



April 28, 2014

**Via Electronic Mail (rule-comments@sec.gov)**

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Re-Opening of Comment Period for Asset-Backed Securities Release  
Release Nos. 33-9552; 33-9244; File No. S7-08-10**

The Global Financial Markets Association ("GFMA") and the Australian Securitisation Forum (the "AuSF") welcome the opportunity to comment on behalf of their respective members on proposed revisions to Regulation AB under the U.S. Securities Act of 1933, as amended ("Regulation AB"), for which the U.S. Securities and Exchange Commission (the "Commission") has re-opened the comment period to permit interested persons to comment on an approach for the dissemination of potentially sensitive asset-level data discussed in a memorandum concurrently released by the staff (the "Staff") of the Commission (collectively, the "Reg AB Proposals"). In May 2010, even before passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd Frank Act"), the Commission had proposed to amend Regulation AB's required disclosures regarding asset-backed securities ("ABS"). In August 2011, the Commission re-proposed amendments to Regulation AB to address certain rule making mandates under the Dodd Frank Act. Under the Reg AB Proposals, a designated set of asset-level data regarding the assets being securitized in an offering of ABS in the United States would be required to be provided through a combination of the Commission's EDGAR system and an issuer or issuer-sponsored website. As currently proposed, only data that is not sensitive from the perspective of privacy laws would be disclosed through EDGAR, and issuers would be responsible for putting in place controls on their websites to comply with applicable privacy laws while disseminating potentially sensitive asset-level data.

GFMA brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe ("AFME") in London and Brussels, the Asia

Securities Industry & Financial Markets Association ("ASIFMA") in Hong Kong, and the Securities Industry and Financial Markets Association ("SIFMA") in New York and Washington are, respectively, the European, Asian and North American members of GFMA. GFMA's overarching goal is to coordinate regulatory reform implementation across borders to ensure that regulatory arbitrage (when an institution chooses a nominal place of business with less stringent or less expensive regulatory regimes) does not pose a risk to the global financial system and to avoid negative extra-territorial effects of inconsistent regulatory actions on the financial sector. GFMA and our constituent organizations have been urging the G20 finance ministers and central bank governors to work together with each other and the regulatory agencies they supervise to ensure consistency in approach to regulatory reform across jurisdictions, where practicable. In particular, we have called for G20 finance ministers formally to endorse the robust application among local regulators of the international principle of comity – where a home jurisdiction regulator defers to the regulations of a regulator in a second jurisdiction in circumstances where the latter's rules are consistent with G20 recommendations and best practices – as policymakers and regulators progress their regulatory implementation processes.

Formed in 1989, the AuSF is the industry body representing Australian securitization market participants. The AuSF's members act as issuers, dealers, investors, servicers, trustees, auditors and professional advisors working on securitization transactions.

In their current form, the Reg AB Proposals risk exposing non-U.S. sponsors and issuers, especially those in Europe and Australia, seeking to offer ABS to U.S. investors (as well as certain U.S. sponsors and issuers seeking to offer ABS to European and other non-U.S. investors) to non-aligned compliance requirements regarding privacy protections as well as categories and/or formats of asset-level disclosure. After the comment period on the 2011 ABS Re-Proposing Release closed, the market in the European Union independently moved forward with its own approach to the aggregation and dissemination of asset-level data for ABS, including methodologies to format data and to address a wide range of consumer privacy concerns.<sup>1</sup>

In 2010, the Bank of England began to publish its own requirements for various ABS asset classes to be eligible for refinancing through its Discount Window Facility. Since then, U.K. or European issuers that seek to take advantage of the Discount Window Facility have been providing loan-level data (and other items of information) in accordance with these requirements.

