

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-91476; S7-04-21)

Notice of Substituted Compliance Application Submitted by the United Kingdom Financial Conduct Authority in Connection with Certain Requirements Applicable to Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom; Proposed Order

AGENCY: Securities and Exchange Commission.

ACTION: Notice of application for substituted compliance determination; proposed order.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is soliciting public comment on an application by the United Kingdom Financial Conduct Authority (“FCA”) requesting that, pursuant to rule 3a71-6 under the Securities Exchange Act of 1934 (“Exchange Act”), the Commission determine that registered security-based swap dealers and registered major security-based swap participants (together, “SBS Entities”) that are not U.S. persons and that are subject to certain regulation in the United Kingdom (“UK”) may comply with certain requirements under the Exchange Act via compliance with corresponding requirements of the UK. The Commission also is soliciting comment on a proposed Order providing for conditional substituted compliance in connection with the application.

DATES: Submit comments on or before [INSERT DATE 25 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-04-21 on the subject line.

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-04-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/proposed.shtml>). Typically, comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Carol M. McGee, Assistant Director, Laura Compton, Senior Special Counsel, or Pamela Carmody, Special Counsel, at 202-551-5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION: The Commission is soliciting public comment on an application by the FCA requesting that the Commission determine that SBS Entities that are not U.S. persons and that are subject to certain regulation in the UK may satisfy certain requirements under the Exchange Act by complying with comparable requirements in the UK. The

Commission also is soliciting comment on a proposed Order, set forth in Attachment A, providing for conditional substituted compliance in connection with the FCA application.

I. Background

On August 6, 2021, market participants will begin to count security-based swap positions toward the thresholds for registration with the Commission as an SBS Entity.¹ Exchange Act rule 3a71-6² conditionally provides that non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F³ by complying with comparable regulatory requirements of a foreign jurisdiction.⁴ Substituted compliance potentially is available in connection with requirements regarding business conduct and supervision, chief compliance officers, trade acknowledgment and verification, non-prudentially regulated capital and margin, recordkeeping and reporting, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.⁵

¹ See Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR 43872, 53954 (Aug. 22, 2019) (“Capital and Margin Adopting Release”); see also Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6345-49 (Feb. 4, 2020).

² 17 CFR 240.3a71-6.

³ 15 U.S.C. 78o-10.

⁴ The Commission also has discussed the parameters of substituted compliance in connection with substituted compliance requests regarding the Federal Republic of Germany and the French Republic. See Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726 (Nov. 13, 2020) (“German Notice and Proposed Order”); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) (“German Substituted Compliance Order”); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) (“French Notice and Proposed Order”).

⁵ See Exchange Act rule 3a71-6(d). Substituted compliance is not available for antifraud prohibitions and information-related requirements under section 15F. See Exchange Act rule 3a71-6(d)(1) (specifying that substituted compliance is not available in connection with the antifraud provisions of Exchange Act section 15F(h)(4)(A) and Exchange Act rule 15Fh-4(a), 17 CFR 240.15Fh-4(a), and the information-related provisions of Exchange Act sections 15F(j)(3) and 15F(j)(4)(B)). Substituted compliance under rule 3a71-6 also does not extend to certain other provisions of the federal securities laws that apply to security-based swaps, such as: (1) additional antifraud prohibitions (see Exchange Act section 10(b), 15 U.S.C. 78j(b), Exchange Act rule 10b-5, 17 CFR 240.10b-5, and Securities Act of 1933 section 17(a), 15 U.S.C. 77q(a)); (2) requirements related to transactions with counterparties that are not eligible contract participants

Substituted compliance in part is predicated on the Commission determining the analogous foreign requirements are “comparable” to the applicable requirements under the Exchange Act, after accounting for factors such as the “scope and objectives” of the relevant foreign regulatory requirements and the effectiveness of the relevant foreign authority’s or authorities’ supervisory and enforcement frameworks.⁶ Substituted compliance further requires that the Commission and the relevant foreign financial regulatory authorities have entered into an effective supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation and other matters related to substituted compliance.⁷ A foreign financial regulatory authority may submit a substituted compliance application only if the authority provides “adequate assurances” that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission “to provide

(“ECPs”) (see Exchange Act section 6(l), 15 U.S.C. 78f(l); Securities Act of 1933 section 5(e), 15 U.S.C. 77e(e)); (3) segregation of customer assets (see Exchange Act section 3E, 15 U.S.C. 78c-5; Exchange Act rule 18a-4, 17 CFR 240.18a-4); (4) required clearing upon counterparty election (see Exchange Act section 3C(g)(5), 15 U.S.C. 78c-3(g)(5)); (5) regulatory reporting and public dissemination (see generally Regulation SBSR, 17 CFR 242.900 et seq.); (6) SBS Entity registration (see Exchange Act section 15F(a) and (b)); and (7) registration of offerings (see Securities Act of 1933 section 5, 15 U.S.C. 77e).

⁶ See Exchange Act rule 3a71-6(a)(2)(i).

⁷ See Exchange Act rule 3a71-6(a)(2)(ii). The Commission and the FCA are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance. Because the FCA asks the Commission to permit certain entities regulated and supervised by both the FCA and the UK Prudential Regulation Authority (“PRA”) to use substituted compliance, the Commission and the PRA are also in the process of developing a memorandum of understanding or other arrangement to address cooperation matters related to substituted compliance. These memoranda of understanding or other arrangements will need to be in place before the Commission may allow Covered Entities (as defined herein) to use substituted compliance to satisfy obligations under the Exchange Act. The Commission expects to publish any such memorandum of understanding or arrangement on its website at www.sec.gov under the “Substituted Compliance” tab, which is located on the “Security-Based Swap Markets” page in the Division of Trading and Markets section of the site.

prompt access to the Commission to such entity’s books and records or to submit to onsite inspection or examination by the Commission.”⁸

Commission rule 0-13⁹ addresses procedures for filing substituted compliance applications. The rule provides that the Commission will publish a notice when a completed application has been submitted and that any person may submit to the Commission “any information that relates to the Commission action requested in the application.”¹⁰

II. The FCA’s Substituted Compliance Request

The FCA has submitted a complete substituted compliance application to the Commission (“FCA Application”).¹¹ Pursuant to rule 0-13, the Commission is publishing notice of the FCA Application together with a proposed Order to conditionally grant substituted compliance to an entity that (1) is a security-based swap dealer or major security-based swap participant registered with the Commission; (2) is not a “U.S. person,” as that term is defined in rule 3a71-3(a)(4) under the Exchange Act;¹² (3) is a “MiFID investment firm” or “third country investment firm,” as such terms are defined in the FCA Handbook Glossary, that has permission from the FCA or PRA under Part 4A of FSMA to carry on regulated activities relating to

⁸ See Exchange Act rule 3a71-6(a)(3). The FCA has satisfied this prerequisite in the Commission’s preliminary view, taking into account information and representations that the FCA provided regarding certain UK requirements that are relevant to the Commission’s ability to inspect, and access the books and records of, Covered Entities (as defined herein).

⁹ 17 CFR 240.0-13.

¹⁰ See Commission rule 0-13(h). The Commission may take final action on a substituted compliance application no earlier than 25 days following publication of the notice in the Federal Register. See id.

¹¹ See Letter from Nausicaa Delfas, Executive Director of International, FCA, dated March 19, 2021. The FCA Application is available on the Commission’s website at: <https://www.sec.gov/files/uk-financial-conduct-authority-complete-application-substituted-compliance-031921.pdf>.

¹² 17 CFR 240.3a71-3(a)(4).

investment services and activities in the UK; and (4) is supervised by the FCA under the fixed supervision model and, if the firm is a PRA-authorized person, also supervised by the PRA as a Category 1 firm (each, a “Covered Entity”).¹³ In making its substituted compliance determination, the Commission will consider public comments on the FCA Application and the proposed Order.

The FCA seeks substituted compliance for Covered Entities in connection with a number of requirements under Exchange Act section 15F.

A. Relevant market participants and general conditions

The Commission will consider whether to allow substituted compliance to be used by any Covered Entity.

B. Relevant section 15F requirements

The FCA requests that the Commission issue an order determining that – for substituted compliance purposes – applicable requirements in the UK are comparable with the following requirements under Exchange Act section 15F:

- Risk control requirements – Requirements related to internal risk management systems, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression and trading relationship documentation.¹⁴

¹³ The terms “MiFID investment firm” and “third country investment firm” include credit institutions when they provide investment services or perform investment activities in the UK. See FCA Handbook Glossary.

¹⁴ See part IV, infra.

- Capital and margin requirements – Requirements related to capital applicable to non-prudentially regulated security-based swap dealers and requirements related to margin applicable to non-prudentially regulated SBS Entities.¹⁵
- Internal supervision, chief compliance officer and additional Exchange Act section 15F(j) requirements – Requirements related to diligent supervision, conflicts of interest, information gathering under Exchange Act section 15F(j) and chief compliance officers.¹⁶
- Counterparty protection requirements – Requirements related to disclosure of material risks and characteristics and material incentives or conflicts of interest, “know your counterparty,” suitability of recommendations, fair and balanced communications, disclosure of daily marks and disclosure of clearing rights.¹⁷

¹⁵ See part V, infra. The FCA requests substituted compliance in connection with capital and margin requirements applicable to non-prudentially regulated SBS Entities pursuant to Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d, and 18a-3. 17 CFR 240.18a-1 through 18a-1d, and 17 CFR 240.18a-3. The FCA does not request substituted compliance in connection with capital requirements applicable to non-prudentially regulated major security-based swap participants pursuant to Exchange Act rule 18a-2, 17 CFR 240.18a-2. The proposed Order defines the term “prudentially regulated” to mean an SBS Entity that has a “prudential regulator” as that term is defined in Exchange Act section 3(a)(74), 15 U.S.C. 78c(a)(74). See para. (g)(41) to the proposed Order.

¹⁶ See part VI, infra.

¹⁷ See part VII, infra. The FCA is not requesting substituted compliance in connection with: ECP verification requirements (Exchange Act section 15F(h)(3)(A) and Exchange Act rule 15Fh-3(a)(1), 17 CFR 240.15Fh-3(a)(1)); “special entity” provisions (Exchange Act sections 15F(h)(4) and (5) and Exchange Act rules 15Fh-3(a)(2) and (3), 15Fh-4(b) and 15Fh-5, 17 CFR 240.15Fh-3(a)(2) and (3), 240.15Fh-4(b) and 240.15Fh-5); and political contribution provisions (Exchange Act rule 15Fh-6, 17 CFR 240.15Fh-6).

- Recordkeeping, reporting, notification and securities count requirements – Requirements related to making and keeping current certain prescribed records, the preservation of records, reporting, notification and securities counts.¹⁸

C. Comparability considerations and proposed Order

Though the UK ceased to be a member of the European Union (the “EU”) on January 31, 2020, market participants in the UK remain subject to UK requirements implemented pursuant to EU directives, and to EU regulations that have been added to UK law.¹⁹ Those requirements include those related to: organization, compliance and conduct;²⁰ risk-mitigation;²¹ prudential

¹⁸ See part VIII, *infra*.

¹⁹ In adding EU regulations to UK law, the UK in some cases has adopted UK versions of these regulations that differ from the original EU versions “as necessary to account for the effects of Brexit.” See FCA Application Appendix A at 7. The Commission has reviewed the FCA Application in light of the UK versions of these regulations.

²⁰ The Financial Services and Markets Act 2000 (“FSMA”) gives the FCA and PRA powers to make rules and guidance for firms within the scope of FSMA’s financial services regulatory regime, including MiFID investment firms and third country investment firms. Relevant elements of the EU’s Markets in Financial Instruments Directive, Directive 2014/65/EU (“MiFID”), have been implemented in the UK via provisions in the FCA Handbook and PRA Rulebook. These provisions in the FCA Handbook and the PRA Rulebook address organizational, compliance and conduct requirements applicable to MiFID investment firms and third country investment firms. The UK version of Commission Delegated Regulation (EU) 2017/565 (“UK MiFID Org Reg”) in part supplements the FCA Handbook and the PRA Rulebook with respect to organizational requirements for these firms. The UK version of the Markets in Financial Instruments Regulation, Regulation (EU) 648/2012 (“UK MiFIR”), addresses certain recordkeeping requirements. Commission Delegated Directive (EU) 2017/593 (“MiFID Delegated Directive”) in part supplements MiFID with regard to safeguarding client property, and in the UK has been implemented in relevant part in the FCA Handbook and PRA Rulebook.

²¹ The UK version of the European Market Infrastructure Regulation (“EMIR”), Regulation (EU) 648/2012 (“UK EMIR”), in part imposes certain risk mitigation requirements on counterparties in connection with non-centrally cleared OTC derivatives transactions. The UK version of Delegated Regulation (EU) 149/2013 (“UK EMIR RTS”) supplements EMIR with requirements related to confirmations, portfolio reconciliation, portfolio compression and dispute resolution. The UK version of Delegated Regulation (EU) 2016/2251 (“UK EMIR Margin RTS”) further supplements EMIR with requirements related to documentation and collateral.

matters;²² and certain other matters relevant to the application.²³ In the view of the FCA, UK requirements taken as a whole produce regulatory outcomes that are comparable to those of the relevant requirements under the Exchange Act.²⁴

In the Commission’s preliminary view, requirements under the Exchange Act and UK requirements maintain similar approaches with respect to achieving regulatory goals in several respects, but follow differing approaches or incorporate disparate elements in certain other respects. The Commission has considered those similarities and differences when analyzing comparability and developing preliminary views, while recognizing that differences in approach do not necessarily preclude substituted compliance in light of the Commission’s holistic, outcomes-oriented framework for assessing comparability.²⁵

²² The EU’s Capital Requirements Directive IV, Directive 2013/36/EU (“CRD”), has been adopted in the UK via provisions in the FCA Handbook and PRA Rulebook. The FCA Handbook sets forth prudential and related requirements applicable in relevant part to IFPRU investment firms. The PRA Rulebook sets forth prudential and related requirements applicable in relevant part to UK banks and UK designated investment firms. The UK version of the Capital Requirements Regulation (“CRR”), Regulation (EU) 575/2013 (“UK CRR”), further addresses prudential and related requirements for those firms. The UK version of Commission Implementing Regulation (EU) 680/2014 (“UK CRR Reporting ITS”) sets forth implementing technical standards regarding supervisory reporting.

