose publicly available or available to be issued financial statements in Canada; and (3) file the periodic financial and operational information consistent with the regulatory schedule for filing financial reports in Canada every three months (the “Canadian reporting quarters”).⁸

⁵ See *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance Determinations with Respect to Rule 18a-7*, Exchange Act Release No. 93335 (Oct. 14, 2021), 86 FR 59208 (Oct. 26, 2021) (the “Manner and Format Order”).

⁶ 17 CFR 240.18a-8(c).

⁷ 17 CFR 240.18a-8(h).

⁸ The Letter states that the Six Canadian Banks are subject to home jurisdiction reporting requirements based on quarterly reporting periods ending January 31, April 30, July 31, and October 31 rather than March 31, June 30, September 30, and December 31.

In support of your request, you state that the Six Canadian Banks would be required to comply with Rule 18a-7(a)(2), while European Bank SBSDs could comply with Rule 18a-7(a)(2) pursuant to either the German, French, or UK Orders (as applicable) and the Manner and Format Order. Consequently, European Bank SBSDs would be subject to reporting requirements that accommodate home jurisdiction laws while the Six Canadian Banks would not have this benefit even though – as prudentially regulated banks – they present similar risk to the U.S. financial system. For example, the Six Canadian Banks would be required to present financial information in accordance with generally accepted accounting principles in the U.S. (“U.S. GAAP”), provide information for line items in the FOCUS Report Part IIC that are only relevant for banks in the U.S. reporting under U.S. GAAP, and report regulatory capital in a manner that reflects a U.S. approach to calculating bank capital.

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 section 15F(f) of the Exchange Act and Rule 18a-7(a)(2) thereunder if the Six Canadian Banks are registered with the Commission as SBSDs and file periodic unaudited financial and operational information with the Commission or its designee pursuant to Rule 18a-7(a)(2) in accordance with the Manner and Format Order and present the financial information in the filing in accordance with Canadian GAAP; provided that:

1. The Six Canadian Banks file the financial and operational information within 35 days of the end of each Canadian reporting quarter; and
2. The Six Canadian Banks immediately notify Division staff if they fail to maintain the minimum amount of regulatory capital required under Canadian law and include with the notification the contact information of an individual who can provide further information about the matter.⁹

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 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.

⁹ The notification should be sent to the Commission by email to SBS-OTCDDnotices@sec.gov. See, e.g., *Staff Statement on Submitting Notices, Statements, Applications, and Reports for Security-Based Swap Dealers and Major Security-Based Swap Participants Pursuant to the Financial Responsibility Rules (Exchange Act Rules 18a-1 through 18a-10)*, available at: <https://www.sec.gov/tm/staff-statement-on-submissions>.

Ms. Angelina Mason

November 1, 2021

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If you have any questions regarding this letter, please contact Randall W. Roy, Deputy Associate Director at (202) 551-5522, Abraham Jacob, Special Counsel at (202) 551-5583, or me at (202) 551-5525.

Sincerely,

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets

October 29, 2021

Michael A. Macchiaroli
Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Request for no-action relief regarding Reporting Requirements for Registered Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants with a Prudential Regulator

Dear Mr. Macchiaroli:

The Canadian Bankers Association (“CBA”) is writing on behalf of its members that engage in security-based swap activities in the United States and expect to register as security-based swap dealers (“SBSDs”), namely, Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada, and The Toronto-Dominion Bank (together, the “Canadian Banks”). For the reasons discussed below, we write to request written assurance that the staff of the Division of Trading and Markets (the “Staff”) of the Securities Exchange Commission (the “Commission”) would not recommend enforcement action against a Canadian Bank registered as an SBSB under section 15F(f) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and paragraph (a)(2) of Rule 18a-7 thereunder (“Rule 18a-7(a)(2)”) ² if the Canadian Bank: (1) files periodic financial and operational information with the Commission as if the Canadian Bank were applying substituted compliance with respect to Rule 18a-7(a)(2); (2) presents the financial information in such filings in accordance with generally accepted accounting principles in Canada; and (3) submits the filings consistent with the regulatory schedule for filing financial reports in Canada.

Background

The Canadian Banks

The Canadian Banks are headquartered in Canada and their primary domestic regulator at the federal level is the Office of the Superintendent of Financial Institutions (“OSFI”). The generally accepted accounting principles used by the Canadian Banks to prepare general purpose publicly available or available to be issued financial statements (“Canadian GAAP”) are consistent with the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).

