



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

DIVISION OF  
TRADING AND MARKETS

November 1, 2021

Carolyn H. Jackson  
Katten Munchin Rosenman LLP  
Paternoster House  
65 St Paul's Churchyard  
London, EC4M 8AB  
United Kingdom

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

Dear Ms. Jackson:

In your November 1, 2021 letter ("Letter"), on behalf of Skandinaviska Enskilda Banken AB (publ) ("SEB"), 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")<sup>1</sup> and Rule 18a-7 thereunder ("Rule 18a-7")<sup>2</sup> if SEB is registered with the Commission as a security-based swap dealer ("SBSD") and files required periodic unaudited financial and operational information with the Commission or its designee in the same manner and format as certain prudentially-regulated SBSDs 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

### *SEB*

The Letter states that SEB is an international bank headquartered in Sweden, where it is prudentially regulated by the Finansinspektionen ("FI" or "Swedish FSA"). The Letter also states that the generally accepted accounting principles used by SEB 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) ("Swedish GAAP").

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<sup>1</sup> 15 U.S.C. 78o-10.

<sup>2</sup> 17 CFR 240.18a-7.

*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.<sup>3</sup>

*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.<sup>4</sup> 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 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 SBSDs use to prepare general purpose publicly available or available to be issued financial statements in their home jurisdictions (the “manner and format condition”).

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<sup>3</sup> 17 CFR 240.18a-7(a)(2).

<sup>4</sup> 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”).

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.<sup>5</sup>

### *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)”) <sup>6</sup> and the requirements of paragraph (h) of Exchange Act Rule 18a-8 (“Rule 18a-8(h)”) <sup>7</sup> 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 SEB is registered with the Commission as an SBSB and: (1) files periodic financial and operational information with the Commission pursuant to the terms and conditions of the Manner and Format Order as if SEB was applying substituted compliance with respect to Rule 18a-7(a)(2); and (2) presents the financial information in the filing in accordance with generally accepted accounting principles that SEB uses to prepare general purpose publicly available or available to be issued financial statements in Sweden.

In support of your request, you state that SEB 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 SEB would not have this benefit even though – as a prudentially regulated bank – SEB presents similar risk to the U.S. financial system. For example, SEB 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

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<sup>5</sup> 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”).

<sup>6</sup> 17 CFR 240.18a-8(c).

<sup>7</sup> 17 CFR 240.18a-8(h).

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 SEB is registered with the Commission as an SBSD and files 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 presents the financial information in the filing in accordance with Swedish GAAP; provided that SEB immediately notifies the Division staff if it fails to maintain the minimum amount of regulatory capital required under Swedish law and includes with the notification the contact information of an individual who can provide further information about the matter.<sup>8</sup>

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.

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

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<sup>8</sup> The notification should be sent to the Commission by email to [SBS-OTCDDnotices@sec.gov](mailto: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>.

November 1, 2021

Ref No. 385248 00020 CHJ:sh

## VIA E-MAIL AND FEDERAL EXPRESS

Mr. Michael A. Macchiaroli  
Associate Director  
Division of Trading and Markets  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-7010

### **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:

We act for Skandinaviska Enskilda Banken AB (publ) (“**SEB**”), an international bank headquartered in Sweden. SEB is currently planning to register with the Securities and Exchange Commission (the “**Commission**”) as a security-based swap dealer (“**SBSD**”). SEB intends to register with the Commission as a non-resident SBSD that will not have received a substituted compliance determination from the Commission, permitting SEB to comply with the rules and regulations of its home jurisdiction for certain of its SBSD compliance obligations, including SEC Rule 18a-7. On behalf of our client we request written assurance that the staff of the Division of Trading and Markets (the “**Staff**”) of the Commission would not recommend enforcement action against SEB under section 15F(f) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) <sup>1</sup> and paragraph (a)(2) of Rule 18a-7 thereunder (“**Rule 18a-7(a)(2)**”) <sup>2</sup> if SEB is registered with the Commission as an SBSD and: (1) files periodic financial and operational information with the Commission as if SEB were applying substituted compliance with respect to Rule 18a-7(a)(2); and (2) presents the financial information in the filing in accordance with generally accepted accounting in Sweden.