²³ The UK version of the Market Abuse Regulation, Regulation (EU) 596/2014 (“UK MAR”), sets forth requirements to enhance market integrity and investor protection. The UK version of the MAR Investment Recommendations Regulation, Commission Delegated Regulation (EU) 2016/958 (“UK MAR Investment Recommendations Regulation”), supplements UK MAR with respect to regulatory technical standards regarding investment recommendations. The UK’s Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“MLR 2017”) sets forth “know your counterparty” requirements.

²⁴ The FCA Application includes a series of analyses that compare UK requirements with the applicable requirements under the Exchange Act in the following areas: risk control (see FCA Application Appendix B category 1), books and records (see FCA Application Appendix B category 2), internal supervision and compliance (see FCA Application Appendix B category 3) and counterparty protection (see FCA Application Appendix B category 4). These analyses are available on the Commission’s website along with the remainder of the FCA Application. See note 11, supra.

²⁵ In this context, the Commission recognizes that other regulatory regimes will have exclusions, exceptions and exemptions that may not align perfectly with the corresponding requirements

Based on the Commission’s analysis of the application and review of relevant UK requirements, the proposed Order, located at Attachment A, would grant substituted compliance subject to specific conditions and limitations. When Covered Entities seek to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable UK requirements would lead to a violation of those requirements under the Exchange Act and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

III. Applicable Entities and General Conditions

A. Covered Entities for which the Commission is proposing a positive conditional substituted compliance determination

Under the proposed Order, substituted compliance could be applied by “Covered Entities” – a term that would limit the scope of the substituted compliance determination to SBS Entities that are subject to applicable UK requirements and oversight. Consistent with the parameters of substituted compliance under Exchange Act rule 3a71-6, the proposed “Covered Entity” definition provides that the relevant entity must be a security-based swap dealer or major security-based swap participant registered with the Commission, and that the entity cannot be a U.S. person.²⁶ The proposed “Covered Entity” definition further would provide that the entity must be either a MiFID investment firm or a third country investment firm that has permission from the FCA or PRA under Part 4A of FSMA to carry on regulated activities relating to

under the Exchange Act. Where the Commission preliminarily has found that the UK regime produces comparable outcomes notwithstanding those particular differences, the Commission proposes to make a positive determination on substituted compliance. Where the Commission preliminarily has found that those exclusions, exemptions and exceptions lead to outcomes that are not comparable, however, the proposal would not provide for substituted compliance.

²⁶ See paras. (g)(1)(i) and (ii) to the proposed Order.

investment services and activities in the UK.²⁷ Each entity also must be supervised by the FCA under the fixed supervision model and, if the firm is a PRA-authorized person, also supervised by the PRA as a Category 1 firm.²⁸ These prongs of the definition are intended to help ensure that Covered Entities are subject to relevant UK requirements and oversight.

B. General conditions and prerequisites

Substituted compliance under the proposed Order would be subject to a number of conditions and other prerequisites, to help ensure that the relevant UK requirements that form the basis for substituted compliance in practice will apply to the Covered Entity’s security-based swap business and activities, and to promote the Commission’s oversight over entities that avail themselves of substituted compliance.

1. “Subject to and complies with” applicability provisions

Each relevant section of the proposed Order would be subject to the condition that the Covered Entity “is subject to and complies with” the applicable UK requirements that are needed to establish comparability. Accordingly, the proposed Order would not provide substituted compliance when a Covered Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant UK requirements do not apply to the security-based swap activities of a non-UK branch of a MiFID investment firm or to a third country investment firm. In that event, the Covered Entity would not be “subject to” those requirements, and the Covered Entity could not rely on substituted compliance in connection with those activities.²⁹

²⁷ See para. (g)(1)(iii) to the proposed Order.

²⁸ See para. (g)(1)(iv) to the proposed Order.

²⁹ An SBS Entity’s “voluntary” compliance with the relevant UK requirements would not suffice for these purposes. Substituted compliance reflects an alternative means by which an SBS Entity may comply with applicable requirements under the Exchange Act, and thus mandates that the SBS Entity be subject to the requirements needed to establish comparability and face

2. Additional general conditions

Substituted compliance under the proposed Order further would be subject to general conditions intended to help ensure the applicability of relevant UK requirements, and to facilitate the Commission's oversight of firms that avail themselves of substituted compliance. In particular:

- “Regulated activities” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook (“FCA SYSC”) 4, 5, 6, 7, 9 and/or 10, certain parts of the PRA Rulebook and/or MLR 2017, the Covered Entity's relevant security-based swap activities must constitute “regulated activities” as defined for purposes of the relevant UK provisions, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.³⁰
- UK MiFID “investment services or activities” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Product Intervention and Product Governance Sourcebook of the FCA Handbook (“FCA PROD”) 3 and/or UK MiFID Org Reg, the Covered Entity's relevant security-based swap activities must constitute “investment services or activities,” as defined in the FCA

consequences arising from any failure to comply with those requirements. Moreover, the comparability assessment takes into account the effectiveness of the supervisory compliance program administered and the enforcement authority exercised by the FCA and/or PRA, which would not be expected to promote comparable outcomes when compliance merely is “voluntary.”

³⁰ See para. (a)(1) to the proposed Order.

Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity’s authorization from the FCA and/or PRA to conduct regulated activities in the UK.³¹

- UK “MiFID or equivalent third country business” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Conduct of Business Sourcebook of the FCA Handbook (“FCA COBS”) 2, 4, 6, 8A, 9A, 14 and/or 14A, the Covered Entity’s relevant security-based swap activities must constitute “MiFID or equivalent third country business,” as defined in the FCA Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity’s authorization from the FCA and/or PRA to conduct regulated activities in the UK.³²
- UK “designated investment business” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA COBS 11, the Covered Entity’s relevant security-based swap activities must constitute “MiFID business” that is also “designated investment business,” each as defined in the FCA

³¹ See para. (a)(2) to the proposed Order. Under this condition, a Covered Entity’s security-based swap activities must constitute “investment services or activities” only to the extent that the relevant part of the proposed Order requires the entity to be subject to and comply with the UK provisions listed in paragraph (a)(2) to the proposed Order. The security-based swap activities need not be “investment services or activities” when the relevant part of the proposed Order does not require compliance with one of those provisions (e.g., paragraph (e)(6) to the proposed Order addressing substituted compliance for daily mark disclosure requirements).

³² See para. (a)(3) to the proposed Order. Under this condition, a Covered Entity’s security-based swap activities must constitute “MiFID or equivalent third country business” only to the extent that the relevant part of the proposed Order requires the entity to be subject to and comply with the UK provisions listed in paragraph (a)(3) to the proposed Order. The security-based swap activities need not be “MiFID or equivalent third country business” when the relevant part of the proposed Order does not require compliance with one of those provisions (e.g., paragraph (e)(6) to the proposed Order addressing substituted compliance for daily mark disclosure requirements).

Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity’s authorization from the FCA and/or PRA to conduct regulated activities in the UK.³³

- UK “MiFID business” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Client Asset Sourcebook of the FCA Handbook (“FCA CASS”) 6 and/or 7, the Covered Entity must not be an “ICVC” as defined in the FCA Handbook Glossary,³⁴ the Covered Entity’s relevant security-based swap activities must constitute “regulated activities” as defined for purposes of the relevant UK provisions and “MiFID business” as defined in the FCA Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity’s authorization from the FCA and/or PRA to conduct regulated activities in the UK.³⁵
- Activities covered by FCA SYSC 10A – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 10A, the

³³ See para. (a)(4) to the proposed Order. Under this condition, a Covered Entity’s security-based swap activities must constitute “MiFID business” that is also “designated investment business” only to the extent that the relevant part of the proposed Order requires the entity to be subject to and comply with FCA COBS 11. The security-based swap activities need not be “MiFID business” that is also “designated investment business” when the relevant part of the proposed Order does not require compliance with FCA COBS 11 (e.g., paragraph (e)(6) addressing substituted compliance for daily mark disclosure requirements).

³⁴ “ICVC” means investment company with variable capital as defined in the FCA Handbook Glossary.

³⁵ See para. (a)(5) to the proposed Order. Under this condition, a Covered Entity’s security-based swap activities must constitute “regulated activities” that is also “MiFID business” only to the extent that the relevant part of the proposed Order requires the entity to be subject to and comply with the UK provisions listed in paragraph (a)(5) to the proposed Order. The security-based swap activities need not be “MiFID business” that is also “designated investment business” when the relevant part of the proposed Order does not require compliance with one of those provisions (e.g., paragraph (e)(6) addressing substituted compliance for daily mark disclosure requirements).

Covered Entity’s relevant security-based swap activities must constitute activities described in FCA SYSC 10A.1.1(2)(a), (b) and/or (c), must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity’s authorization from the FCA and/or PRA to conduct regulated activities in the UK.³⁶

- UK MiFID “clients” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14 and/or 14A, FCA PROD 3, FCA SYSC 10.1.8, FCA SYSC 10A and/or UK MiFID Org, the Covered Entity’s relevant counterparties (or potential counterparties) must be “clients” (or potential “clients”) as defined in FCA COBS 3.2.1R.³⁷
- UK MiFID “financial instruments” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14 and/or 14A, FCA PROD 3, FCA SYSC 10A, UK MAR, UK MAR Investment Recommendations Regulation and/or UK MiFID Org Reg, the relevant security-based swap must be a “financial instrument” as defined in Part 1 of Schedule 2 of the UK Regulated Activities Order.³⁸

³⁶ See para. (a)(6) to the proposed Order. Under this condition, a Covered Entity’s security-based swap activities must constitute activities described in FCA SYSC 10A.1.1(2)(a), (b) and/or (c) only to the extent that the relevant part of the proposed Order requires the entity to be subject to and comply with FCA SYSC 10A. The security-based swap activities need not be activities described in those provisions when the relevant part of the proposed Order does not require compliance with FCA SYSC 10A (e.g., paragraph (e)(6) addressing substituted compliance for daily mark disclosure requirements).

³⁷ See para. (a)(7) to the proposed Order.

³⁸ See para. (a)(8) to the proposed Order.

- UK CRD/CRR “institution” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of UK CRR, the Covered Entity must be an “institution” as defined in UK CRR article 4(1)(3).³⁹
- “Common platform firm” or “third country firm” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9 and/or 10, the Covered Entity must be either a “common platform firm” (other than a “UCITS investment firm”) or a “third country firm,” each as defined in the FCA Handbook Glossary.⁴⁰
- “IFPRU investment firm” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 19A, the Prudential Sourcebook for Investment Firms of the FCA Handbook (“FCA IFPRU”) and/or the Prudential Sourcebook for Banks, Building Societies and Investment Firms of the FCA Handbook (“FCA BIPRU”), the Covered Entity must be an “IFPRU investment firm” as defined in the FCA Handbook Glossary.⁴¹
- “UK bank” or “UK designated investment firm” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 19D and/or certain parts of the PRA Rulebook, the Covered Entity must be a “UK bank” or “UK designated investment firm,” each as defined in the FCA Handbook Glossary (in the case of chapter 19D of FCA SYSC) or in the PRA Rulebook Glossary (in the case of a part of the PRA Rulebook).⁴²

³⁹ See para. (a)(9) to the proposed Order.

⁴⁰ See para. (a)(10) to the proposed Order.

⁴¹ See para. (a)(11) to the proposed Order.

⁴² See para. (a)(12) to the proposed Order.

- Covered Entity’s counterparties as UK EMIR “counterparties” – For each condition in the proposed Order that requires the application of, and compliance with, provisions of UK EMIR, UK EMIR RTS and/or UK EMIR Margin RTS, if the counterparty to the Covered Entity is not a “financial counterparty” or “non-financial counterparty” as defined in UK EMIR articles 2(8) or 2(9), respectively, the Covered Entity must comply with the applicable condition as if the counterparty were a financial counterparty or non-financial counterparty.⁴³ If the Covered Entity reasonably determines that the counterparty conducts a financial business that would cause it to be a financial counterparty if it were UK-established and UK-authorized, then the proposed Order would require the Covered Entity to treat the counterparty as a financial counterparty; otherwise, the proposed Order would require the Covered Entity to treat the counterparty as a non-financial counterparty.⁴⁴ In addition, the proposed Order would provide that a Covered Entity complying with UK EMIR could not apply substituted compliance by complying with third country requirements that UK authorities may determine to be equivalent to UK EMIR.⁴⁵
- Security-based swap status under UK EMIR – For each condition in the proposed Order that requires the application of, and compliance with, provisions of UK EMIR, UK EMIR RTS and/or UK EMIR Margin RTS, either: (1) the relevant security-based swap must be an “OTC derivative” or “OTC derivative contract,” as defined in UK EMIR article 2(7), that has not been cleared by a CCP and otherwise is subject to the provisions of UK

⁴³ See para. (a)(13) to the proposed Order.

⁴⁴ See para. (a)(13)(i) to the proposed Order.

⁴⁵ See para. (a)(13)(ii) to the proposed Order.

EMIR article 11, UK EMIR RTS articles 11 through 15, and UK EMIR Margin RTS article 2; or (2) the relevant security-based swap must have been cleared by a central counterparty that has been authorized or recognized to clear derivatives contracts in the UK.⁴⁶

- Memorandum of understanding – The Commission has an applicable memorandum of understanding or other arrangement with the FCA and PRA addressing cooperation with respect to the proposed Order at the time the Covered Entity makes use of substituted compliance.⁴⁷
- Notice of reliance on substituted compliance – A Covered Entity must provide notice of its intent to rely on the proposed Order by notifying the Commission in the manner specified on the Commission’s website.⁴⁸ In the notice, the Covered Entity would need to identify each specific substituted compliance determination in the proposed Order for which the Covered Entity intends to apply substituted compliance.⁴⁹ If a Covered Entity

⁴⁶ See para. (a)(14) to the proposed Order.