Next, in April 2011, as part of an initiative of the European Central Bank ("ECB") to establish asset-level data requirements for ABS in the Eurosystem collateral framework (to improve

---

<sup>1</sup> AFME's comment letters to the Commission's 2010 and 2011 proposals to amend Regulation AB indicated that the European Central Bank and the Bank of England were in the process of implementing asset-level data requirements that had the potential to present important differences and inconsistencies with the Commission's proposed asset-level disclosure requirements. AFME's August 2, 2010 comment letter is available at: <http://www.sec.gov/comments/s7-08-10/s70810-80.pdf>; and AFME's October 4, 2011 comment letter is available at: <http://www.sec.gov/comments/s7-08-10/s70810-207.pdf>. AFME's 2011 comment letter requests that the Commission consider an "equivalence" regime to (1) reduce duplication of compliance costs for European market participants and (2) allow European market participants to comply with applicable data protection, banking secrecy and confidentiality regulations.

transparency and to help to restore investor confidence in the European securitization markets), the ECB encouraged the creation of a data warehouse for the processing, verification and transmission of asset-level data. At the end of June 2012, European DataWarehouse GmbH was founded and it commenced operations in January 2013. Since then, European issuers of ABS, that are offered to European investors who seek to take advantage of the liquidity programs of the European Central Bank, have been providing loan-level data through this data warehouse on a voluntary basis. The ECB's asset-level data templates are designed to capture relevant information on a jurisdiction-by-jurisdiction basis while also ensuring compliance with the applicable data protection, banking secrecy and confidentiality regulations.<sup>2</sup> European ABS issuers have invested significant monetary and staff resources to developing information technology systems and data processing capabilities to be able to provide loan-level data through the above described frameworks in accordance with their respective relevant data templates.

Most recently, in February 2014, the European Securities and Markets Authority ("ESMA") published a consultation paper and first draft regulatory technical standard on the implementation of Regulation (EU) No. 462/2013 on credit rating agencies (the "RTS")<sup>3</sup>, which would for the first time in Europe impose by law mandatory asset-level disclosure requirements for European ABS transactions. ESMA has proposed that such disclosures would be required using templates based on the ECB's templates. AFME responded to this consultation on April 10, 2014 expressing a number of serious concerns on behalf of its members regarding the implications of this and other proposals made by ESMA.<sup>4</sup>

In addition, the Reserve Bank of Australia ("RBA") has developed templates for asset-level disclosures by Australian ABS issuers seeking to enter into ABS repurchase agreements with the RBA (as part of the RBA's open market operations). The RBA's templates have been designed to capture important information regarding nuanced asset data specific to the Australian market and regulatory environment while also protecting borrower privacy. In December 2013, the RBA finalized its new reporting requirements for repo-eligible ABS and has published annotated versions of the reporting templates.<sup>5</sup> The RBA's reporting requirements will become effective January 1, 2015. From this date, public reporting of asset-level data using the RBA's templates will be required for Australian ABS to be considered repo-eligible. Australian ABS issuers and sponsors have begun to invest significant resources to develop information technology systems and data processing capabilities to be able to provide loan-level data to the RBA's data warehouse in accordance with the RBA's data templates. In the future, it is possible that other non-U.S. jurisdictions may similarly adopt asset-level disclosure regimes designed to reflect home country-specific market practices and regulations.

---

<sup>2</sup> The ECB's asset-level data templates and the related taxonomy manuals are available at: <https://www.ecb.europa.eu/paym/coll/loanlevel/transmission/html/index.en.html>.

<sup>3</sup> This ESMA consultation paper is available at: [http://www.esma.europa.eu/system/files/2014-150\\_consultation\\_paper\\_on\\_cra3\\_implementation\\_0.pdf](http://www.esma.europa.eu/system/files/2014-150_consultation_paper_on_cra3_implementation_0.pdf).

<sup>4</sup> This consultation response is available at: <http://www.afme.eu/WorkArea/DownloadAsset.aspx?id=10681>.

<sup>5</sup> The Reserve Bank of Australia's templates for asset-level disclosures are available at: <http://www.rba.gov.au/securitisations/reporting-templates/index.html>

We request that the Commission take into account the markedly changed global policy, regulatory and market landscape for ABS since the closing of the comment period for the 2011 ABS Re-Proposing Release and give consideration to providing for a practical means of avoiding unduly burdensome costs and barriers to cross-border ABS offerings arising from compliance with similar but not identical loan-level data aggregation, dissemination and privacy requirements. Specifically, we recommend that the Commission adopt a substituted compliance framework pursuant to which the Commission would consider permitting compliance with requirements in a non-U.S. regulatory system to substitute for compliance with loan-level data requirements in revised Regulation AB, provided that the corresponding requirements in the non-U.S. regulatory system are comparable to the relevant provisions of revised Regulation AB.

