

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101932]

## **Amended and Restated 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**

### **I. Overview**

On October 14, 2021, the U.S. Securities and Exchange Commission (“Commission”) issued an order<sup>1</sup> specifying the manner and format of unaudited financial and operational information security-based swap dealers and major security-based swap participants (collectively, “SBS Entities”) relying on a Commission substituted compliance order (“Covered Entities”)<sup>2</sup> must file if they are relying on substituted compliance with respect to Securities Exchange Act of 1934 (“Exchange Act”) Rule 18a-7(a)(1) or (a)(2). The 2021 Manner and Format Order specified that these SBS Entities must complete the highlighted line items in Parts II and IIC of Form X-17A-5 (“FOCUS Report”), which were attached to the 2021 Manner and Format Order as appendices.<sup>3</sup>

Since that time, FOCUS Report Parts II and IIC have been amended so that the appendices to the 2021 Manner and Format Order no longer contain the most current versions of the FOCUS Report. First, the Commission made technical amendments to correct the formula in FOCUS Report Part II’s “Computation of CFTC Minimum Capital Requirements” section and to

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<sup>1</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) (“2021 Manner and Format Order”).

<sup>2</sup> See *infra* n.12.

<sup>3</sup> See 2021 Manner and Format Order at Apps. A and B.

assign new box numbers to certain line items in FOCUS Report Part IIC.<sup>4</sup> Second, the Commission amended FOCUS Report Part IIC to incorporate modifications to FFIEC Form 031.<sup>5</sup> The Commission also amended FOCUS Report Part II by: removing obsolete references to the Commodity Futures Trading Commission’s (“CFTC”) segregated funds requirement; adding fields to report additional types of revenue; revising the “Computation of CFTC Minimum Capital Requirements” section to be consistent with the CFTC’s Form 1-FR; and updating the customer and PAB (proprietary accounts of broker-dealers) reserve computations in the form to match amendments to these computations in Exchange Act Rule 15c3-3a.<sup>6</sup>

The Commission is issuing this amended and restated manner and format order (“2024 Manner and Format Order” or “this Order”) to incorporate these amendments to FOCUS Report Parts II and IIC<sup>7</sup> and to specify that the FOCUS Report highlighting the fields required for Covered Entities are located on the Commission’s website (instead of attaching them as appendices to this Order). This Order supersedes and replaces the 2021 Manner and Format Order.

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<sup>4</sup> See *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Correction*, Exchange Act Release No. 87005D (Feb. 2, 2022), 87 FR 7934 (Feb. 11, 2022).

<sup>5</sup> See *Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report*, Exchange Act Release No. 101925 (December 16, 2024) (the “Electronic Submission Release”).

<sup>6</sup> See *id.*

<sup>7</sup> In particular, the FOCUS Reports highlighting the fields required for Covered Entities are being revised to specify the following: (1) Firms must complete new lines 1F-1H (commissions on commodity transactions, all other commissions, total commissions) in the Statement of Income section of FOCUS Report Part II. (2) Because box 1754b is being renumbered box JJ34b, firms must complete box JJ34b instead of box 1754b. (3) Firms must complete box 2143b (intangible assets) instead of boxes 3163b (goodwill) and 0426b (other intangible assets) since the Electronic Submission Release replaces boxes 3163b and 0426b (which are subtypes of intangible assets) with box 2143b. (4) Firms must complete new boxes P793b (common equity tier 1 capital ratio – column A) and P793bb (common equity tier 1 capital ratio – column B), as applicable, due to the addition of this capital ratio to Basel III regulations. These changes have the same effective date and compliance date specified in the Electronic Submission Release.