⁴⁷ See para. (a)(15) to the proposed Order.

⁴⁸ See para. (a)(16) to the proposed Order.

⁴⁹ If the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the capital and margin determinations in paragraph (c) of the proposed Order, it would indicate in the notice that it is relying on the determinations in paragraph (c). However, if the Covered Entity intends to rely on the margin determination but not the capital determination, it would need to indicate in the notice that it is relying on paragraph (c)(2) of the proposed Order (the margin determination). In this case, paragraph (c)(1) of the proposed Order (the capital determination) would be excluded from the notice and the Covered Entity would need to comply with the Exchange Act capital requirements. Further, as discussed below in section VIII.B. of this notice, the recordkeeping and reporting determinations in the proposed Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those rules for which they want to rely on substituted compliance. For example, paragraph (f)(1)(i) of the proposed Order sets forth the Commission’s preliminary substituted compliance determinations with respect to the requirements of Exchange Act rule 18a-5, 17 CFR 240.18a-5. These proposed determinations are set forth in paragraphs (f)(1)(i)(A) through (O). If a Covered Entity intends to rely on some but not all of the determinations, it

elects not to apply substituted compliance with respect to a specific substituted compliance determination in the proposed Order, it must comply with the Exchange Act requirements subject to that determination. Further, except in the case of the counterparty protection requirements and linked recordkeeping requirements discussed below, the Commission has determined that the Exchange Act requirements subject to substituted compliance determinations in the proposed Order are entity-level requirements. Therefore, if a Covered Entity elects to apply substituted compliance to these entity-level requirements, it must do so at the entity level. Finally, a Covered Entity must promptly update the notice if it intends to modify its reliance on the positive substituted compliance determinations in the proposed Order.⁵⁰

IV. Substituted Compliance for Risk Control Requirements

A. FCA request and associated analytic considerations

The FCA Application in part requests substituted compliance in connection with risk control requirements under the Exchange Act relating to:

would need to identify in the notice the specific determinations in this paragraph it intends to rely on (e.g., paragraphs (f)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a-5 requirement. Finally, as discussed below in sections VII.B.2. and VIII.B.2. of this notice, a Covered Entity would be able to apply substituted compliance at the transaction level (rather than the entity level) for certain counterparty protection requirements and the recordkeeping requirements that are linked to them. In this case, the notice would need to indicate the class of transactions (e.g., transactions with UK counterparties) for which the Covered Entity is applying substituted compliance with respect to the counterparty protection requirements and linked recordkeeping requirements.

⁵⁰ A Covered Entity would modify its reliance on the positive substituted compliance determinations in the proposed Order, and thereby trigger the requirement to update its notice, if it adds or subtracts determinations for which it is applying substituted compliance or completely discontinues its reliance on the proposed Order.

- Risk management systems – Internal risk management system requirements pursuant to Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I).⁵¹ Those provisions address the obligation of SBS Entities to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.⁵²
- Trade acknowledgment and verification – Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-2.⁵³ Those provisions help avoid legal and operational risks by requiring definitive written records of transactions and for procedures to avoid disagreements regarding the meaning of transaction terms.⁵⁴
- Portfolio reconciliation and dispute reporting – Portfolio reconciliation and dispute reporting requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule

⁵¹ 17 CFR 240.15Fh-3(h)(2)(iii)(I). The FCA also is requesting substituted compliance in connection with Exchange Act rule 18a-1(f), 17 CFR 240.18a-1(f), which sets forth additional internal risk management system requirements for non-prudentially regulated security-based swap dealers. The Commission preliminarily has considered that request holistically as part of its analysis of the FCA’s request for substituted compliance for capital requirements for those entities. See part V, infra. The FCA is not requesting substituted compliance in connection with Exchange Act rule 18a-2(c), which sets forth additional internal risk management system requirements for non-prudentially regulated major security-based swap participants.

⁵² See Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70250 (Nov. 23, 2012) (proposing capital and margin requirements for security-based swap dealers and major security-based swap participants). The FCA Application discusses UK requirements that address Covered Entities’ obligations related to risk management. See FCA Application Appendix B category 1 at 19-71.

⁵³ 17 CFR 240.15Fi-2.

⁵⁴ See Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39808, 39809 & 39820 (Jun. 17, 2016) (“Trade Acknowledgment and Verification Adopting Release”). The FCA Application discusses UK requirements that address Covered Entities’ obligations related to confirmations. See FCA Application Appendix B category 1 at 72-84.

15Fi-3.⁵⁵ Those provisions require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps and promptly notify the Commission and applicable prudential regulators regarding certain valuation disputes.⁵⁶

- Portfolio compression – Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-4.⁵⁷ Those provisions require that SBS Entities have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.⁵⁸
- Trading relationship documentation – Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-5.⁵⁹ Those provisions require that SBS Entities have procedures to execute written security-based swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.⁶⁰

Taken as a whole, these risk control requirements help to promote market stability by mandating that SBS Entities follow practices that are appropriate to manage the market, credit, counterparty, operational and legal risks associated with their security-based swap businesses.

⁵⁵ 17 CFR 240.15Fi-3.

⁵⁶ See Exchange Act Release No. 87782 (Dec. 18, 2019), 85 FR 6359, 6360-61 (Feb. 4, 2020) (“Risk Mitigation Adopting Release”). The FCA Application discusses UK requirements that address portfolio reconciliation and dispute resolution and reporting. See FCA Application Appendix B category 1 at 85-93.

⁵⁷ 17 CFR 240.15Fi-4.

⁵⁸ See Risk Mitigation Adopting Release, 85 FR at 6361. The FCA Application discusses UK portfolio compression requirements. See FCA Application Appendix B category 1 at 94-96.

⁵⁹ 17 CFR 240.15Fi-5.

⁶⁰ See Risk Mitigation Adopting Release, 85 FR at 6361. The FCA Application discusses UK requirements regarding records of agreements with counterparties. See FCA Application Appendix B category 1 at 96-100.

The Commission's comparability assessment accordingly focuses on whether the analogous foreign requirements – taken as a whole – produce comparable outcomes with regard to providing that Covered Entities follow risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses.

B. Preliminary views and proposed Order

1. General considerations

In the Commission's preliminary view based on the FCA Application and the Commission's review of applicable provisions, relevant UK requirements would produce regulatory outcomes that are comparable to those associated with the above risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses. Substituted compliance accordingly would be conditioned on Covered Entities being subject to the UK provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with these risk control requirements under the Exchange Act.⁶¹

⁶¹ In connection with risk management system requirements, a Covered Entity must be subject to and comply with provisions of UK law that implement MiFID article 16(4) and (5) and CRD articles 74, 76 and 79 through 87; UK CRR articles 286 through 288 and 293; UK EMIR Margin RTS article 2; and UK MiFID Org Reg articles 21 through 24. See para. (b)(1) to the proposed Order. In connection with trade acknowledgment and verification requirements, a Covered Entity must be subject to and comply with the UK EMIR article 11(1)(a) and the UK EMIR RTS article 12. See para. (b)(2) to the proposed Order. In connection with portfolio reconciliation and dispute reporting requirements, a Covered Entity must be subject to and comply with UK EMIR article 11(1)(b) and UK EMIR RTS articles 13 and 15. See para. (b)(3) to the proposed Order. In connection with portfolio compression requirements, a Covered Entity must be subject to and comply with UK EMIR RTS article 14. See para. (b)(4) to the proposed Order. In connection with trading relationship documentation requirements, a Covered Entity must be subject to and comply with UK EMIR article 11(1)(a), UK EMIR article 12 and UK EMIR Margin RTS article 2. See para. (b)(5) to the proposed Order.

In connection with trade acknowledgement and verification requirements, the Commission preliminarily believes that UK requirements are comparable to Exchange Act requirements despite not requiring a Covered Entity to establish, maintain and enforce written policies and procedures that are reasonably designed to obtain prompt verification of a trade acknowledgment. The Commission reached this preliminary conclusion because the UK requirements instead generally require both counterparties to provide a trade confirmation. Though this confirmation requirement generally does not apply to a counterparty not established in the UK, such as a U.S. person counterparty (unless the relevant contract has a direct and substantial effect in the UK), the Commission has considered the UK confirmation requirements together with guidance from the European Securities and Markets Authority (“ESMA”).⁶² In interpreting EU confirmation requirements that are identical to the UK requirements referenced in the proposed Order, that guidance provides that “when an EU counterparty is transacting with a third country entity, the EU counterparty would be required to ensure that the requirements for...timely confirmation...are met for the relevant...transactions even though the third country entity would not itself be subject to EMIR.”⁶³ That guidance also provides that compliance with the EMIR confirmation requirements means “reach[ing] a legally binding agreement to all the terms of an OTC derivative contract.”⁶⁴ The FCA has published guidance indicating that ESMA’s guidance “will remain relevant [after the UK’s exit from the EU] to the FCA and

⁶² See European Securities and Markets Authority, Questions and Answers: Implementation of the Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR), available at: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf (“ESMA EMIR Q&A”).

⁶³ See ESMA EMIR Q&A, OTC Answer 12(b).

⁶⁴ See ESMA EMIR Q&A, OTC Answer 5(a).

market participants in their compliance with regulatory requirements.”⁶⁵ In the Commission’s preliminary view, the UK requirements, as interpreted by this guidance, thus are comparable to Exchange Act trade acknowledgment and verification requirements.

In connection with trading relationship documentation requirements, the Commission also preliminarily believes that UK requirements are comparable to Exchange Act requirements when considered together with this guidance. The proposed Order would require a Covered Entity to be subject to and comply with UK EMIR article 11(1)(a), UK EMIR RTS article 12 and UK EMIR Margin RTS article 2. By its terms, UK EMIR Margin RTS article 2 relates to documentation of “risk management procedures for the exchange of collateral” for non-centrally cleared transactions.⁶⁶ Exchange Act trading relationship documentation requirements, however, apply not only to agreements related to collateral exchange procedures but also to any other terms governing the trading relationship between the counterparties.⁶⁷ In the Commission’s preliminary view, UK EMIR article 11(1)(a) and UK EMIR RTS article 12, when viewed together with the ESMA EMIR Q&A as described above, bridge this gap by requiring counterparties to reach a legally binding agreement to all the terms of a transaction.

While the Commission recognizes these and certain other differences between UK requirements and the applicable risk control requirements under the Exchange Act, in the

⁶⁵ See Financial Conduct Authority, “Brexit: our approach to EU non-legislative materials,” para. 9, available at: <https://www.fca.org.uk/publication/corporate/brexit-our-approach-to-eu-non-legislative-materials.pdf> (“FCA Brexit Guidance”); see also FCA Brexit Guidance at para. 12 (“We will continue to have regard to other EU non-legislative material where and if they are relevant, taking account of Brexit and ongoing domestic legislation. Firms, market participants and stakeholders should also continue to do so.”).

⁶⁶ UK EMIR Margin RTS article 2(1).

⁶⁷ See Exchange Act rule 15Fi-5(b)(1) (“The security-based swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the security-based swap dealer or major security-based swap participant and its counterparty....”).

Commission's preliminary view those differences on balance would not preclude substituted compliance for these requirements, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

2. Scope of substituted compliance

The proposed Order would permit a Covered Entity to apply substituted compliance for one or more risk control requirements. For example, a Covered Entity could apply substituted compliance for internal risk management requirements but comply directly with Exchange Act trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression or trading relationship documentation requirements. For any set of risk control requirements for which a Covered Entity applies substituted compliance, however, the proposed Order would require the Covered Entity to apply substituted compliance at an entity level, *i.e.*, to all of its activities subject to that set of risk control requirements. For example, the proposed Order would require a Covered Entity applying substituted compliance for internal risk management requirements to comply with the comparable UK requirements with respect to all of its risk management systems. The Covered Entity could not choose to comply with the Exchange Act for one part of its risk management systems and with UK requirements for another part of its risk management systems.⁶⁸ The Commission preliminarily believes that this scope of

⁶⁸ See para. (b)(1) to the proposed Order. Similarly, a Covered Entity applying substituted compliance for trade acknowledgment and verification requirements would have to comply with the comparable UK requirements with respect to all security-based swaps subject to Exchange Act trade acknowledgment and verification requirements. See para. (b)(2) to the proposed Order. A Covered Entity applying substituted compliance for portfolio reconciliation and dispute reporting requirements would have to comply with the comparable UK requirements with respect to all security-based swaps subject to Exchange Act portfolio reconciliation and dispute reporting requirements. See para. (b)(3) to the proposed Order. A Covered Entity applying substituted compliance for portfolio compression requirements would have to comply with the comparable UK requirements with respect to all security-based swaps subject to Exchange Act portfolio compression requirements. See para. (b)(4) to the proposed Order. A Covered Entity applying substituted compliance for trading relationship documentation requirements would have to

substituted compliance strikes the right balance between providing Covered Entities flexibility to tailor the application of substituted compliance to their business needs and ensuring that substituted compliance is consistent with the Commission’s classification of the relevant Exchange Act risk control requirements as entity-level requirements.⁶⁹

3. Types of Covered Entities “subject to” comparable UK requirements

In connection with risk management system requirements, each of the comparable UK provisions listed in the proposed Order applies to a uniquely defined set of UK-authorized firms.⁷⁰ To assist UK firms in determining whether they are subject to these provisions, the Commission preliminarily has determined that any Covered Entity that is an “IFPRU investment firm,” as defined in the FCA Handbook Glossary, or a “UK bank” or “UK designated investment firm,” as defined in both the FCA Handbook Glossary and the PRA Rulebook Glossary, would be subject to all of the required UK provisions. Accordingly, those types of firms preliminarily would be eligible to apply substituted compliance for risk management system requirements. A Covered Entity that is preliminarily not eligible to apply substituted compliance for risk

comply with the comparable UK requirements with respect to all security-based swaps subject to Exchange Act trading relationship documentation requirements. See para. (b)(5) to the proposed Order.