### ***Importance of Well-Functioning Cross-border Securitization Market to the Global Economy***

GFMA is deeply engaged in the myriad of industry, regulatory, and legislative efforts that intersect with the securitization markets because it believes that the recovery of these markets and the restoration of healthy lending are essential to the recovery of the global economy. Its goal is to help regulators design a regulatory regime that addresses shortfalls and gaps in previous standards, without impeding a recovery of the global securitization market.

Securitization serves as an efficient technique for raising capital and transferring risk from originators of financial products (which drive growth in the real economy) to the capital markets. Cross-border marketing of securitizations allows originators of credit to consumers and businesses to finance in an efficient and cost-effective manner a wide range of assets (such as auto loans, residential and commercial mortgages, and credit card receivables) by offering securities backed by pools of these assets to a broad range of domestic and international investors. As banking institutions are increasingly constrained in the amount and type of credit they can supply, the ability of these other investors to provide an alternative source of financing for consumers and businesses is highly dependent upon seamless cross-border capital markets. While it is difficult to provide precise figures as to the level of reliance on the U.S. market by non-U.S. ABS market participants, AFME estimates indicate that over 25% of total issuance of European originated securitizations have in recent years been offered to U.S. investors. Annex A to this letter provides more detailed information on the importance of access to the U.S. market for European ABS issuers in the context of recent transactions.

In a November 2012 report on global developments in securitization regulations, which was produced at the direction of the Financial Stability Board, the International Organization of Securities Commissions ("IOSCO") states that, "[c]ross border activity is an important component of global securitization markets, and policy makers and regulators should be conscious of not adding to the cost of cross border activity through requirements that are duplicative of, or inconsistent with, requirements in other jurisdictions."<sup>6</sup> Accordingly, IOSCO's report includes the following recommendation: "Regulators should seek to minimize the

---

<sup>6</sup> International Organization of Securities Commissions, *Global Developments in Securitisation Regulation: Final Report*, at 10 (Nov. 16, 2012), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf> (the "IOSCO Final Report"). This report is part of a larger effort by the Financial Stability Board, acting upon the request of the G20, to develop recommendations to strengthen oversight and regulation of the securitization sector.

potentially adverse effects to cross border securitization transactions resulting from differences in approaches to asset-level disclosure and privacy protections.”<sup>77</sup>

### ***Risks of Overlapping or Non-aligned Regulatory Approaches***

Differing regulatory reform approaches that reflect a trend toward "localization" (operating under the assumption that such an approach will allow for better home country protection) in other matters has already created incompatible and duplicative compliance requirements that have negatively impacted markets and raised costs, potentially subverting many G20 goals related to reducing systemic risk in the financial system.<sup>8</sup> Introducing similar requirements in different jurisdictions without providing for substituted compliance could lead to ABS issuers becoming subject to multiple overlapping (but differing) regulatory regimes with effectively identical policy objectives in cross-border offerings. The challenges of complying with multiple regulatory regimes include:

- The structure and data requirements contemplated by Schedule L pursuant to the Reg AB Proposals have – understandably – been designed with U.S.-originated assets in mind. As such, they are sufficiently different from a technical perspective from those currently used for loan-level disclosures in Europe (or in other non-U.S. jurisdictions in the future) that European (and other non-U.S.) ABS issuers would need to invest in building additional information technology systems and data processing capabilities to be able to comply with Schedule L requirements. It is unlikely they could leverage the current systems. If European or other non-U.S. ABS issuers have loans in their pools from more than one information technology system, they will face additional complexity and cost of compliance.
- Some terms included in proposed Schedule L may not clearly match up with comparable concepts from a European or other non-U.S. perspective. European and other non-U.S. ABS issuers would likely need to seek significant discussions with Commission staff to ensure that there is a clear understanding of what those terms mean. Specifically, European and other non-U.S. loans may be underwritten and structured in a manner that is significantly different as compared to U.S. loans due to relevant non-U.S. legal system requirements and market practices. Accordingly, European and other non-U.S. ABS issuers would need to understand how to: (1) disclose material loan-level information for which there may be no clear U.S. analog; and (2) address U.S. requirements for which there may be no clear home country analog.
- Investors may be confused by the availability of a set of U.S.-style data for a pool of European (or other non-U.S.) assets for which a set of data is also made available in a comparable but different format through the European Data Warehouse (or another non-U.S. data warehouse). In addition, the disclosure of data about a European (or other non-

---

<sup>7</sup> *Id.* at 49.

