

## Relief for Swap Dealer Pre-Trade Disclosures

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On April 4, 2025, the staff of the Commodity Futures Trading Commission ("CFTC") Market Participants Division ("MPD") **issued** compliance relief for registered swap dealers ("SDs") from the requirement to provide the so-called pre-trade mid-market marks ("PTMMM"). CFTC Regulation § 23.431 that was promulgated in 2012 under the Dodd Frank Act of 2010 mandates that SDs provide PTMMM to their non-SD counterparties to allow them to compare the PTMMM with the executable quote for the swap with the same PTMMMs and swap quote provided by other dealers. It became clear, however, that the PTMMM is essentially an academic value that is determined by each SD pursuant to their own methodology and on the basis of their own assumptions and scenarios that may not be comparable between SDs. As a result, the CFTC had issued several no action letters providing relief to SDs under various conditions.

The MPD relief also specifically notes that PTMMM disclosures also apply to "foreign exchange forwards" and "foreign exchange swaps" (as defined in the Commodity Exchange Act (CEA)) that are otherwise exempted by the 2012 Treasury Determination from the definition of "swaps." Requirement to provide PTMMMs for this class of FX contacts has been particularly burdensome for SDs. In consideration of limited utility of PTMMMs to SDs' counterparties, compliance burdens and previously-issued relief, the MPD stated that "MPD will not recommend the Commission commence an enforcement action against a [SD] for failure to satisfy the PTMMM Requirement for its non-[SD] counterparties," and noted that this relief will continue until the CFTC adopts regulations "addressing the PTMMM Requirement."

It is not clear at this time whether SDs will collectively stop providing PTMMMs altogether considering that this is only MPD staff relief and that both the CEA and CFTC regulations require providing of "daily marks" (the MPD relief does not apply to "daily marks") and there are several CFTC enforcement actions as well as court decisions on the basis of § 23.431 requirements. Further, the MPD relief itself states that it is effective until the CFTC "addresses" this requirement, instead of saying "repeals or abolishes." Once a uniform market compliance approach emerges, the SDs will be best advised to follow this approach in consultation with the trade associations.