## II. Introduction

As discussed in the 2021 Manner and Format Order, broker-dealers are required to file on a monthly or quarterly basis the applicable part of the FOCUS Report.<sup>8</sup> Broker-dealers and SBS Entities use the FOCUS Report to submit unaudited financial and operational information that is used by the Commission and broker-dealer self-regulatory organizations (if applicable) to monitor and supervise the firms. Exchange Act Rule 18a-7 (“Rule 18a-7”) requires SBS Entities not dually registered with the Commission as a broker-dealer to file Part II or Part IIC of the FOCUS Report with the Commission or its designee.<sup>9</sup> The Commission has designated the Financial Industry Regulatory Association, Inc. (“FINRA”) as the organization with which SBS Entities must file Part II or Part IIC of the FOCUS Report.<sup>10</sup>

As discussed in the 2021 Manner and Format Order, Exchange Act Rule 3a71-6 (“Rule 3a71-6”) conditionally provides that SBS Entities that are not U.S. persons may satisfy certain requirements under Exchange Act section 15F, including Rule 18a-7, by complying with comparable regulatory requirements of the SBS Entity’s home jurisdiction.<sup>11</sup> Pursuant to Rule 3a71-6, the Commission has issued orders granting conditional substituted compliance with respect to certain requirements applicable to SBS Entities subject to regulation in France, Germany, Switzerland, Spain, and the United Kingdom (“substituted compliance orders”).<sup>12</sup> The

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<sup>8</sup> See 17 CFR 240.17a-5(a).

<sup>9</sup> See 17 CFR 240.18a-7(a).

<sup>10</sup> See Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X-17A-5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Release No. 34-88866 (May 14, 2020).

<sup>11</sup> See 17 CFR 240.3a71-6.

<sup>12</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

substituted compliance orders permit certain SBS Entities in those jurisdictions to apply substituted compliance for specified Exchange Act requirements.

The substituted compliance orders permit a Covered Entity to satisfy the requirements of Rule 18a-7 with respect to filing Part II or Part IIC of the FOCUS Report by being subject to and complying with specified requirements in the Covered Entity's home jurisdiction, subject to additional conditions designed to help ensure comparability of regulatory outcomes. In particular, the conditions for applying substituted compliance with respect to Rule 18a-7 are that the Covered Entity: (1) is subject to and complies with the relevant comparable requirements of the home jurisdiction; (2) 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 ("GAAP") that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in the home jurisdiction ("manner and format condition"); (3) applies substituted compliance for the capital requirements of Exchange Act Rules 18a-1 through 18a-1d (collectively, "Rule 18a-1") if the Covered Entity does not have a prudential regulator;<sup>13</sup> and (4) applies substituted compliance for the record preservation

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*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), 86 FR 57455 (Oct. 15, 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), 86 FR 59776 (Oct. 28, 2021).

<sup>13</sup> See 17 CFR 240.18a-1 through 18a-1d.

requirements of Exchange Act Rule 18a-6(b)(1)(viii) (“Rule 18a-6(b)(1)(viii)”) if the Covered Entity does not have a prudential regulator.<sup>14</sup>

This Order specifies how a Covered Entity must meet the manner and format condition in a substituted compliance order.<sup>15</sup>

### **III. Discussion**

#### **A. Manner of Filing**

##### **i. Use Part II or IIC of the FOCUS Report and the eFOCUS System Administered by FINRA**

As discussed in the 2021 Manner and Format Order, a Covered Entity must file the financial and operational information in the format discussed below with the Commission through the SEC eFOCUS system administered by FINRA (“SEC eFOCUS system”).<sup>16</sup>

##### **ii. Frequency and Timing of Filing**

As discussed in the 2021 Manner and Format Order, a Covered Entity without a prudential regulator must file the FOCUS Report Part II 35 calendar days after the end of the month.<sup>17</sup> A Covered Entity with a prudential regulator must file the FOCUS Report Part IIC 35 calendar days after the end of the quarter.<sup>18</sup>

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<sup>14</sup> See 17 CFR 240.18a-6(b)(1)(viii). Rule 18a-6(b)(1)(viii) requires SBS Entities without a prudential regulator to preserve specified information in support of amounts included in the FOCUS Report Part II prepared as of the audit date. *Id.*

<sup>15</sup> This Order applies to the manner and format condition in the existing substituted compliance orders and to any future orders that include the manner and format condition. If necessary to achieve comparable regulatory outcomes, the Commission may prescribe additional conditions in a future substituted compliance order with respect to a particular jurisdiction to tailor a Covered Entity’s reliance on the manner and format condition to the relevant laws in the jurisdiction.