<sup>8</sup> See GFMA Letter to IOSCO, Regarding Recommendations on Foundational Principles for Global Coordination in Cross-Border Regulation, March 13, 2014, available at <http://www.gfma.org/Initiatives/Cross-Border-Resolution/GFMA-Submits-Comments-to-IOSCO-on-Recommendations-on-Foundational-Principles-for-Global-Coordination-in-Cross-Border-Regulation/>.

U.S.) loan that has been underwritten and structured in accordance with local law and market practice through U.S.-style data fields risks omitting important information about home country-specific loan features that the European and other non-U.S. templates are specifically designed to capture.<sup>9</sup>

Even if ABS issuers were able to comply with multiple disclosure regimes, it is very likely that the related increased compliance costs would be ultimately passed on to consumers and the real economy. Should this situation go unaddressed in the Commission's amendments to Regulation AB, the consequences could include reducing the quality or usefulness of information available to regulators and investors, regulatory arbitrage, constrained access to, and increased cost of, funding and investment opportunities as well as less accessible, less clear and conflicting resources available for asset managers, pension funds and other investors making their risk management more difficult and complex.<sup>10</sup>

### ***Substituted Compliance Regime***

The Regulation AB Proposals present a critical opportunity to reduce challenges and complications of regulatory non-alignment for cross-border securitization transactions that have significant potential to inhibit or preclude beneficial economic activity. A reduction in cross-border transactional frictions with respect to asset-level disclosures (including any related privacy law accommodations) would provide benefits to the real economy as well as the structured debt markets generally.

To mitigate the impact of differing disclosure regimes on cross-border securitizations, we recommend adopting a framework for recognizing substituted compliance pursuant to which non-U.S. ABS issuers that comply (on a voluntary or mandatory basis) with a non-U.S. asset-level disclosure regime that is comparable to the asset-level requirements of the United States may choose to satisfy U.S. asset-level disclosure requirements by complying with such non-U.S. regime. Specifically, we recommend that securitization transactions by non-U.S. issuers should be permitted to comply with a comparable asset-level disclosure regime when the ABS transaction complies with a non-U.S. asset-level disclosure regime for which the Commission has made an affirmative comparability determination. In making comparability determinations, we recommend that the Commission take a holistic outcomes-focused approach rather than a rule-by-rule comparison. In approving a non-U.S. asset-level disclosure regime for substituted compliance, the Commission could evaluate whether such regime is comparable to that of the U.S. on a regime-by-regime basis upon application by an interested party, such as an ABS sponsor or originator. Comparability determinations may be made subject to various conditions or only with respect to certain asset classes or types of issuers. For example, even before the RTS that are expected to mandate asset-level disclosure for structured finance instruments in Europe become effective, the Commission could make a comparability determination that the

---

<sup>9</sup> For example, the ECB's RMBS template, *available at* <https://www.ecb.europa.eu/paym/coll/loanlevel/transmission/html/index.en.html>, provides for a "Right to Buy" data field as well as a data field to disclose the related purchase price only for the U.K. and Norway.

<sup>10</sup> We discuss these issues in more detail in "Regulatory Reform Programme – Extraterritoriality Issues in US and EU", *available at* <http://www.gfma.org/Initiatives/Consistency-of-Implementation/GFMA-Paper-Detailing-Extraterritoriality-Issues-in-US-and-EU/>.

current voluntary disclosure regimes for the liquidity programs of the ECB and the Bank of England are comparable.

In cases where the Commission declines to make an affirmative substituted compliance determination for a particular non-U.S. disclosure regime, it would be very helpful to affected non-U.S. ABS issuers if the Commission provides guidance on how to: (1) disclose material loan-level information for which there may be no clear U.S. analog; and (2) address U.S. requirements for which there may be no clear home country analog.

