



Deputy Chief Executive Officer

January 25, 2021

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman  
Secretary,  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549–1090

**Re: Notice of Substituted Compliance Application Submitted by the French Autorité des Marchés Financiers and the Autorité de Contrôle Prudential et de Résolution in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic; Proposed Order (File No. S7-22-20)**

Dear Ms. Countryman,

The French Banking Federation (“FBF”) is pleased to have the opportunity to comment on the above-captioned notice by the Securities and Exchange Commission (the “SEC”) concerning the substituted compliance application submitted by the French Autorité des Marchés Financiers (“AMF”) and the Autorité de Contrôle Prudential et de Résolution (“ACPR”) in connection with certain requirements applicable to security-based swap (“SBS”) dealers (“SBSDs”) and major SBS participants (together with SBSs, “SBS Entities”) subject to regulation in the French Republic and the proposed Order (the “French Order”) providing for the conditional substituted compliance in connection with the application (together, the “Proposal”).

The FBF appreciates that the French Order represents a timely and pragmatic approach to substituted compliance, but is concerned that some conditions and limitations specified by the SEC can raise significant challenges in making use of the substituted compliance granted, and have the potential to partially undermine the availability of substituted compliance for French SBSs. The FBF fully endorses the comment letter dated January 25, 2021 submitted by Securities Industry and Financial Markets Association (“SIFMA”) regarding the Proposal (“SIFMA Letter”).

Consistent with concerns raised in the SIFMA Letter, the FBF wishes to highlight the following:

**1. Scope of Foreign Requirements Identified as Conditions to Substituted Compliance**

The FBF agrees with the recommendations in the SIFMA letter that the SEC modify the scope of the EU and French requirements upon which substituted compliance would be conditioned. As proposed, the French Order would condition substituted compliance on duplicate layers of EU and French regulation, basing it both on EMIR and MiFID requirements that cover the same ground. This could result in substituted compliance being unavailable where MiFID does not line up in territorial scope with that of the SEC requirement or is not supervised by AMF for certain markets. This is not necessary to a substituted compliance finding notably in the area of trade acknowledgment and verification, and of trading relationship documentation. Moreover, an SBS Entity relying on substituted compliance must, for many of the SEC requirements listed, be subject to, and comply with, a far broader range of EU and French requirements than necessary to address the relevant Exchange Act requirements. As described in detail in Section 1 of the SIFMA Letter, this approach would result in undue burdens for French SBSDs. In particular, the FBF has considerable concerns that this approach could unreasonably expand the required scope of SBS governance requirements and potential U.S. liability in areas of EU and French law which go well beyond the scope which is necessary to substitute compliance for discrete SEC requirements. We note also the vast discrepancy in the requirements cited for different EU countries in the area of financial reporting, creating competitive disadvantages for French SBSDs relative to German SBSDs, while both are governed by the same EU requirements. Lastly, we note that the SEC requirements distinguish in several instances between prudentially regulated SBS Entities and those that are not (e.g. regarding risk management, financial reporting, recordkeeping), but the French Order does not extend the same distinctions to foreign-based SBSD registrants. The FBF agrees with the recommendations in the SIFMA letter that the SEC modify the scope of EU and French requirements upon which substituted compliance would be conditioned and clarify where some are only meant to apply to non-prudentially regulated SBS Entities. *See SIFMA Letter, Section I.*

**2. Scope of Reliance on Substituted Compliance**

We ask that the SEC confirm the understanding set out in Section VII of the SIFMA Letter with respect to an SBS Entities' notification to the SEC of the scope of its reliance on substituted compliance. This feature is critical to making substituted compliance operationally workable, given its complexity. An all or nothing approach would not be workable. *See SIFMA Letter, Section II.*

**3. Supervision and Enforcement of EU and French Laws**

The FBF supports SIFMA's request that the SEC clarify that (i) an SBS Entity would not violate the SEC's requirements where the relevant foreign regulatory authority has found no violation of the comparable French or EU requirement and the SBS Entity's conduct would have complied with the SEC's requirements (even if the SBS Entity relied on French and EU rules that imposed stricter requirements) and (ii) it will rely on the relevant foreign regulatory authority to examine and assess whether an SBS Entity is complying with EU or French requirements. This clarification is a necessary corollary of the fact that, but for SBS Entities "substituting compliance" with specific SEC requirements, the SEC has no supervisory authority or

enforcement interest over EU and French laws, an important corrective for the fact that EU laws cover broader products and activities than the SEC's mandate for SBS activities, and a basic tenet of deference. See *SIFMA Letter, Section III*.