<sup>16</sup> See paragraph (a) of the ordering language below.

<sup>17</sup> See paragraph (a)(1) of the ordering language below.

<sup>18</sup> See paragraph (a)(2) of the ordering language below.

## **B. Format of Filing**

### **i. Complete a Specified Set of Line Items on the FOCUS Report**

Part II and Part IIC of the FOCUS Report elicit financial and operational information about the filer through sections consisting of uniquely numbered line items. The information (e.g., a number or dollar amount) is entered into the line items. Under Rule 18a-7, an SBS Entity must use Part II or Part IIC of the FOCUS Report to submit required financial and operational information by filling out all applicable line items on the form.

As discussed in the 2021 Manner and Format Order and as discussed above, Covered Entities must complete a limited set of applicable line items on Part II or Part IIC of the FOCUS Report (as applicable).<sup>19</sup>

### **ii. Report Information On A Consolidated or Unconsolidated Basis**

As discussed in the 2021 Manner and Format Order, Covered Entities are permitted to present the information in Part II or Part IIC of the FOCUS Report (as applicable) at the entity level of the Covered Entity on the same basis (consolidated or unconsolidated) that the Covered Entity presents information in the financial reports it files in its home jurisdiction.<sup>20</sup>

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<sup>19</sup> See paragraph (b) of the ordering language below. The minimum required line items are highlighted on Part II of the FOCUS Report (if not prudentially regulated) or Part IIC of the FOCUS Report (if prudentially regulated) and are available on the Commission's website. An SBS Entity may report information elicited in other line items on the applicable FOCUS Report if it chooses to do so. Further, as is the case with SBS Entities, Covered Entities must complete required line items *if applicable*. For example, under this Order, Covered Entities need to complete line items linked to Exchange Rule 18a-4 ("Rule 18a-4"). 17 CFR 240.18a-4. However, the Commission expects most, if not all, Covered Entities will operate under an exemption to the segregation requirements of Rule 18a-4. Almost all the line items linked to Rule 18a-4 apply if the Covered Entity is not operating under the exemption. Therefore, a Covered Entity operating under the exemption need not complete these line items (there is a line item to indicate the firm is operating under the exemption, which will need to be completed if applicable).

<sup>20</sup> See paragraph (c) of the ordering language below.

**iii. Covered Entities Without a Prudential Regulator Must Complete the Regulatory Capital Section of Part IIC of the FOCUS Report**

As discussed in the 2021 Manner and Format Order, Covered Entities without a prudential regulator must complete the Regulatory Capital section from Part IIC of the FOCUS Report, rather than completing the Computation of Net Capital and Computation of Minimum Regulatory Capital Requirements sections from Part II of the FOCUS Report.<sup>21</sup> Because Part II of the FOCUS Report does not include a section to calculate capital under the Basel capital standard, the version of that form highlighting required fields for Covered Entities includes the capital calculation section from Part IIC of the FOCUS Report.

**iv. Report Basel Capital Standard Calculation Pursuant to Home Country Requirements**

As discussed in the 2021 Manner and Format Order, a Covered Entity is permitted to complete the capital line items in the filings, if the FOCUS Report Part IIC is used as the filing form, in a manner consistent with its home jurisdiction's capital standards and related reporting requirements. Consequently, even though the capital section of Part IIC of the FOCUS Report requires SBS Entities to complete the Regulatory Capital section using the instructions accompanying form FFIEC 031 ("Call Report"), Covered Entities completing the capital section of Part IIC of the FOCUS Report pursuant to this Order may rely on local requirements to present the information on this section of the FOCUS Report.<sup>22</sup>

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<sup>21</sup> See paragraph (d) of the ordering language below.

<sup>22</sup> See paragraph (d) of the ordering language below.