¹ 15 U.S.C. 78o-10.

² 17 CFR 240.18a-7(a)(2).

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Substituted Compliance Determinations with Respect to Rule 18a-7(a)(2)

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³ 17 CFR 240.18a-7(a)(2).

⁴ See *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany*, Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic*, Exchange Act Release No. 92484 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom*, Exchange Release No. 92529 (June 30, 2021), 86 FR 43318 (Aug. 6, 2021); *Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation*, Exchange Act Release No. 93284 (Oct. 8, 2021); *Amended and Restated Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin*, Exchange Act Release No. 93411 (Oct. 22, 2021); *Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Kingdom of Spain*, Exchange Act Release No. 93412 (Oct. 22, 2021) (collectively, the “substituted compliance orders”).

use to prepare general purpose publicly available or available to be issued financial statements in their home jurisdictions (the “manner and format condition”).

On October 14, 2021, the Commission issued an order specifying how an SBSB must meet the manner and format condition in a substituted compliance order (the “**Manner and Format Order**”).⁵

Notices of Changes in Regulatory Capital

The substituted compliance orders have a general condition that European Bank SBSBs apply substituted compliance with respect to the requirements of paragraph (c) Exchange Act Rule 18a-8 (“Rule 18a-8(c)”) ⁶ and the requirements of paragraph (h) of Exchange Act Rule 18a-8 (“Rule 18a-8(h)”) ⁷ as applied to Rule 18a-8(c). Rule 18a-8(c) requires every SBSB with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact on the same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Rule 18a-8(h). Applying substituted compliance to Rules 18a-8(c) and (h) requires the European Bank SBSBs, among other things, to send the Commission copies of the notices about their capital situation that they send to European authorities.

Request for Relief

We respectfully request the Staff not recommend enforcement action to the Commission under Exchange Act Section 15F and Rule 18a-7(a)(2) thereunder with respect to a Canadian Bank registered with the Commission as an SBSB if such Canadian Bank: (1) files periodic financial and operational information with the Commission pursuant to the terms and conditions of the Manner and Format Order as if such Canadian Bank was applying substituted compliance with respect to Rule 18a-7(a)(2); (2) presents the financial information in the filing in accordance with Canadian GAAP; and (3) files the periodic financial and operational information consistent with the regulatory schedule for filing financial reports in Canada every three months (the “**Canadian reporting quarters**”).⁸

⁵ See *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance Determinations with Respect to Rule 18a-7*, Exchange Act Release No. 93335 (Oct. 14, 2021), 86 FR 59208 (Oct. 26, 2021).

⁶ 17 CFR 240.18a-8(c).

⁷ 17 CFR 240.18a-8(h).

⁸ The Canadian Banks are subject to home jurisdiction reporting requirements based on quarterly reporting periods ending January 31, April 30, July 31, and October 31 rather than March 31, June 30, September 30, and December 31.

Absent the requested relief, the Six Canadian Banks would be required to comply with Rule 18a-7(a)(2), while European Bank SBSBs could comply with Rule 18a-7(a)(2) pursuant to either the German, French, or UK Orders (as applicable) and the Manner and Format Order. Consequently, European Bank SBSBs would be subject to reporting requirements that accommodate home jurisdiction laws while the Canadian Banks would not have this benefit even though – as prudentially regulated banks – they present similar risk to the U.S. financial system. For example, Canadian Banks would be required to present financial information in accordance with generally accepted accounting principles in the U.S. (“**U.S. GAAP**”), provide information for line items in the FOCUS Report Part IIC that are only relevant for banks in the U.S. reporting under U.S. GAAP, and report regulatory capital in a manner that reflects a U.S. approach to calculating bank capital.

* * *

Should you have any questions about this request, please contact Angelina Mason (amason@cba.ca; (647) 730-4753) General Counsel and Vice-President at the CBA and Jeff Robins (jlobins@debevoise.com; 212-909-6526) at Debevoise & Plimpton LLP, U.S. counsel representing the CBA in connection with this matter.

Respectfully submitted on the above-referenced date, on behalf of:



Angelina Mason, General Counsel &
Vice-President, Legal, CBA