



11 June 2025

Capital and Examinations
National Futures Association
200 Liberty Street, Suite 2800
New York, NY 10281

By email DSpoljaric@NFA.Futures.Org

Dear Mr Spoljaric

Extraterritorial application of NFA rules to non-US Swap Dealers

The Australian Financial Markets Association ('AFMA') welcomes the opportunity to provide feedback to the National Futures Association ('NFA') on its application of certain Compliance Rules to non-US swap dealer business activities.

Australian non-US swap dealers became members of the NFA under the Commodities Futures Trading Commission's ('CFTC') delegation of the registration of swap dealer in 2012 to the NFA (See 77 FR 2708 (Jan. 19, 2012)). In an acknowledgement of the existing regulatory and prudential requirement that Australian non-US swap dealers are subject to, the CFTC published a *Comparability Determination for Australia: Certain Entity-Level Requirement* (78 FR 78864) in December 27 2013 and the *Comparability Determination for Australia Uncleared Swap Margin Rules for Substituted Compliance Purposes* in March 27 2019 (84 FR 12908) for substituted compliance purposes. In addition, the CFTC published the *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants* on September 14 2020 which provided further relief from the application of CFTC rules to non-US swap dealer activity.

The CFTC¹ as recently as May 14, 2025, stated that the reasons for these rules as:

Consistent with its interpretation of section 2(i) of the Commodity Exchange Act ("CEA"), which recognized the interconnectedness of the global swap market and followed principles of

¹. See the *CFTC Procedure: Referrals for Enforcement Investigation or Action and Enforcement Recommendations Where Registrants Are Relying on Substituted Compliance* of the published by Market Participants Division and Division of Enforcement May 14, 2025

international comity², the Commission implemented a substituted compliance regime with respect to certain regulatory requirements applicable to Swap Entities, including the adoption of the Substituted Compliance Rules. This approach mitigates burdens associated with potentially conflicting foreign standards and recognizes the supervisory interests of foreign regulators in entities domiciled and operating in foreign jurisdictions.

We are not aware of any similar comparability assessment nor cross-border relief from NFA compliance rules to non-US swap dealers for activities that are outside the scope US swap dealing with US Persons. The absence of any relief impacts Australian non-US Swap dealers who (for prudential reasons) include swap dealer activity within the same legal entity as the retail, business, institutional, broker-dealer and treasury activities.

During the recent NFA exams we noticed specific examples of this:

- (a) Application of Rule 2-9(2) Supervision of Marketing Materials³ - the policy reasons for the NFA imposing marketing obligations on interactions with non-US Persons are uncertain, especially for firms subject to equivalent regulatory requirements non-US swap regulators⁴. Producing copies of marketing material, which may include sharing information on non-US customers, counterparties and their staff is likely to cause concern with customers and non-US regulators; and
- (b) the reporting of swap valuation disputes for non-CFTC counterparties would see an Australian swap dealer reporting disputes with another Australian swap dealer to the NFA, in addition to complying with their home APRA regulations.

On behalf of our members AFMA is grateful to the NFA to hold a post exam workshop for Australian swap dealers. Any questions on this letter should be directed to myself, David Love, at dlove@afma.com.au or on 0415 903 412.

Yours sincerely



David Love
General Counsel

². See *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 Fed. Reg. 56924, 56927-31 (Sep. 14, 2020)

³. 9077 - NFA Compliance Rule 2-9(d): Swap Dealer and Major Swap Dealer Participant Supervision on the use of Marketing Materials.

⁴. Note the CFTC's 2013 compatibility assessment on Australia regulation, also included the requirements in §§23.201 and 23.203 for marketing and sales material.