### ***BACKGROUND ON SEB***

SEB is an international bank headquartered in Sweden. SEB has a New York branch, which is regulated by the Board of Governors of the Federal Reserve System. SEB would register with the Commission as an SBSD that is prudentially regulated. SEB has an affiliate, SEB Securities, Inc., headquartered in New York and registered with the Commission as a broker-

<sup>1</sup> 15 U.S.C. 78o-10.

<sup>2</sup> 17 CFR 240.18a-7(a)(2).

Katten Muchin Rosenman UK LLP is a Limited Liability Partnership of solicitors and registered foreign lawyers registered in England & Wales, authorised and regulated by the Solicitors Regulation Authority, whose registered office is at Paternoster House, 65 St. Paul's Churchyard, London EC4M 8AB. Registered No. OC312814.

A list of the members of Katten Muchin Rosenman UK LLP is available for inspection at the registered office.  
We use the word “partner” to refer to a member of the LLP.

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dealer. SEB has been provisionally registered with the Commodity Futures Trading Commission since 2014.

SEB's security-based swap activity is primarily focused on security-based swaps with one or more Nordic securities as the underlying to the transaction. None of SEB's security-based swap activity is cleared. SEB currently files its financial reports as required by applicable EU and Swedish law in accordance with IFRS ("**Swedish GAAP**").

### ***SECTION 15F AND SEC RULE 18A-7***

Section 15F(f)(1)(A) of the Securities Exchange Act of 1934<sup>3</sup> 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, Rule 18a-7(a)(2) requires an SBSD registered with the Commission that is prudentially regulated 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. Such quarterly reports are not required to be audited.

### ***SUBSTITUTED COMPLIANCE DETERMINATIONS WITH RESPECT TO 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.<sup>4</sup> 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

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<sup>3</sup> 15 U.S.C. 78o-10.

<sup>4</sup> 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").

and complies with certain specified European home jurisdiction reporting laws. The second condition is that the European Bank SBSB files periodic unaudited financial and operational information with the 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 (the “**Manner and Format Order**”).<sup>5</sup>

### ***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)**”)<sup>6</sup> and the requirements of paragraph (h) of Exchange Act Rule 18a-8 (“**Rule 18a-8(h)**”)<sup>7</sup> 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.

### ***SEB REQUESTED NO-ACTION RELIEF***

SEB is requesting that the Staff not recommend any enforcement action be taken with respect to SEB, if it is registered with the Commission as an SBSB and: (1) files periodic financial and operational information with the Commission pursuant to the terms and conditions of the Manner and Format Order as if SEB were applying substituted compliance with respect to Rule 18a-7(a)(2); and (2) presents the financial information in the filing in accordance with Swedish GAAP.

Absent the requested relief, SEB 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,

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<sup>5</sup> 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).

<sup>6</sup> 17 CFR 240.18a-8(c).

<sup>7</sup> 17 CFR 240.18a-8(h).

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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 SEB would not have this benefit even though – as a prudentially regulated bank – SEB presents similar risk to the U.S. financial system. SEB would also 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.

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Please let me know if you have any questions that you or others at the Commission might have regarding SEB’s request for the no-action relief described above. Please feel free to contact me at + 44 207 776 7625 or at [carolyn.jackson@katten.co.uk](mailto:carolyn.jackson@katten.co.uk).

Sincerely,



**Carolyn H. Jackson**

cc. Mr. Randall Roy, Deputy Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission  
Carol McGee, Head of the Office of Derivatives Policy, Division of Trading and Markets, U.S. Securities and Exchange Commission