#### **4. Transition Period**

To the extent that Exchange Act requirements not covered by the French Order apply to a non-U.S. SBS Entity's SBS with non-U.S. persons and require agreement from the counterparty, we request that the SEC provide an additional transition period of one year for a non-U.S. SBS Entity to come into compliance with such requirements with respect to the SBS Entity's non-U.S. counterparties as of the date of the SBS Entity's registration. This is particularly important as the exact applicability of these requirements to these counterparties only emerges as part of the SEC's implementation of its substituted compliance framework. See *SIFMA Letter, Section IV*.

#### **5. Recordkeeping, Reporting, and Notification—English Translations**

The FBF supports SIFMA's request that the SEC provide a time period that is commensurate with the scope of the SEC's request for an SBS Entity to furnish any requested English translations. See *SIFMA Letter, Section VII*.

#### **6. Condition Requiring the Filing of Financial and Operational Information in the Manner and Format Required by SEC Rule or Order**

We concur with SIFMA that the SEC's objectives in this regard can be achieved by an SBS Entity providing information using FOCUS Report Part II (for non-prudentially regulated SBS Entities) and FOCUS Report Part IIC (for prudentially regulated SBS Entities) by the flexible means set out in the Proposal, including permitting SBS Entities to provide information presented in accordance with generally accepted accounting principles ("GAAP") other than U.S. GAAP. Furthermore, we support the observations and recommendations made in the SIFMA Letter that would provide additional flexibility for SBS Entities with respect to their financial reporting obligations. Lastly, the FBF supports the SEC's suggested approach of requiring SBS Entities covered by the French Order to satisfy their Rule 18a-7 obligations by completing a limited number of the required line items for two years and notes that our members are participating in SIFMA's initiative to identify such line items. See *SIFMA Letter, Section VIII*.

#### **7. MoU Regarding ECB-Owned Information**

In the Proposal, the SEC conditions substituted compliance on a memorandum of understanding ("MoU") with the European Central Bank ("ECB") and/or AMF and or the ACPR to ensure that it can obtain information that cannot be shared by the AMF and ACPR without the consent of the ECB. We support SIFMA's request that the SEC confirm that, if the ACPR provides assurances (in an MoU or other arrangement) that it would use its best efforts to assist the SEC in obtaining ECB information in a prompt manner, such assurances will be sufficient for purposes of the final French Order.<sup>1</sup> See *SIFMA Letter, Section IX*.

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<sup>1</sup> We note that doing so would be consistent with the approach taken by the SEC in its Final Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to SBS Entities Subject to Regulation in the Federal Republic of Germany.

## 8. Capital and Margin for Non-prudentially Regulated SBS Entities

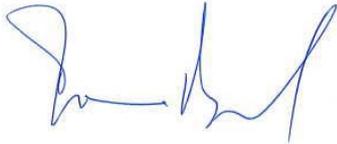
The FBF supports the SEC's approach to the capital and margin requirements for SBS Entities with no prudential regulator and the statement in the SIFMA Letter that the imposition of additional conditions is neither necessary nor appropriate for the reasons set out in *Section V* of that letter.

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The FBF appreciates the opportunity to comment on the Proposal and the SEC's consideration of our views. If you have questions or would like additional information, please contact Olivier Mittelette, at the following e-mail address: [REDACTED]

Very truly yours,

Etienne BAREL  
French Banking Federation  
Deputy Chief Executive Officer



Cc:

Honorable Allison Herren Lee, Acting Chairman, Securities and Exchange Commission  
Honorable Hester M. Peirce, Commissioner, Securities and Exchange Commission  
Honorable Elad L. Roisman, Commissioner, Securities and Exchange Commission  
Honorable Caroline A. Crenshaw, Commissioner, Securities and Exchange Commission

Ms. Carol M. McGee, Assistant Director, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission  
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