⁶⁹ See Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30064 (May 13, 2016) (“Business Conduct Adopting Release”) (internal risk management requirements are entity-level requirements); Trade Acknowledgment and Verification Adopting Release, 81 FR at 39826 (trade acknowledgment and verification requirements are entity-level requirements); Risk Mitigation Adopting Release, 85 FR at 6378 (portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation requirements are entity-level requirements).

⁷⁰ The Commission preliminarily understands that FCA IFPRU and FCA BIPRU apply to IFPRU investment firms; FCA SYSC 4 and 7 apply to common platform firms and third country firms; FCA SYSC 19A applies to IFPRU investment firms and their overseas firm analogues; FCA SYSC 19D applies to UK banks, UK designated investment firms and their overseas firm analogues; the PRA rules cited in paragraph (b)(1) to the proposed Order apply to CRR firms as defined in the PRA Rulebook Glossary; UK CRR applies to CRR firms as defined in that legislation; UK EMIR Margin RTS applies to financial counterparties; and UK MiFID Org Reg applies to MIFID investment firms.

management system requirements, such as a third country investment firm, nevertheless would be preliminarily eligible to apply substituted compliance for other requirements addressed in the proposed Order if it complies with the relevant parts of the proposed Order.

In connection with trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation requirements, each of the comparable UK provisions listed in the proposed Order applies to “financial counterparties.” The Commission preliminarily understands that this term includes Covered Entities that are MiFID investment firms but not Covered Entities that are third country investment firms. A Covered Entity that is preliminarily not eligible to apply substituted compliance for these Exchange Act requirements nevertheless would be preliminarily eligible to apply substituted compliance for other requirements addressed in the proposed Order if it complies with the relevant parts of the proposed Order.

4. Additional conditions and scope issues

Substituted compliance in connection with these requirements would be subject to certain additional conditions to help ensure the comparability of outcomes:

- a. Trading relationship documentation – Disclosure regarding legal and bankruptcy status

Under the proposed Order, substituted compliance in connection with trading relationship documentation would not extend to disclosures regarding legal and bankruptcy status that are required by paragraph (b)(5) to Exchange Act rule 15Fi-5 when the counterparty is a U.S. person.⁷¹ Documentation requirements under applicable UK law do not address the disclosure of

⁷¹ Those disclosures address information regarding the status of the SBS Entity or its counterparty as an insured depository institution or financial counterparty, and regarding the possibility that in certain circumstances the SBS Entity or its counterparty may be subject to the insolvency regime set forth under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act, which may

information related to insolvency procedures under U.S. law. However, the absence of such disclosure would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, because the insolvency-related consequences that are the subject of the disclosure would not be applicable to non-U.S. counterparties in most cases.⁷²

b. Dispute reporting – Provision of dispute reports consistent with UK law

Under the proposed Order, substituted compliance further would be conditioned on Covered Entities having to provide the Commission with reports regarding disputes between counterparties, on the same basis as the Covered Entities provide those reports to the FCA pursuant to UK law.⁷³ This condition promotes comparability with the Exchange Act rule requiring reporting to the Commission regarding significant valuation disputes,⁷⁴ while leveraging UK reporting provisions to avoid the need for Covered Entities to create additional reporting frameworks.⁷⁵

affect rights to terminate, liquidate or net security-based swaps. See Risk Mitigation Adopting Release, 85 FR at 6374 (discussing potential application of alternatives to the liquidation schemes established under the Securities Investor Protection Act of 1970 or the U.S. Bankruptcy Code).

⁷² See also UK EMIR Margin RTS (in part addressing procedures providing for or specifying the terms of agreements entered into by counterparties, including applicable governing law for non-centrally cleared derivatives, and further providing that counterparties which enter into a netting or collateral exchange agreement must perform an independent legal review regarding enforceability).

⁷³ See para. (b)(3)(ii) to the proposed Order.

⁷⁴ In proposing the notice provision, the Commission recognized that valuation inaccuracies may lead to uncollateralized credit exposure and the potential for loss in the event of default. See Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614, 4621 (Feb. 15, 2019). It thus is important that the Commission be informed regarding valuation disputes affecting SBS Entities.

⁷⁵ The principal difference between the two sets of requirements concerns the timing of notices. Under Exchange Act rule 15Fi-3, SBS Entities must promptly report to the Commission valuation disputes in excess of \$20 million that have been outstanding for three or five business days (depending on counterparty types). Under UK EMIR RTS article 15(2), firms must report to the FCA at least monthly any disputes between counterparties in excess of €15 million and outstanding for at least 15 business days. The Commission is mindful that the UK provision does not provide for notice as quickly as rule 15Fi-3(c), but in the Commission's preliminary view, on

V. Substituted Compliance for Capital and Margin Requirements

A. The FCA’s request and associated analytic considerations

The FCA Application in part requests substituted compliance in connection with requirements under the Exchange Act relating to:

- Capital – Capital requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a-1 and its appendices (collectively “Exchange Act rule 18a-1”) applicable to certain SBS Entities.⁷⁶ Exchange Act rule 18a-1 helps to ensure the SBS Entity maintains at all times sufficient liquid assets to promptly satisfy its liabilities, and to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit, and other risks.⁷⁷ The rule’s net liquid assets test standard protects customers and counterparties and mitigates the consequences of an SBS Entity’s failure by promoting the ability of the firm to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.⁷⁸ As part of the capital requirements, non-prudentially regulated

balance this difference would not be inconsistent with the conclusion that the two sets of risk control requirements – taken as a whole – produce comparable regulatory outcomes.

⁷⁶ Exchange Act rule 18a-1 applies to non-prudentially regulated security-based swap dealers that are not also registered as broker-dealers, other than OTC derivatives dealers.

⁷⁷ See Capital and Margin Adopting Release, 84 FR at 43947. The FCA Application discusses UK requirements that address firms’ capital requirements. See FCA Application Appendix B, Annex V (Side Letter Addressing Capital Requirements). See also FCA Application Appendix B category 1.d. (Internal Risk Management Requirements) (generally discussing internal risk management requirements).

⁷⁸ See Capital and Margin Adopting Release, 84 FR at 43879-83. The capital standard of Exchange Act rule 18a-1 is based on the net liquid assets test of Exchange Act rule 15c3-1 applicable to broker-dealers. Id. The net liquid assets test seeks to promote liquidity by requiring that a firm maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors, and, in the event a firm fails financially, to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding. See id. at 43879. See FCA Application Appendix B, Annex V (Side Letter Addressing Capital Requirements).

security-based swap dealers also must comply with the internal risk management control requirements of Exchange Act Rule 15c3-4 with respect to certain activities.⁷⁹

- Margin – Margin requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a-3 for non-prudentially regulated SBS Entities. The margin requirements are designed to protect SBS Entities from the consequences of a counterparty’s default.⁸⁰

Taken as a whole, these capital and margin requirements help to promote market stability by mandating that SBS Entities follow practices to manage the market, credit, liquidity, solvency, counterparty, and operational risks associated with their security-based swap businesses. The Commission’s comparability assessment accordingly focuses on whether the analogous foreign requirements – taken as a whole – produce comparable outcomes with regard to providing that Covered Entities follow capital and margin requirements that address the risks associated with their security-based swap businesses.

B. Preliminary views and proposed Order

1. General considerations

In the Commission’s preliminary view, based on the FCA Application and the Commission’s review of applicable provisions, relevant UK capital requirements would produce regulatory outcomes that address the risks that the above capital requirements are designed to address. As discussed below, however, the Commission preliminarily believes that additional

⁷⁹ See Exchange Act rule 18a-1(f).

⁸⁰ See Capital and Margin Adopting Release, 84 FR at 43947; see also id. at 43949 (“Obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties. Prior to the financial crisis, in certain circumstances, counterparties were able to enter into OTC derivatives transactions without having to deliver collateral. When “trigger events” occurred during the financial crisis, those counterparties faced significant liquidity strains when they were required to deliver collateral”). The FCA Application discusses UK requirements that address firms’ margin requirements. See FCA Application Appendix B category 1.c. (Margin Requirements for Nonbank Firms) and Annex I (Margin Haircuts (Category 1)).

conditions on applying substituted compliance with respect to the Exchange Act capital requirements may be an appropriate supplement to the UK capital requirements in order to produce comparable regulatory outcomes. Substituted compliance with respect to the capital requirements accordingly would be conditioned on Covered Entities being subject to the UK capital requirements and additional conditions that, in the aggregate, establish a framework that produces outcomes comparable to those associated with the capital requirements under Exchange Act rule 18a-1.⁸¹

In the Commission’s preliminary view, based on the FCA Application and the Commission’s review of applicable provisions, relevant UK margin requirements would produce regulatory outcomes that are comparable to those associated with the above margin requirements. For example, in adopting its final margin requirements for non-cleared security-based swaps, the Commission stated that it modified the proposal to more closely align the final rule with the margin rules of the Commodity Futures Trading Commission and the U.S. prudential regulators and, in doing so, with the recommendations made by the Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities

⁸¹ In connection with capital requirements, Covered Entities must comply with: the capital requirements of UK CRR, including recitals 40, 43 and 87, and articles 26, 28, 50 through 52, 61, 63, 92, 111, 113(1), 114 through 122, 143, 153(8), 177(2), 283, 290, 300 through 311, 312(2), 362 through 377, 382 through 383, 412(1), 413(1), 416(1), 427(1), 413, 429, 430, and 499; UK MiFID Org Reg article 23; UK EMIR Margin RTS recital 31 and articles 2, 3(b), 7, and 19(1)(d) and (e), (3) and (8); FCA SYSC 4.1.1R, 7.1.4R, and 7.1.18R; FCA IFPRU 2,7, 10, and 11; FCA BIPRU 12; FCA PRIN; Client asset protection requirements under FCA CASS; PRA General Organisational Requirements Rule 2.1; PRA Risk Control Rules 2.3 and 3.1(1), Capital Buffers Part, Internal Capital Adequacy Assessment Part, Internal Liquidity Adequacy Assessment Part, Liquidity Coverage Requirement — UK Designated Investment Firms Part, and Notifications Part, of the PRA Rulebook; Banking Act 2009; Capital Requirements Regulations 2013; Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014; Part 8 and Part 9 of the Bank Recovery and Resolution (No 2) Order 2014; Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015; and Parts 4A and 12A of FSMA. See para. (c)(1)(i) to the proposed Order.

Commissions (“IOSCO”) with respect to margin requirements for non-centrally cleared derivatives.⁸² Substituted compliance with respect to the margin requirements accordingly would be conditioned on Covered Entities being subject to those UK provisions that, the Commission has determined, in the aggregate, establish a framework that produces outcomes comparable to those associated with the requirements under the Exchange Act rule 18a-3.⁸³

While the Commission recognizes that there are certain differences between those UK requirements and the applicable capital and margin requirements under the Exchange Act, in the Commission’s preliminary view, those differences on balance would not preclude substituted compliance for these requirements, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

As noted above, substituted compliance in connection with capital requirements would be subject to certain additional conditions to help ensure the comparability of outcomes.⁸⁴ As discussed in more detail below in section V.B.3. of this notice, these proposed conditions to substituted compliance for capital are designed to promote comparability in light of the differences between the net liquid assets test standard of Exchange Act rule 18a-1 and the bank capital standard applicable to Covered Entities.⁸⁵ More specifically, in proposing the capital

⁸² See Capital and Margin Adopting Release, 84 FR at 43908-09; see also BCBS/IOSCO, Margin Requirements for Non-centrally Cleared Derivatives (April 2020), available at: <https://www.bis.org/bcbs/publ/d499.pdf> (“BCBS/IOSCO Paper”). The UK margin requirements also are based on the recommendation in the BCBS/IOSCO Paper.

⁸³ In connection with margin requirements, Covered Entities must comply with: UK EMIR article 11; UK EMIR Margin RTS; UK CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); UK MiFID Org Reg article 23(1); FCA SYSC 4.1.1R; FCA IFPRU 2.2.18R; PRA General Organisational Requirements Rule 2.1; and PRA Internal Capital Adequacy Assessment Rule 4.2. See para. (c)(2) to the proposed Order.

⁸⁴ See para. (c)(1)(ii) to the proposed Order.

⁸⁵ See Capital and Margin Adopting Release, 84 FR at 43881 (“Consequently, in the Commission’s judgment, the broker-dealer capital standard is the appropriate standard for nonbank SBSs”).

conditions, the Commission has preliminarily sought to balance the Commission’s objective to promote the ability of Covered Entities to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner while also providing them flexibility to apply substituted compliance with respect to Exchange Act rule 18a-1.⁸⁶

2. Scope of substituted compliance

The proposed Order would permit a Covered Entity to apply substituted compliance for the capital *and/or* margin requirements. Thus, a Covered Entity could apply substituted compliance for Exchange Act margin requirements by complying with UK margin requirements but comply with Exchange Act capital requirements (rather than applying substituted compliance to those requirements) and vice versa. However, as to the various requirements within the capital and margin rules, the Commission found the rules to be entity-level when adopting amendments to Exchange Act rule 3a71-6 to make substituted compliance available with respect to them.⁸⁷ Consequently, under the proposed Order, a Covered Entity must apply substituted compliance with respect to capital and margin requirements at an entity level. For example, a Covered Entity applying substituted compliance for capital would need to comply with the comparable UK capital requirements at the entity level with respect to all capital requirements

because it is designed to promote a firm’s liquidity and self-sufficiency (in other words, to account for the lack of inexpensive funding sources that are available to banks, such as deposits and central bank support).”).

⁸⁶ See, e.g., Capital and Margin Adopting Release, 84 FR at 43881 (“The Commission believes that the broker-dealer capital standard is the most appropriate alternative for nonbank SBSBs, given the nature of their business activities and the Commission’s experience administering the standard with respect to broker-dealers. The objective of the broker-dealer capital standard is to protect customers and counterparties and to mitigate the consequences of a firm’s failure by promoting the ability of these entities to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.”).