We believe that such approach would be consistent with the following declaration of the G20 Leaders: "We agree that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes."<sup>11</sup> Furthermore, this approach would also be consistent with the two U.S. substituted compliance frameworks that are summarized in Annex B hereto.

Key benefits of adopting a framework for substituted compliance would be to: (1) provide investors in non-U.S. ABS with disclosure about non-U.S. assets through data fields that are specifically designed to capture material information about jurisdiction-specific loan features that have no clear U.S. analogs; and (2) make available to non-U.S. ABS issuers exceptions or accommodations that relevant non-U.S. asset-level disclosure regimes have made, or may make available in the future, to ensure compliance with the applicable non-U.S. data protection, banking secrecy and confidentiality requirements. Such a regime would not only be in keeping with principles of international comity, but would also avoid costly and unnecessary regulation of ABS transactions when they are simultaneously subject to regulation that is comparable to that in the U.S.

### ***Conclusion***

Given the important benefits that accrue to open, unhindered cross-border markets for ABS interests, pragmatic alternatives to inconsistent national regulatory regimes should be considered in order to facilitate the operation of efficient international capital markets. In the context of comparable asset-level disclosure regimes, we are not aware of compelling domestic policy considerations that would justify increasing transactional frictions (such as increased costs of compliance) caused by potentially inconsistent disclosure regimes that unintentionally may: (1) limit the amount, and increase the cost, of credit available to consumers and businesses; (2) reduce the diversity of assets available to U.S. investors; (3) decrease the supply of safe assets; and (4) impede efficient price discovery. Accordingly, we request that you give consideration to providing for a practical means of avoiding unduly burdensome costs and barriers to cross-border ABS offerings arising from compliance with differing asset-level data aggregation, dissemination and privacy requirements. Specifically, we recommend that the Commission adopt a substituted compliance framework under which the Commission would consider permitting compliance with requirements of a non-U.S. asset-level disclosure regime to substitute for compliance with revised Regulation AB, provided that the non-U.S. disclosure regime is

---

<sup>11</sup> G20 Leaders' Declaration, St. Petersburg, September 6, 2013, 71, *available at*: <http://www.g20.utoronto.ca/2013/2013-0906-declaration.html>.

comparable to the relevant provisions of revised Regulation AB. In the event that the Commission chooses not to adopt a substituted compliance framework, we urge the Commission to engage with relevant non-U.S. regulators and affected non-U.S. ABS market participants to craft an alternative solution that avoids imposing unduly burdensome costs and barriers on cross-border ABS offerings.

\* \* \*

We are grateful for the chance to provide these comments on the Proposals. We would be pleased to answer any questions that you might have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Strongin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

DAVID STRONGIN  
Executive Director  
Global Financial Markets Association

A handwritten signature in black ink, appearing to read "Chris Dalton". The signature is cursive and somewhat stylized, with a large initial "C".

CHRIS DALTON  
Chief Executive Officer  
Australian Securitisation Forum

## Annex A

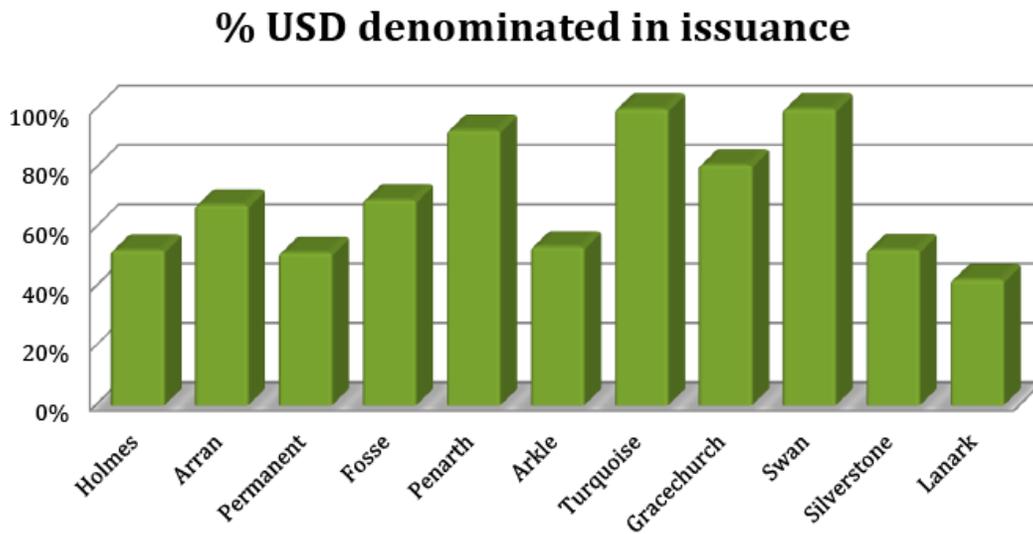
### TRANSACTIONS EVIDENCING THE IMPORTANCE TO EUROPEAN ISSUERS OF ACCESS TO USD LIQUIDITY