**v. Report GAAP Used In Memo Field to the FOCUS Report**

As discussed in the 2021 Manner and Format Order, the manner and format condition in the Commission’s substituted compliance orders requires Covered Entities to file periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and present the financial information in the filing in accordance with GAAP that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in the home jurisdiction. Under this Order, the Covered Entity must notify the Commission in a memorandum field accompanying the FOCUS Report the GAAP it uses to present the financial information in the filing.<sup>23</sup>

**vii. Follow FOCUS Report Instructions Unless Inconsistent with this Order**

Finally, as discussed in the 2021 Manner and Format Order, the Covered Entity must follow the instructions for completing the FOCUS Report Part II or Part IIC, as applicable, to the extent the instructions are not inconsistent with the provisions of this Order.<sup>24</sup> This includes presenting information in U.S. dollars (not in local currencies).<sup>25</sup> However, a prudentially regulated Covered Entity filing the FOCUS Report Part IIC need not follow instructions

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<sup>23</sup> See paragraph (e) of the ordering language below. In particular, the Covered Entity needs to report this information in the memorandum field for line item 12003 or 12004 (as applicable) of the FOCUS Report Part II if not prudentially regulated or line item 12820 or 12821 (as applicable) of the FOCUS Report Part IIC if prudentially regulated.

<sup>24</sup> See paragraph (f) of the ordering language below.

<sup>25</sup> Covered Entities may convert local currencies at a “top-line” level to U.S. dollars at the spot rate applicable on the “as of” date of the reported amount.



referring to line items on the Call Report to the extent the Covered Entity does not report the required information in a Call Report pursuant to that instruction.<sup>26</sup>

#### **IV. Conclusion**

IT IS HEREBY ORDERED that a Covered Entity must meet the manner and format condition in a Commission order granting conditional substituted compliance with respect to Exchange Act Rule 18a-7 by:

(a)(1) If not prudentially regulated, filing through the SEC eFOCUS system a FOCUS Report Part II 35 calendar days after the end of each month; or

(2) If prudentially regulated, filing through the SEC eFOCUS system the FOCUS Report Part IIC 35 calendar days after the end of each quarter;

(b)(1) If not prudentially regulated, entering the required information on the line items (as applicable) highlighted on the FOCUS Report Part II, as specified on the Commission's website, on the FOCUS Report Part II filed pursuant to paragraph (a)(1) above; or

(2) If prudentially regulated, entering the required information on the line items (as applicable) highlighted on the FOCUS Report Part IIC, as specified on the Commission's website, on the FOCUS Report Part IIC filed pursuant to paragraph (a)(2) above;

(c) Presenting the information in the FOCUS Report Part II or Part IIC (as applicable) filed pursuant to paragraph (a) above at the entity level of the Covered Entity on the same basis (consolidated or unconsolidated) that the Covered Entity presents information in the financial reports it files in its home jurisdiction;

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<sup>26</sup> If the Covered Entity files a Call Report in the U.S. with a prudential regulator pursuant to the instructions for the Call Report, it should follow the instructions in the FOCUS Report Part IIC to report information in that report to the extent the same information is reported by the Covered Entity in the Call Report.

(d) Completing the Regulatory Capital section of the FOCUS Report Part IIC and presenting the information in that section in accordance with the reporting requirements of the Covered Entity's home jurisdiction;

(e) Identifying the generally accepted accounting principles being used to present the information in the FOCUS Report Part II or Part IIC (as applicable) filed pursuant to paragraph (a) above in the memo field for line item 12003, 12004, 12820, or 12821 (as applicable) of the report in the SEC eFOCUS system; and

(f) Reporting the information in the FOCUS Report Part II or Part IIC (as applicable) filed pursuant to paragraph (a) above in accordance with the instructions for those reports; except that the Covered Entity can report the information:

(1) In a manner consistent with a condition of this Order, if the instruction conflicts with the condition; or

(2) In a manner consistent with the requirements of its home jurisdiction, if the instruction on the FOCUS Report Part IIC requires information submitted on the Call Report and the Covered Entity does not report the required information on a Call Report.

By the Commission.

Dated: December 16, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*