⁸⁷ See Capital and Margin Adopting Release, 84 FR at 43946-50.

and calculations. Similarly, a Covered Entity applying substituted compliance for margin would need to comply with the comparable UK requirements at the entity level with respect to all margin requirements and counterparties – the firm could not apply UK margin requirements for one set of counterparties and Exchange Act margin requirements for another set of counterparties.⁸⁸

3. Additional conditions

Substituted compliance in connection with capital requirements would be subject to certain additional conditions to help ensure the comparability of outcomes. As discussed above, the capital standard of Exchange Act rule 18a-1 is the net liquid assets test. This is the same capital standard that applies to broker-dealers under Exchange Act rule 15c3-1. The net liquid assets test is designed to promote liquidity. In particular, Exchange Act rule 18a-1 allows an SBS Entity to engage in activities that are part of conducting a securities business (e.g., taking securities into inventory) but in a manner that places the firm in the position of holding at all times more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities (e.g., money owed to customers, counterparties, and creditors).⁸⁹ For example, Exchange Act

⁸⁸ See Capital and Margin Adopting Release, 84 FR at 43947 (“Margin is designed to protect the nonbank SBS or MSBSP from the consequences of a counterparty’s default. Permitting different margin requirements based on the location of the counterparty is not consistent with this objective.”) (footnotes omitted).

⁸⁹ See, e.g., Exchange Act Release No. 8024 (Jan. 18, 1967), 32 FR 856 (Jan. 25, 1967) (“Rule 15c3-1 (17 CFR 240.15c3-1) was adopted to provide safeguards for public investors by setting standards of financial responsibility to be met by brokers and dealers. The basic concept of the rule is liquidity; its object being to require a broker-dealer to have at all times sufficient liquid assets to cover his current indebtedness.”) (footnotes omitted); Exchange Act Release No. 10209 (June 8, 1973), 38 FR 16774 (June 26, 1973) (Commission release of a letter from the Division of Market Regulation) (“The purpose of the net capital rule is to require a broker or dealer to have at all times sufficient liquid assets to cover its current indebtedness. The need for liquidity has long been recognized as vital to the public interest and for the protection of investors and is predicated on the belief that accounts are not opened and maintained with broker-dealers in anticipation of relying upon suit, judgment and execution to collect claims but rather on a reasonable demand

rule 18a-1 allows securities positions to count as allowable net capital, subject to standardized or internal model-based haircuts. The rule, however, does not permit most unsecured receivables to count as allowable net capital. This aspect of the rule severely limits the ability of SBS Entities to engage in activities, such as uncollateralized lending, that generate unsecured receivables. The rule also does not permit fixed assets or other illiquid assets to count as allowable net capital, which creates disincentives for SBS Entities to own real estate and other fixed assets that cannot be readily converted into cash. For these reasons, Exchange Act rule 18a-1 incentivizes SBS Entities to confine their business activities and devote capital to security-based swap activities.

The net liquid assets test is imposed through how an SBS Entity is required to compute net capital pursuant to Exchange Act rule 18a-1. The first step is to compute the SBS Entity's net worth under generally accepted accounting principles ("GAAP"). Next, the SBS Entity must make certain adjustments to its net worth to calculate net capital, such as deducting illiquid assets and taking other capital charges and adding qualifying subordinated loans.⁹⁰ The amount remaining after these deductions is defined as "tentative net capital." Exchange Act rule 18a-1 prescribes a minimum tentative net capital requirement of \$100 million for SBS Entities approved to use models to calculate net capital. The final step in computing net capital is to take

one can liquidate his cash or securities positions."); Exchange Act Release No. 15426 (Dec. 21, 1978), 44 FR 1754 (Jan. 8, 1979) ("The rule requires brokers or dealers to have sufficient cash or liquid assets to protect the cash or securities positions carried in their customers' accounts. The thrust of the rule is to insure that a broker or dealer has sufficient liquid assets to cover current indebtedness."); Exchange Act Release No. 26402 (Dec. 28, 1988), 54 FR 315 (Jan. 5, 1989) ("The rule's design is that broker-dealers maintain liquid assets in sufficient amounts to enable them to satisfy promptly their liabilities. The rule accomplishes this by requiring broker-dealers to maintain liquid assets in excess of their liabilities to protect against potential market and credit risks.") (footnote omitted).

⁹⁰ See 17 CFR 240.15c3-1(c)(2).

prescribed percentage deductions (standardized haircuts) or model-based deductions from the mark-to-market value of the SBS Entity's proprietary positions (e.g., securities, money market instruments, and commodities) that are included in its tentative net capital. The amount remaining is the firm's net capital, which must exceed the greater of \$20 million or a ratio amount. An SBS Entity that is meeting its minimum net capital requirement will be in the position where each dollar of unsubordinated liabilities is matched by more than a dollar of highly liquid assets.

In comparison, Covered Entities in the UK are subject to capital requirements applicable to prudentially regulated entities based on the international capital standard for banks (the "Basel capital standard").⁹¹ The Basel capital standard counts as capital assets that Exchange Act rule 18a-1 would exclude (e.g., loans and most other types of uncollateralized receivables, furniture and fixtures, real estate). The Basel capital standard accommodates the business of banking: making loans (including extending unsecured credit) and taking deposits. While the Covered Entities that will apply substituted compliance with respect to Exchange Act rule 18a-1 will not be banks, the Basel capital standard allows them to count illiquid assets such as real estate and fixtures as capital. It also allows them to treat unsecured receivables related to activities beyond dealing in security-based swaps as capital notwithstanding the illiquidity of these assets.

Further, one critical example of the difference between the requirements of Exchange Act rule 18a-1 and the Basel capital standard relates to the treatment of initial margin with respect to security-based swaps and swaps. Under the UK margin requirements, Covered Entities will be

⁹¹ See supra note 81 (citing UK capital requirements under UK CRR). See also BCBS, The Basel Framework, available at: https://www.bis.org/basel_framework/.

required to post initial margin to counterparties unless an exception applies.⁹² Under Exchange Act rule 18a-1, an SBS Entity cannot count as capital the amount of initial margin posted to a counterparty unless it enters into a special loan agreement with an affiliate.⁹³ The special loan agreement requires the affiliate to fund the initial margin amount and the agreement must be structured so that the affiliate – rather than the SBS Entity – bears the risk that the counterparty may default on the obligation to return the initial margin. The reason for this restrictive approach to initial margin posted away is that it “would not be available [to the SBS Entity] for other purposes, and, therefore, the firm’s liquidity would be reduced.”⁹⁴ Under the Basel capital standard, a Covered Entity can count initial margin posted away as capital without the need to enter into a special loan arrangement with an affiliate. Consequently, because of the ability to include illiquid assets and margin posted away as capital, Covered Entities subject to the Basel capital standard may have less balance sheet liquidity than SBS Entities subject to Exchange Act rule 18a-1.

To address this potential liquidity difference, substituted compliance with respect to Exchange Act rule 18a-1 would be subject to the conditions that a Covered Entity: (1) maintains an amount of assets that are allowable under Exchange Act rule 18a-1, after applying applicable haircuts under the Basel capital standard, that equals or exceeds the Covered Entity’s current liabilities coming due in the next 365 days; (2) makes a quarterly record listing: (a) the assets maintained pursuant to the first condition, their value, and the amount of their applicable haircuts; and (b) the aggregate amount of the liabilities coming due in the next 365 days; (3)

⁹² Exchange Act rule 18a-3 does not require SBS Entities to post initial margin (though it does not prohibit the practice).

⁹³ See Capital and Margin Adopting Release, 84 FR at 43887-88.

⁹⁴ See id. at 43887.

maintains at least \$100 million of equity capital composed of highly liquid assets, as defined in the Basel capital standard; and (4) includes its most recent statement of financial condition (i.e., balance sheet) filed with its local supervisor whether audited or unaudited with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(16) to the proposed Order.⁹⁵

The first proposed capital condition would require a Covered Entity to maintain an amount of assets that are allowable under Exchange Act rule 18a-1, after applying applicable haircuts under the Basel capital standard,⁹⁶ that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days.⁹⁷ The objective of this condition is to require a Covered Entity to maintain sufficient liquidity to meet near-term liabilities through a simple computation, as compared to the net capital computation required by Exchange Act rule 18a-1. Generally, current liabilities are understood to mean those liabilities coming due within one year as distinct from long-term liabilities that mature in more than a year. The proposed 365-day period is designed to align with that distinction between short-term and long-term liabilities to facilitate compliance with the condition. Because the condition does not address long-term liabilities, it would not necessarily leave the Covered Entity in position where each dollar of unsubordinated liabilities is matched by more than a dollar of highly liquid assets (as is the case with the net liquid assets test of Exchange Act rule 18a-1). However, it would provide a pool of highly liquid assets that can be used by the Covered Entity to avoid a near-term liquidity strain

⁹⁵ See para. (c)(1)(ii) to the proposed Order.

⁹⁶ See standard supervisory haircuts under the Basel capital standards. BCBS, The Basel Framework, available at: https://www.bis.org/basel_framework/.

⁹⁷ See para. (c)(1)(ii)(A) to the proposed Order.

that could imperil its ability to remain a going concern.⁹⁸ The condition’s use of the Basel capital standard haircuts (as opposed to Exchange Act rule 18a-1 haircuts) is designed to tailor the condition to the Basel capital standard consistent with substituted compliance.

The second proposed condition would require that a Covered Entity make a quarterly record listing: (1) the assets maintained pursuant to the first condition, their value, and the amount of their applicable haircuts; and (2) the aggregate amount of the liabilities coming due in the next 365 days.⁹⁹ The requirement to create this record would enable the Commission or Commission staff to monitor compliance with the proposed condition and facilitate examination of the Covered Entity with regard to substituted compliance. The proposed quarterly interval between making this record (as opposed to a daily, weekly, or monthly interval) is designed to facilitate exams while minimizing the burden of the condition.

In proposing these two conditions, the Commission acknowledges that the Basel capital standard includes the liquidity coverage ratio (“LCR”). However, the LCR requires Covered Entities to maintain an amount of high quality liquid assets equal to or greater than their projected total net cash outflows over a prospective 30 calendar-day period. As discussed above, the first proposed condition requires sufficient liquidity to address liabilities coming due over the next 365 days. The longer period in the condition is designed to cover a greater amount of liabilities in order to further enhance the Covered Entity’s liquidity to achieve an outcome more

⁹⁸ See Capital and Margin Adopting Release, 84 FR at 43881 (“The Commission believes that the broker-dealer capital standard is the most appropriate alternative for nonbank SBSBs, given the nature of their business activities and the Commission’s experience administering the standard with respect to broker-dealers. The objective of the broker-dealer capital standard is to protect customers and counterparties and to mitigate the consequences of a firm’s failure by promoting the ability of these entities to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.”)

⁹⁹ See para. (c)(1)(ii)(B) to the proposed Order.

in line with the liquidity that results from the net liquid assets test of Exchange Act rule 18a-1. This is consistent with the goal of ensuring comparability of outcomes.

The third proposed condition is that the Covered Entity maintain at least \$100 million of equity capital composed of highly liquid assets as defined in the Basel capital standard.¹⁰⁰ This condition is based on the \$100 million tentative net capital requirement of Exchange Act rule 18a-1 for SBS Entities authorized to use models. The condition is designed to ensure that Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1 have a minimum level of capital to absorb financial losses. Further, the LCR defines “highly liquid assets” and the use of that definition is designed to tailor the condition to the Basel capital standard consistent with the substituted compliance.

The fourth condition is that the Covered Entity include its most recently filed statement of financial condition whether audited or unaudited with its initial notice to the Commission of its intent to rely on substituted compliance.¹⁰¹ This one-time obligation would provide the Commission with information about the assets, liabilities, and capital of Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1. The Commission would use the statement of financial condition and the periodic audited and unaudited reports Covered Entities will file with the Commission to monitor the appropriateness of the capital condition if it is included in the final Order. The Commission expects that most Covered Entities will file their initial notice of intent to apply substituted compliance with respect to Exchange Act rule 18a-1 at or around the time they file their registration applications with the Commission. Therefore, receipt of the statement of financial condition at that time would allow the

¹⁰⁰ See para. (c)(1)(ii)(C) to the proposed Order.

¹⁰¹ See para. (c)(1)(ii)(D) to the proposed Order.

Commission to begin this monitoring process before Covered Entities begin filing audited and unaudited reports with the Commission pursuant to Exchange Act rule 18a-7.

The Commission is mindful that compliance with these conditions would require Covered Entities applying substituted compliance to Exchange Act rule 18a-1 to supplement their existing capital calculations and practices, as well as to incur additional time and cost burdens to implement the potential conditions and integrate them into existing business operations.¹⁰² On balance, however, these proposed conditions to substituted compliance for capital are designed to ensure the comparability of outcomes in light of the differences between the net liquid assets test and the Basel capital standard. If these conditions are included in the final order, the Commission intends to monitor their impact on firms and to make adjustments to them as appropriate.

VI. Substituted Compliance for Internal Supervision, Chief Compliance Officers and Additional Exchange Act Section 15F(j) Requirements

A. FCA request and associated analytic considerations

The FCA also requests substituted compliance in connection with requirements under the Exchange Act relating to:

- Internal supervision – Diligent supervision is required pursuant to Exchange Act rule 15Fh-3(h),¹⁰³ and Exchange Act section 15F(j)(5) requires conflict of interest systems and procedures. These provisions generally require that SBS Entities establish, maintain

¹⁰² Additional time and costs burdens may include employee costs and time to program software and computer systems to add an additional capital calculation into an existing system and firm processes and procedures, as well as ongoing time and expenses to monitor the calculations on an ongoing basis. Further, additional time and expense may be incurred with respect to any additional controls implemented to ensure compliance with the proposed capital conditions.