#### USD DENOMINATED U.K. RMBS & CARDS ISSUANCES JAN. 2011 – JUNE 2013

Date	Issuer	Seller	Collateral	AAA EUR mn	of which USD	% USD
2-Feb-11	Holmes	Santander	RMBS	2,400	869	36%
6-Apr-11	Arran	RBS	RMBS	4,282	740	17%
14-Apr-11	Permanent	Lloyds	RMBS	4,136	1,795	43%
18-May-11	Fosse	Santander	RMBS	4,276	2,650	62%
2-Jun-11	Penarth	Lloyds	CARDS	659	518	79%
21-Jul-11	Arkle	Lloyds	RMBS	2,734	2,111	77%
15-Sep-11	Holmes	Santander	RMBS	2,730	2,342	86%
6-Oct-11	Turquoise	HSBC	CARDS	372	372	100%
7-Oct-11	Gracechurch	Barclays	CARDS	748	748	100%
10-Oct-11	Arran	RBS	RMBS	3,262	2,790	86%
13-Oct-11	Silverstone	Nationwide	RMBS	12,851	2,359	18%
26-Oct-11	Permanent	Lloyds	RMBS	3,557	2,121	60%
11-Nov-11	Gracechurch	Barclays	RMBS	2,767	2,110	76%
15-Nov-11	Penarth	Lloyds	CARDS	443	443	100%
29-Nov-11	Fosse	Santander	RMBS	1,302	1,202	92%
21-Dec-11	Swan	Lloyds	RMBS	383	383	100%
13-Jan-12	Arran	RBS	CARDS	947	947	100%
18-Jan-12	Holmes	Santander	RMBS	2,646	777	29%
3-Feb-12	Arkle	Lloyds	RMBS	4,733	1,406	30%
5-Mar-12	Gracechurch	Barclays	CARDS	340	340	100%
15-Mar-12	Silverstone	Nationwide	RMBS	1,805	1,565	87%
04-Apr-12	Penarth	Lloyds	CARDS	571	571	100%
12-Apr-12	Holmes	Santander	RMBS	949	949	100%
16-May-12	Fosse	Santander	RMBS	2,558	1,373	54%
18-May-12	Gracechurch	Barclays	CARDS	469	469	100%

Date	Issuer	Seller	Collateral	AAA EUR mn	of which USD	% USD
30-May-12	Holmes	Santander	RMBS	645	113	18%
7-Jun-12	Gracechurch	Barclays	CARDS	577	577	100%
14-Jun-12	Gracechurch	Barclays	RMBS	3,807	397	10%
22-Jun-12	Turquoise	HSBC	CARDS	597	597	100%
20-Jul-12	Lanark	Clydesdale	RMBS	1,333	658	49%
23-May-13	Holmes	Santander	RMBS	1,284	580	45%
06-Jun-13	Lanark	Clydesdale	RMBS	639	226	35%