¹⁰³ 17 CFR 240.15Fh-3(h).

and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest.¹⁰⁴

- Chief compliance officers – Chief compliance officer requirements are set out in Exchange Act section 15F(k) and Exchange Act rule 15Fk-1.¹⁰⁵ These provisions in general require that SBS Entities designate individuals with the responsibility and authority to establish, administer and review compliance policies and procedures, to resolve conflicts of interest, and to prepare and certify an annual compliance report to the Commission.¹⁰⁶
- Additional Exchange Act section 15F(j) requirements – Additional requirements related to information-gathering pursuant to Exchange Act section 15F(j)(4)(A), and certain antitrust prohibitions specified by Exchange Act section 15F(j)(6).¹⁰⁷

Taken as a whole, these internal supervision, chief compliance officer and additional Exchange Act section 15F(j) requirements help to promote SBS Entities' use of structures,

¹⁰⁴ The FCA Application addresses UK provisions that address firms' supervisory frameworks, persons with supervisory authority, supervisory policies and procedures, general compliance and internal recordkeeping, investigation of personnel, conflicts of interest, personal trading and remuneration. See FCA Application Appendix B category 3 at 190-214, 217-48.

¹⁰⁵ 17 CFR 240.15Fk-1.

¹⁰⁶ The FCA Application discusses UK requirements that address compliance officers and their responsibilities, compliance officer appointment, removal and compensation, related conflict of interest provisions and compliance-related reports. See FCA Application Appendix B category 3 at 249-74.

¹⁰⁷ Section 15F(j)(4)(A) particularly requires firms to have systems and procedures to obtain necessary information to perform functions required under section 15F. The FCA Application in turn discusses UK provisions generally addressing information gathering and disclosure. See FCA Application Appendix B category 3 at 214-15. Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade, or to impose any material anticompetitive burden on trading or clearing. The FCA Application addresses EU antitrust requirements. See FCA Application Appendix B category 3 at 216-17.

processes and responsible personnel reasonably designed to promote compliance with applicable law, to identify and cure instances of non-compliance and to manage conflicts of interest. The comparability assessment accordingly may focus on whether the analogous foreign requirements – taken as a whole – produce comparable outcomes with regard to providing that Covered Entities have structures and processes reasonably designed to promote compliance with applicable law, identify and cure instances of non-compliance and to manage conflicts of interest, in part through the designation of an individual with responsibility and authority over compliance matters.

B. Preliminary views and proposed Order

1. General considerations

Based on the FCA Application and the Commission’s review of applicable provisions, in the Commission’s preliminary view the relevant UK requirements would produce regulatory outcomes that are comparable to those associated with the above-described internal supervision, chief compliance officer, conflict of interest and information-related requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance and manage conflicts of interest.¹⁰⁸ As elsewhere, this part of the proposed Order conditions

¹⁰⁸ This portion of the proposed Order accordingly would extend generally to the internal supervision provisions of Exchange Act rule 15Fh-3(h), the requirement in Exchange Act section 15F(j)(4)(A) to have systems and procedures to obtain necessary information to perform functions required under Exchange Act section 15F and the conflict of interest provisions of Exchange Act section 15F(j)(5). See para. (d)(1) to the proposed Order. This portion of the proposed Order does not extend to the portions of rule 15Fh-3(h) that mandate supervisory policies and procedures in connection with: the risk management system provisions of Exchange Act section 15F(j)(2) (which are addressed by paragraph (b)(1) to the proposed Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the

substituted compliance on Covered Entities being subject to and complying with specified UK requirements that are necessary to establish comparability.¹⁰⁹

The Commission recognizes that certain differences are present between those UK requirements and the applicable requirements under the Exchange Act. In the Commission's preliminary view, on balance, however, those differences would not preclude substituted compliance within the relevant outcomes-oriented context.

2. Scope of substituted compliance

The proposed Order would permit a Covered Entity to apply substituted compliance for internal supervision and/or chief compliance officer requirements. For example, a Covered Entity could apply substituted compliance for internal supervision requirements but comply directly with Exchange Act chief compliance officer requirements. For either set of requirements for which a Covered Entity applies substituted compliance, however, the proposed Order would require the Covered Entity to apply substituted compliance at an entity level, *i.e.*, to all of its activities subject to that set of requirements. For example, the proposed Order would require a Covered Entity applying substituted compliance for internal supervision requirements to comply with the comparable UK requirements with respect to all of its internal supervision systems and procedures. The Covered Entity could not choose to comply with the Exchange Act for one part of its internal supervision systems and procedures and with UK requirements for

antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not proposing to provide substituted compliance). See para. (d)(1)(iii) to the proposed Order.

¹⁰⁹ In connection with these internal supervision, chief compliance officer and conflict of interest and information gathering provisions, a Covered Entity must be subject to and comply with provisions of UK law that implement MiFID articles 16 and 23 and CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2) and 92; UK CRR article 286 through 288 and 293; UK EMIR Margin RTS article 2; and UK MiFID Org Reg articles 21 through 37 and 72 through 76 and Annex IV. See para. (d)(3) to the proposed Order.

another part of its internal supervision systems and procedures.¹¹⁰ The Commission preliminarily believes that this scope of substituted compliance strikes the right balance between providing Covered Entities flexibility to tailor the application of substituted compliance to their business needs and ensuring that substituted compliance is consistent with the Commission’s classification of the relevant Exchange Act requirements as entity-level requirements.¹¹¹

3. Types of Covered Entities “subject to” comparable UK requirements

Each of the comparable UK provisions listed in the proposed Order applies to a uniquely defined set of UK-authorized firms.¹¹² To assist UK firms in determining whether they are subject to these provisions, the Commission preliminarily has determined that any Covered Entity that is an “IFPRU investment firm,” as defined in the FCA Handbook Glossary, or a “UK bank” or “UK designated investment firm,” as defined in both the FCA Handbook Glossary and the PRA Rulebook Glossary, and is not an “investment company with variable capital,” as defined in the FCA Handbook Glossary, would be subject to all of the required UK provisions. Accordingly, those types of firms preliminarily would be eligible to apply substituted

¹¹⁰ See para. (d)(1) to the proposed Order. Similarly, a Covered Entity applying substituted compliance for chief compliance officer requirements would have to comply with the comparable UK requirements with respect to all security-based swaps subject to Exchange Act trade acknowledgment and verification requirements. See para. (d)(2) to the proposed Order.

¹¹¹ See Business Conduct Adopting Release, 81 FR at 30064 (diligent supervision and chief compliance officer requirements are entity-level requirements).

¹¹² The Commission preliminarily understands that FCA CASS 6 and 7 apply to all FCA-authorized firms that are not investment companies with variable capital; FCA COBS 11 applies to all FCA-authorized firms; FCA IFPRU and FCA BIPRU apply to IFPRU investment firms; FCA SYSC 4, 7, 9 and 10 (except SYSC 10.1.8) apply to common platform firms and third country firms; FCA SYSC 10.1.8 applies to firms that provide services to a client in the course of carrying on regulated activities or ancillary activities or providing ancillary services that constituted MiFID business; FCA SYSC 10A applies to MiFID investment firms and third country investment firms; FCA SYSC 19A applies to IFPRU investment firms and their overseas firm analogues; FCA SYSC 19D applies to UK banks, UK designated investment firms and their overseas firm analogues; the PRA rules cited in paragraph (d)(3) to the proposed Order apply to CRR firms as defined in the PRA Rulebook Glossary; and UK MiFID Org Reg applies to investment firms and credit institutions.

compliance for internal supervision, chief compliance officer, conflict of interest and information-related requirements. A Covered Entity that is preliminarily not eligible to apply substituted compliance for those requirements, such as a third country investment firm, nevertheless would be preliminarily eligible to apply substituted compliance for other requirements addressed in the proposed Order if it complies with the relevant parts of the proposed Order.

4. Additional conditions and scope issues

Substituted compliance in connection with these requirements would be subject to certain additional conditions to help ensure the comparability of outcomes:

- a. Application of UK supervisory and compliance requirements to residual U.S. requirements and Order conditions

Under the proposed Order, substituted compliance for the relevant internal supervision requirements would be conditioned on Covered Entities complying with applicable UK supervisory and compliance provisions as if those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions to the Order.¹¹³

Even with substituted compliance, Covered Entities still would be subject directly to a number of requirements under the Exchange Act and to the conditions to the Order. In some cases, particular requirements under the Exchange Act are outside the ambit of substituted compliance.¹¹⁴ In other cases, certain requirements under the Exchange Act may not have

¹¹³ See para. (d)(4) to the proposed Order.

¹¹⁴ As noted, substituted compliance does not extend to antifraud prohibitions or to certain other requirements under the Exchange Act (e.g., requirements related to transactions with counterparties that are not ECPs and segregation requirements). See note 5, supra.

comparable UK requirements or may be outside the scope of the FCA Application,¹¹⁵ or the Covered Entity may decide not to use substituted compliance for certain requirements under the Exchange Act. While the UK regulatory framework in general reasonably appears to promote Covered Entities' compliance with applicable UK laws, those requirements do not appear to promote Covered Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance, or promote Covered Entities' compliance with the applicable conditions to substituted compliance. This condition would address this issue, while still allowing Covered Entities to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and Order conditions, rather than having to establish separate special-purpose supervision and compliance frameworks.

b. Compliance reports

Under the proposed Order, substituted compliance in connection with the compliance report requirements under Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) also would be subject to the condition that the compliance reports required pursuant to UK MiFID Org Reg article 22(2)(c) must: (1) be provided to the Commission annually and in the English language; (2) include a certification under penalty of law that the report is accurate and complete; and (3) address the Covered Entity's compliance with other applicable conditions to the proposed Order.¹¹⁶

¹¹⁵ For example, the FCA is not requesting substituted compliance in connection with ECP verification requirements, "special entity" provisions and political contribution provisions. See note 17, supra.

¹¹⁶ See para. (d)(2)(ii) to the proposed Order. UK MiFID Org Reg article 22(2)(c) particularly requires that a Covered Entity's compliance function "report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken[.]" Under the proposed condition, those reports, as submitted to the Commission and the Covered Entity's management

Although certain UK requirements address a Covered Entity's use of internal compliance reports, those provisions do not require it to submit compliance reports to the Commission. Under this condition, a Covered Entity could leverage the compliance reports that it otherwise must produce, by extending those reports to address compliance with the conditions to the proposed Order.¹¹⁷

c. Antitrust considerations

Under the proposed Order, substituted compliance would not extend to Exchange Act section 15F(j)(6) (and related internal supervision requirements of Exchange Act rule 15Fh-3(h)(2)(iii)(I)). Allowing an alternative means of compliance would not lead to outcomes comparable to that statutory prohibition.¹¹⁸

VII. Substituted Compliance for Counterparty Protection Requirements

A. FCA request and associated analytic considerations

The FCA further requests substituted compliance in connection with provisions under the Exchange Act relating to:

- Disclosure of material risks and characteristics and material incentives or conflicts of interest – Exchange Act rule 15Fh-3(b)¹¹⁹ requires that SBS Entities disclose to certain

body, also would address the Covered Entity's compliance with the other conditions to the proposed Order (in addition to addressing the Covered Entity's compliance with applicable UK provisions).

¹¹⁷ In practice, a Covered Entity may satisfy this condition by identifying relevant Order conditions and reporting on the implementation and effectiveness of its controls with regard to compliance with those Order conditions.

¹¹⁸ See also German Substituted Compliance Order, 85 FR at 85691-92. The Commission is not taking any position regarding the applicability of the section 15F(j)(6) antitrust prohibitions in the cross-border context. Non-U.S. SBS Entities should assess the applicability of those prohibitions to their security-based swap businesses.

¹¹⁹ 17 CFR 240.15Fh-3(b).

counterparties to a security-based swap certain information about the material risks and characteristics of the security-based swap, as well as material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. These provisions address the need for security-based swap market participants to have information that is sufficient to make informed decisions regarding potential transactions involving particular counterparties and particular financial instruments.¹²⁰

- “Know your counterparty” – Exchange Act rule 15Fh-3(e)¹²¹ requires that SBS Entities establish, maintain and enforce written policies and procedures to obtain and retain certain information regarding a counterparty that is necessary for conducting business with that counterparty. This provision accounts for the need that SBS Entities obtain essential counterparty information necessary to promote effective compliance and risk management.¹²²
- Suitability – Exchange Act rule 15Fh-3(f)¹²³ requires a security-based swap dealer that recommends to certain counterparties a security-based swap or trading strategy involving a security-based swap, to undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation and to have a reasonable basis to

¹²⁰ See Business Conduct Adopting Release, 81 FR at 29983-86. The FCA Application discusses UK requirements that address disclosure of product information and firm information. See FCA Application Appendix B category 4 at 292-303.

¹²¹ 17 CFR 240.15Fh-3(e).

¹²² See Business Conduct Adopting Release, 81 FR at 29993-94. The FCA Application discusses UK suitability requirements regarding information that firms must obtain regarding counterparties. See FCA Application Appendix B category 4 at 313-20.

¹²³ 17 CFR 240.15Fh-3(f).

believe that the recommendation is suitable for the counterparty.¹²⁴ This provision accounts for the need to guard against security-based swap dealers making unsuitable recommendations.¹²⁵

- Fair and balanced communications – Exchange Act rule 15Fh-3(g)¹²⁶ requires that SBS Entities communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith. These provisions promote complete and honest communications as part of SBS Entities’ security-based swap businesses.¹²⁷
- Daily mark disclosure – Exchange Act rule 15Fh-3(c)¹²⁸ requires that SBS Entities provide daily mark information to certain counterparties. These provisions address the need for market participants to have effective access to daily mark information necessary to manage their security-based swap positions.¹²⁹

¹²⁴ See Business Conduct Adopting Release, 81 FR at 29994-30000. A security-based swap dealer may satisfy its counterparty-specific suitability obligation with respect to an “institutional counterparty,” as defined in Exchange Act rule 15Fh-3(f)(4), if the security-based swap dealer reasonably determines that the counterparty or its agent is capable of independently evaluating relevant investment risks, the counterparty or its agent represents in writing that it is exercising independent judgment in evaluating the recommendation, and the security-based swap dealer discloses that it is acting as counterparty and is not undertaking to assess the suitability of the recommendation for the counterparty. See Exchange Act rule 15Fh-3(f)(2) and (3).

¹²⁵ See Business Conduct Adopting Release, 81 FR at 29997. The FCA Application discusses UK suitability requirements that are more targeted for transactions with “professional clients.” See FCA Application Appendix B category 4 at 321-32.

¹²⁶ 17 CFR 240.15Fh-3(g).

¹²⁷ See Business Conduct Adopting Release, 81 FR at 30000-02. The FCA Application discusses UK requirements that address communications standards. See FCA Application Appendix B category 4 at 275-91.

¹²⁸ 17 CFR 240.15Fh-3(c).

¹²⁹ See Business Conduct Adopting Release, 81 FR at 29986-91. The FCA Application discusses UK requirements that address valuation, portfolio reconciliation and trade reporting. See FCA Application Appendix B category 4 at 304-12.

- Clearing rights disclosure – Exchange Act rule 15Fh-3(d)¹³⁰ requires that SBS Entities provide certain counterparties with information regarding clearing rights under the Exchange Act.¹³¹

Taken as a whole, the counterparty protection requirements under section 15F of the Exchange Act help to “bring professional standards of conduct to, and increase transparency in, the security-based swap market and to require [SBS Entities] to treat parties to these transactions fairly.”¹³² The comparability assessment accordingly may focus on whether the analogous foreign requirements – taken as a whole – produce similar outcomes with regard to promoting professional standards of conduct, increasing transparency and requiring Covered Entities to treat parties fairly.

¹³⁰ 17 CFR 240.15Fh-3(d).

¹³¹ Exchange Act section 3C(g)(5), provides certain rights for counterparties to select the clearing agency at which a security-based swap is cleared. For all security-based swaps that an SBS Entity enters into with certain counterparties, the counterparty has the sole right to select the clearing agency at which the security-based swap is cleared. For security-based swaps that are not subject to mandatory clearing (pursuant to Exchange Act sections 3C(a) and (b), 15 U.S.C. 78c-3(a) and (b)) and that an SBS Entity enters into with certain counterparties, the counterparty also may elect to require clearing of the security-based swap. Substituted compliance is not available in connection with this provision. The FCA Application discusses UK provisions that address clearing rights. See FCA Application Appendix B category 4 at 333-40.

¹³² See Business Conduct Adopting Release, 81 FR at 30065. These transaction-level requirements generally apply only to a non-U.S. SBS Entity’s activities involving U.S. counterparties (unless the transaction is arranged, negotiated or executed in the United States). In particular, for non-U.S. SBS Entities, the counterparty protection requirements under Exchange Act section 15F(h) apply only to the SBS Entity's transactions with U.S. counterparties (apart from certain transactions conducted through a foreign branch of the U.S. counterparty), or to transactions arranged, negotiated or executed in the United States. See Exchange Act rule 3a71-3(c), 17 CFR 240.3a71-3(c) (exception from business conduct requirements for a security-based swap dealer’s “foreign business”); see also Exchange Act rule 3a71-3(a)(3), (8) and (9), 17 CFR 240.3a71-3(a)(3), (8) and (9) (definitions of “transaction conducted through a foreign branch,” “U.S. business” and “foreign business”).

B. Preliminary views and proposed Order

1. General considerations

Based on the FCA Application and the Commission’s review of applicable provisions, in the Commission’s preliminary view, the relevant UK requirements produce regulatory outcomes that are comparable to counterparty protection requirements under Exchange Act section 15F(h) related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, “know your counterparty,” suitability, fair and balanced communications and daily mark disclosure, by subjecting Covered Entities to obligations that promote standards of professional conduct, transparency and the fair treatment of parties. The proposed Order accordingly would provide conditional substituted compliance in connection with those requirements.¹³³ The proposed Order preliminarily does not provide substituted compliance in connection with requirements related to clearing rights disclosure, however, for reasons addressed below.

In taking this proposed approach, the Commission recognizes that there are certain differences between relevant UK requirements, on the one hand, and the relevant disclosure, “know your counterparty,” suitability and communications requirements under the Exchange Act, on the other hand. On balance, however, in the Commission’s preliminary view, those differences, when coupled with the conditions in the proposed Order, are not so material as to be inconsistent with substituted compliance within the requisite outcomes-oriented framework. As elsewhere, the counterparty protection provisions of the proposed Order in part condition substituted compliance on Covered Entities being subject to, and complying with, specified UK

¹³³ See generally para. (e) to the proposed Order.

requirements that are necessary to establish comparability.¹³⁴ Substituted compliance in connection with these counterparty protection requirements also would be subject to specific conditions and limitations necessary to promote consistency in regulatory outcomes.

2. Scope of substituted compliance

The proposed Order would permit a Covered Entity to apply substituted compliance for one or more counterparty protection requirements. For example, a Covered Entity could apply

¹³⁴ In connection with requirements related to disclosure of information regarding material risks and characteristics, a Covered Entity must be subject to and comply with provisions of UK law that implement MiFID article 24(4) and either UK MiFID Org Reg articles 48 through 50 or provisions of UK law that reflect UK MiFID Org Reg articles 48 through 50, in each case in relation to the security-based swap for which substituted compliance is applied. See para. (e)(1) to the proposed Order. In connection with requirements related to disclosure of information regarding material incentives or conflicts of interest, a Covered Entity must be subject to and comply with either: (1) provisions of UK law that implement MiFID article 23(2) and (3) and UK MiFID Org Reg articles 33 through 35; (2) provisions of UK law that implement MiFID article 24(9) and MiFID Delegated Directive article 11(5); or (3) UK MAR article 20(1) and UK MAR Investment Recommendations Regulation articles 5 and 6, in each case in relation to the security-based swap for which substituted compliance is applied. See para. (e)(2) to the proposed Order. In connection with “know your counterparty” requirements, a Covered Entity must be subject to and comply with provisions of UK law that implement MiFID article 16(2); UK MiFID Org Reg articles 21, 22, 25, 26 and applicable parts of Annex I; provisions of UK law that implement CRD articles 74(1) and 85(1), MLD articles 11 and 13 and MLD articles 8(3) and 8(4)(a) as applied to policies, controls and procedures regarding customer due diligence, in each case in relation to the security-based swap counterparty for which substituted compliance is applied. See para. (e)(3) to the proposed Order. In connection with suitability requirements, a Covered Entity must be subject to and comply with provisions of UK law that implement MiFID articles 24(2) and (3) and 25(1) and (2) and UK MiFID Org Reg articles 21(1)(b) and (d), 54 and 55, in each case in relation to the recommendation of a security-based swap or trading strategy involving a security-based swap for which substituted compliance is applied. See para. (e)(4)(i) to the proposed Order. In connection with fair and balanced communications requirements, a Covered Entity must be subject to and comply with provisions of UK law that implement either MiFID article 24(1) and (3) or MiFID article 30(1); provisions of UK law that implement MiFID article 24(4) and (5); either UK MiFID Org Reg articles 46 through 48 or provisions of UK law that reflect UK MiFID Org Reg articles 46 through 48; UK MAR Investment Recommendations Regulation articles 3 and 4; and UK MAR articles 12(1)(c), 15 and 20(1), in each case in relation to the communication for which substituted compliance is applied. See para. (e)(5) to the Proposed Order. In connection with daily mark disclosure requirements, Covered Entities must be required to reconcile, and in fact reconcile, the portfolio containing the security-based swap for which substituted compliance is applied, on each business day pursuant to UK EMIR articles 11(1)(b) and 11(2) and UK EMIR RTS article 13. See para. (e)(6) to the Proposed Order.

substituted compliance for fair and balanced communications requirements but comply directly with Exchange Act requirements related to disclosure of information regarding material risks and characteristics, disclosure of information regarding material incentives or conflicts of interest, “know your counterparty,” suitability and daily mark disclosure. A Covered Entity also may decide to apply substituted compliance for a particular set of counterparty protection requirements, such as fair and balance communications, for some activities and comply directly with Exchange Act requirements for other activities. For example, the proposed Order would allow a Covered Entity applying substituted compliance for fair and balanced communications requirements to comply with the comparable UK requirements with respect to communications with UK counterparties that are subject to the Exchange Act and to comply directly with Exchange Act requirements with respect to U.S. person counterparties.¹³⁵ The Commission preliminarily believes that this scope of substituted compliance would provide Covered Entities flexibility to tailor the application of substituted compliance to their business needs in a manner

¹³⁵ See para. (e)(5) to the proposed Order. Similarly, a Covered Entity applying substituted compliance for requirements to disclose information regarding material risks and characteristics could comply with the comparable UK requirements with respect to some security-based swaps and comply directly with Exchange Act requirements with respect to other security-based swaps. See para. (e)(1) to the proposed Order. A Covered Entity applying substituted compliance for requirements to disclose information regarding material incentives or conflicts of interest could comply with the comparable UK requirements with respect to some security-based swaps and comply directly with Exchange Act requirements with respect to other security-based swaps. See para. (e)(2) to the proposed Order. A Covered Entity applying substituted compliance for “know your counterparty” requirements could comply with the comparable UK requirements with respect to some security-based swap counterparties and comply directly with Exchange Act requirements with respect to other counterparties. See para. (e)(3) to the proposed Order. A Covered Entity applying substituted compliance for suitability requirements could comply with the comparable UK requirements with respect to some recommendations of a security-based swap or trading strategy involving a security-based swap and comply directly with Exchange Act requirements with respect to other recommendations. See para. (e)(4) to the proposed Order. A Covered Entity applying substituted compliance for daily mark disclosure requirements could comply with the comparable UK requirements with respect to some security-based swaps and comply directly with Exchange Act requirements with respect to other security-based swaps. See para. (e)(6) to the proposed Order.

consistent with the Commission’s classification of the relevant Exchange Act counterparty protection requirements as transaction-level requirements.¹³⁶

3. Types of Covered Entities “subject to” comparable UK requirements

Each of the comparable UK provisions listed in the proposed Order applies to a uniquely defined set of UK-authorized firms.¹³⁷ To assist UK firms in determining whether they are subject to these provisions, the Commission preliminarily has determined that any Covered Entity would be subject to the required UK requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, suitability and fair and balanced communications. Accordingly, any Covered Entity preliminarily would be eligible

¹³⁶ See Business Conduct Adopting Release, 81 FR at 30065 (counterparty protection requirements are transaction-level requirements).

¹³⁷ In connection with requirements related to disclosure of information regarding material risks and characteristics, the Commission preliminarily understands that FCA COBS 2, 6, 9A and 14 apply to MiFID investment firms and third country investment firms and the UK MiFID Org Reg applies to investment firms and credit institutions. In connection with requirements related to disclosure of information regarding material incentives or conflicts of interest, the Commission preliminarily understands that FCA COBS 2 applies to MiFID investment firms and third country investment firms; FCA SYSC 10.1.8 applies to firms that provide services to a client in the course of carrying on regulated activities or ancillary activities or providing ancillary services that constitute MiFID business; UK MAR article 20 applies to all natural and legal persons; and UK MiFID Org Reg applies to investment firms and credit institutions. In connection with “know your counterparty” requirements, the Commission preliminarily understands that FCA IFPRU applies to IFPRU investment firms; FCA SYSC 4 and 6 apply to common platform firms and third country firms; MLR 2017 applies to, among others, investment firms and credit institutions; the PRA rules cited in paragraph (e)(3) to the proposed Order apply to CRR firms as defined in the PRA Rulebook Glossary; and UK MiFID Org Reg applies to investment firms and credit institutions. In connection with suitability requirements, the Commission preliminarily understands that FCA COBS 4 and 9A and PROD 3 apply to MiFID investment firms and third country investment firms; FCA SYSC 5 applies to common platform firms and third country firms; and UK MiFID Org Reg applies to investment firms and credit institutions. In connection with fair and balanced communications requirements, the Commission preliminarily understands that FCA COBS 2, 4, 6, 8A, 9A, 14 and 14A apply to MiFID investment firms and third country investment firms; UK MAR articles 12(1)(c) and 15 and UK MAR Investment Recommendations Regulation article 5 apply to all natural and legal persons; and UK MiFID Org Reg applies to investment firms and credit institutions. In connection with daily mark disclosure requirements, the Commission preliminarily understands that UK EMIR and UK EMIR RTS apply to financial counterparties.

to apply substituted compliance for disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, suitability and fair and balanced communications requirements. In connection with “know your counterparty” requirements, the Commission also preliminarily has determined that any Covered Entity that is an “IFPRU investment firm,” as defined in the FCA Handbook Glossary, or a “UK bank” or “UK designated investment firm,” as defined in both the FCA Handbook Glossary and the PRA Rulebook Glossary, would be subject to all of the required UK provisions and thus eligible to apply substituted compliance for Exchange Act “know your counterparty” requirements. In connection with daily mark disclosure requirements, the Commission preliminarily has determined that any Covered Entity that is a “financial counterparty”—that is, a Covered Entity that is a MiFID investment firm rather than a third country investment firm— would be subject to all of the required UK provisions and thus eligible to apply substituted compliance for Exchange Act daily mark disclosure requirements. A Covered Entity that is preliminarily not eligible to apply substituted compliance for “know your counterparty” and/or daily mark disclosure requirements, such as a third country investment firm, nevertheless would be preliminarily eligible to apply substituted compliance for other requirements addressed in the proposed Order if it complies with the relevant parts of the proposed Order.