Source: Deutsche Bank



**SUMMARIES OF EXAMPLES OF  
PROPOSED OR ADOPTED  
U.S. SUBSTITUTED COMPLIANCE REGIMES**

**The Commission's Proposed Substituted Compliance Framework for Cross-Border Security-Based Swaps**

To reduce the likelihood that market participants would be subject to potentially conflicting or duplicative sets of rules regarding security-based swaps, the Commission has proposed a substituted compliance framework for four specified categories of regulatory requirements applicable to cross-border security-based swaps.<sup>12</sup> If adopted as proposed, this framework would permit a non-U.S. registered security-based swap dealer to apply to the Commission for a determination that a non-U.S. swap regulation regime is comparable to the Commission's rules. In making comparability determinations, within each category of requirements, the Commission would take a holistic approach, ultimately focusing on regulatory outcomes rather than a rule-by-rule comparison. To make a comparability determination, the Commission would consider whether the requirements of the non-U.S. regulatory system "are comparable to otherwise applicable requirements, after taking into account such factors as the [Commission] determines are appropriate, such as the scope and objectives of the relevant [non-U.S.] regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by a [non-U.S.] financial regulatory authority or authorities in such system to support its oversight of such [dealer]."<sup>13</sup> The Commission would have discretion to issue a comparability determination subject to various conditions, and may make a determination with respect to only a subset of its rules or only certain classes of dealers. The Commission would only make a comparability determination after it enters into a supervisory and enforcement memorandum of understanding or other arrangement with the relevant non-U.S. financial regulatory authority or authorities. If the Commission issues a comparability determination with respect to a particular non-U.S. regulatory system and a particular class of dealers under the proposed framework, then non-U.S. dealers that are part of

---

<sup>12</sup> See Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 78 Fed. Reg. 30,968, 30,975 (May 23, 2013) (available at <http://www.gpo.gov/fdsys/pkg/FR-2013-05-23/pdf/2013-10835.pdf>) (the "**SEC Proposal**") ("[W]e recognize the potential, in a market as global as the security-based swap market, that market participants who engage in cross-border security-based swap activity may be subject to conflicting or duplicative compliance obligations. To address this possibility, we are proposing a 'substituted compliance' framework under which we would consider permitting compliance with requirements in a foreign regulatory system to substitute for compliance with certain requirements of the Exchange Act relating to security-based swaps, provided that the corresponding requirements in the foreign regulatory system are comparable to the relevant provisions of the Exchange Act. The availability of substituted compliance should reduce the likelihood that market participants would be subject to potentially conflicting or duplicative sets of rules." (internal footnotes omitted) ).

<sup>13</sup> § 240.3a71-5 as proposed in the SEC Proposal, 78 Fed. Reg. at 31,207-08.

the relevant class would be able to rely on that determination to satisfy a specified U.S. rule by complying with the corresponding requirement of such regulatory system, provided they satisfy any conditions specified in the relevant determination.

### **CFTC's Substituted Compliance Framework**

The CFTC has adopted a substituted compliance framework in connection with specified regulatory requirements applicable to cross-border swaps.<sup>14</sup> A non-U.S. regulator, an entity subject to CFTC regulation (or a group of such entities) or a trade association may apply to the CFTC for a determination that a non-U.S. swap regulation regime is comparable and comprehensive. To make a comparability determination, the CFTC will evaluate whether the requirements of the non-U.S. jurisdiction are comparable and comprehensive compared to the applicable U.S. requirements, which will be based on a consideration of all relevant factors, including the comprehensiveness of the non-U.S. regulator's supervisory compliance program and its authority to support and enforce its oversight with regard to the activities to which substituted compliance would apply. The CFTC has discretion to issue a comparability determination subject to various conditions and expects most comparability analyses to involve consultations with non-U.S. regulators. In addition, the CFTC expects to enter into a memorandum of understanding or similar arrangement regarding information sharing and enforcement with the relevant non-U.S. regulator in connection with making a comparability determination. If the CFTC issues a comparability determination with respect to a particular jurisdiction, it will apply to all entities or transactions in such jurisdiction, to the extent provided in such determination. In December 2013, the CFTC issued comparability determinations for certain transaction and entity level regulatory requirements with respect to the following six jurisdictions: Australia, Canada, the European Union, Hong Kong, Japan and Switzerland.<sup>15</sup>

---

<sup>14</sup> See Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013) (available at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-26/pdf/2013-17958.pdf>).

<sup>15</sup> See Press Release: CFTC Approves Comparability Determinations for Six Jurisdictions for Substituted Compliance Purposes, December 20, 2013, available at: <http://www.cftc.gov/PressRoom/PressReleases/pr6802-13>.