4. Additional conditions and scope issues
 - a. Daily mark disclosure

The proposed Order would provide substituted compliance in connection with daily mark disclosure requirements pursuant to Exchange Act rule 15Fh-3(c) to the extent that the Covered Entity participates in daily portfolio reconciliation exercises that include the relevant security-

based swap pursuant to UK requirements.¹³⁸ The FCA Application takes the view that UK requirements directing certain types of derivatives counterparties to mark-to-market (or mark-to-model) uncleared transactions each day are comparable to Exchange Act requirements. In the Commission’s preliminary view, however, these UK mark-to-market (or mark-to-model) requirements are not comparable to Exchange Act requirements because the UK requirements do not require disclosure to counterparties. In the alternative, the FCA Application notes that certain derivatives counterparties must report to a UK trade repository updated daily valuations for each OTC derivative contract and that all counterparties have the right to access these valuations at the relevant UK trade repository. In the Commission’s preliminary view, in practice, U.S. counterparties may encounter challenges when attempting to access daily marks for different security-based swaps reported to multiple UK trade repositories with which they may not otherwise have business relationships. In addition, the information may be less current, given the time necessary for reporting and for the trade repository to make the information available.¹³⁹ For these reasons, in the Commission’s preliminary view, these UK reporting

¹³⁸ The Commission received a comment on the German Notice and Proposed Order suggesting that a similar condition should apply only to security-based swaps with U.S. counterparties; for all other transactions subject to Exchange Act daily mark requirements, the commenter proposed that the Commission grant substituted compliance if the Covered Entity complies with EU mark-to-market (or mark-to-model) and reporting requirements. See Letter from Kyle Brandon, Managing Director, Head of Derivative Policy, SIFMA (Dec. 8, 2020) (“SIFMA Letter”) at 6. The Commission did not adopt that bifurcated approach. See German Substituted Compliance Order, 85 FR at 85694-95. Similarly, the Commission is proposing one approach to substituted compliance for daily mark requirements in response to the FCA Application. This approach would provide substituted compliance for daily mark requirements based on comparability of outcomes with respect to transactions with U.S. counterparties to the same extent as it would provide substituted compliance with respect to all other transactions.

¹³⁹ The Commission received a comment on the German Notice and Proposed Order that EU reporting requirements similar to the UK requirements cited by the FCA are comparable to Exchange Act daily mark requirements. See SIFMA Letter at 5. The commenter stated that the access and timing challenges should not be as relevant for EU and other non-U.S. counterparties if they are already subject to EU reporting obligations and that in its experience data is available promptly from trade repositories. See id. The commenter’s position, however, highlights that

requirements also are not comparable to Exchange Act requirements. Finally, the FCA Application describes the EU's portfolio reconciliation requirements for uncleared OTC derivative contracts, which include a requirement to exchange valuations of those contracts directly between counterparties. The required frequency of portfolio reconciliations varies depending on the types of counterparties and the size of the portfolio of OTC derivatives between them, with daily reconciliation required only for the largest portfolios. For security-based swaps to which the UK's daily portfolio reconciliation requirements apply (i.e., security-based swaps of a financial counterparty or non-financial counterparty subject to the clearing obligation in UK EMIR, if the counterparties have 500 or more OTC derivatives contracts outstanding with each other¹⁴⁰), the Commission preliminarily views these requirements as comparable to Exchange Act requirements. For all other security-based swaps in portfolios that are not required to be reconciled on each business day, the Commission preliminarily views the UK's portfolio reconciliation requirements as not comparable to Exchange Act requirements and is proposing not to make a positive substituted compliance determination.

b. No substituted compliance in connection with clearing rights disclosure

The proposed Order would not provide substituted compliance in connection with clearing rights disclosure requirements pursuant to Exchange Act rule 15Fh-3(d). For those requirements, the FCA Application cites certain provisions related to clearing rights in the UK that are unrelated to the clearing rights provided by Exchange Act section 3C(g)(5).¹⁴¹ The

U.S. counterparties, as well as non-U.S. counterparties without existing business relationships with multiple UK trade repositories, still may encounter challenges in receiving timely marks from these trade reports. See also German Substituted Compliance Order, 85 FR at 85694-95.

¹⁴⁰ See UK EMIR RTS article 13(3)(a)(i); UK EMIR article 10.

¹⁴¹ See note 131, supra.

section 3C(g)(5) clearing rights are not eligible for substituted compliance, and the UK provisions do not require disclosure of these section 3C(g)(5) clearing rights. In the Commission’s preliminary view, substituted compliance based on UK clearing provisions would not lead to comparable disclosure of a counterparty’s clearing rights under the Exchange Act.

c. Suitability

Under the proposed Order, substituted compliance in connection with the suitability provisions of Exchange Act rule 15Fh-3(f) in part would be conditioned on the requirement that the counterparty be a per se “professional client” as defined in FCA COBS and not be a “special entity” as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh-2(d).¹⁴² Accordingly, the proposed Order would not provide substituted compliance for Exchange Act suitability requirements for a recommendation made to a counterparty that is a “retail client” or an elective “professional client,” as such terms are defined in FCA COBS,¹⁴³ or for a “special entity” as defined in the Exchange Act. In the Commission’s preliminary view, absent such a condition the UK suitability requirements would not be expected to produce a counterparty protection outcome that is comparable with the outcome produced by the suitability requirements under the Exchange Act.¹⁴⁴

¹⁴² 17 CFR 240.15Fh-2(d). See para. (e)(4)(ii) to the proposed Order.

¹⁴³ FCA COBS 3.5 describes which clients are “professional clients.” FCA COBS 3.5.2R describes the types of clients considered to be professional clients unless the client elects non-professional treatment; these clients are per se professional clients. FCA COBS 3.5.3R describes the types of clients who may be treated as professional clients on request; these clients are elective professional clients. See FCA COBS 3.5.

¹⁴⁴ The Commission recognizes that Exchange Act rules permit security-based swap dealers, when making a recommendation to an “institutional counterparty,” to satisfy some elements of the suitability requirement if the security-based swap dealer reasonably determines that the counterparty or its agent is capable of independently evaluating relevant investment risks, the counterparty or its agent represents in writing that it is exercising independent judgment in evaluating recommendations, and the security-based swap dealer discloses to the counterparty that it is acting as counterparty and is not undertaking to assess the suitability of the

VIII. Substituted Compliance for Recordkeeping, Reporting, Notification, and Securities Count Requirements

A. FCA request and associated analytic considerations

The FCA Application in part requests substituted compliance for requirements applicable to SBS Entities under the Exchange Act relating to:

- Recordmaking – Exchange Act rule 18a-5 requires prescribed records to be made and kept current.¹⁴⁵
- Record Preservation – Exchange Act section 15F(g) and Exchange Act rule 18a-6 require preservation of records.¹⁴⁶
- Reporting – Exchange Act rule 18a-7 requires certain reports.¹⁴⁷
- Notification – Exchange Act rule 18a-8 requires notification to the Commission when certain financial or operational problems occur.¹⁴⁸

recommendation for the counterparty. See Exchange Act rule 15Fh-3(f)(2). However, the institutional counterparties to whom this alternative applies are only a subset of the “professional clients” to whom more narrowly tailored suitability requirements apply under UK law. The Commission notes that the institutional counterparty alternative under the Exchange Act would remain available, in accordance with its terms, for recommendations that are not eligible for, or for which a Covered Entity does not rely on, substituted compliance.

¹⁴⁵ See 17 CFR 240.18a-5. The FCA Application discusses UK requirements that address firms’ record creation obligations related to matters such as financial condition, operations, transactions, counterparties and their property, personnel and business conduct. See FCA Application Appendix B category 2 at 101-28, 136-39.

¹⁴⁶ See 15 U.S.C. 780-10(g); 17 CFR 240.18a-6. The FCA Application discusses UK requirements that address firms’ record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. See FCA Application Appendix B category 2 at 140-71.

¹⁴⁷ See 17 CFR 240.18a-7. The FCA Application discusses UK requirements that address firms’ obligations to make certain reports. See FCA Application Appendix B category 2 at 172-80, 185-89.

¹⁴⁸ See 17 CFR 240.18a-8. The FCA Application discusses UK requirements that address firms’ obligations to make certain notifications. See FCA Application Appendix B category 2 at 181-85.

- Securities Count – Exchange Act rule 18a-9 requires non-prudentially regulated security-based swap dealers to perform a quarterly securities count.¹⁴⁹

Taken as a whole, the recordkeeping, reporting, notification, and securities count requirements that apply to SBS Entities are designed to promote the prudent operation of the firm’s security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers. The comparability assessment accordingly may focus on whether the analogous foreign requirements – taken as a whole – produce comparable outcomes with regard to recordkeeping, reporting, notification, securities counts, and related practices that support the Commission’s oversight of these registrants. A foreign jurisdiction need not have analogues to every requirement under Commission rules to receive a positive substituted compliance determination.¹⁵⁰

B. Preliminary views and proposed Order

1. General considerations

Based on the FCA Application and the Commission’s review of applicable provisions, in the Commission’s preliminary view, the relevant UK requirements, subject to the conditions and limitations of the proposed Order, would produce regulatory outcomes that are comparable to the

¹⁴⁹ See 17 CFR 240.18a-9. The FCA Application discusses UK requirements that address firms’ obligations to perform securities counts. See FCA Application Appendix B category 2 at 129-36.

¹⁵⁰ Rule 3a71-6 sets forth additional analytic considerations in connection with substituted compliance for the Commission’s recordkeeping, reporting, notification, and securities count requirements. In particular, Exchange Act rule 3a71-6(d)(6) provides that the Commission intends to consider (in addition to any conditions imposed) “whether the foreign financial regulatory system’s required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports” are comparable to applicable provisions under the Exchange Act, and whether the foreign provisions “would permit the Commission to examine and inspect regulated firms’ compliance with the applicable securities laws.”

outcomes associated with the vast majority of the recordkeeping, reporting, notification, and securities count requirements under the Exchange Act applicable to SBS Entities pursuant to Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9.

In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between those UK requirements and the applicable recordkeeping, reporting, notification, and securities count requirements under the Exchange Act. In the Commission's preliminary view, on balance, those differences generally would not be inconsistent with substituted compliance for these requirements. As noted, requirement-by-requirement similarity is not needed for substituted compliance.

However, the Commission is structuring its preliminary substituted compliance determinations in the Order with respect to the recordkeeping and reporting rules to provide Covered Entities with greater flexibility to select which distinct requirements within the broader recordkeeping and reporting rules for which they want to apply substituted compliance. This flexibility is intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping and reporting requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping or reporting rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them.

As applied to Exchange Act rules 18a-5 and 18a-6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities to make, keep current, and/or

preserve. The objectives of these rules – taken as a whole – is to assist the Commission in monitoring and examining for compliance with Exchange Act requirements applicable to SBS Entities as well as to promote the prudent operation of these firms.¹⁵¹ The Commission preliminarily believes the comparable UK recordkeeping rules achieve these outcomes with respect to compliance with UK requirements for which positive substituted compliance determinations are being made in this proposed Order (e.g., capital and margin requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (e.g., paragraph (a)(2) of Exchange Act rule 18a-5 addressing ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts) can be viewed in isolation as a distinct recordkeeping rule. Therefore, it may be appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a-5 and 18a-6.

As discussed in more detail below, the Commission’s preliminary view is that substituted compliance is appropriate for most of the requirements within these rules. However, certain of the requirements are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination is not being made under the proposed Order. In these cases, a positive substituted compliance determination is not being made for the fully linked requirement in the recordkeeping or reporting rules or to the portion of the requirement that is linked to substantive Exchange Act requirement for which there is not a positive determination. In particular, a positive substituted compliance determination is not being made for recordkeeping, reporting, or notification requirements linked to the following Exchange Act

¹⁵¹ See, e.g., Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199-200 (May 2, 2014).

rules for which a positive substituted compliance determination is not being made: (1) Exchange Act rule 10b-10 (“Rule 10b-10 Exclusion”); (2) Exchange Act rule 15Fh-4 (“Rule 15Fh-4 Exclusion”); (3) Exchange Act rule 15Fh-5 (“Rule 15Fh-5 Exclusion”); (4) Exchange Act rule 15Fh-6 (“Rule 15Fh-6 Exclusion”); (5) Exchange Act rule 18a-2 (“Rule 18a-2 Exclusion”); (6) Exchange Act rule 18a-4 (“Rule 18a-4 Exclusion”); and (7) Regulation SBSR (“Regulation SBSR Exclusion”).

In addition, certain of the requirements in the recordkeeping, reporting, and notification rules are linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the linked requirement in the recordkeeping, reporting, or notification rule is conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement. This is the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement. The recordkeeping, reporting, and notification requirements that are linked to a substantive Exchange Act requirement are designed and tailored to assist the Commission in monitoring and examining an SBS Entity’s compliance with the substantive Exchange Act requirement. UK recordkeeping, reporting, and notification requirements are designed to perform a similar role with respect to the UK requirements to which they are linked. Consequently, this condition is designed to ensure that the records, reports, and notifications of a Covered Entity align with the substantive Exchange Act or UK requirement to which they are linked. For these reasons, substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3 (“Rule 15Fh-3 Condition”); (2) Exchange Act

rule 15Fi-2 (“Rule 15Fi-2 Condition”); (3) Exchange Act rule 15Fi-3 (“Rule 15Fi-3 Condition”); (4) Exchange Act rule 15Fi-4 (“Rule 15Fi-4 Condition”); (5) Exchange Act rule 15Fi-5 (“Rule 15Fi-5 Condition”); (6) Exchange Act rule 15Fk-1 (“Rule 15Fk-1 Condition”); (7) Exchange Act rule 18a-1 (“Rule 18a-1 Condition”); (8) Exchange Act rule 18a-3 (“Rule 18a-3 Condition”); (8) Exchange Act rule 18a-5 (“Rule 18a-5 Condition”) and (9) Exchange Act rule 18a-7 (“Rule 18a-7 Condition”).

Moreover, while certain recordkeeping and reporting requirements are not expressly linked to Exchange Act rule 18a-1, they would be important to the Commission’s ability to monitor or examine for compliance with the capital requirements under this rule. The records also will assist the firm in monitoring its net capital position and, therefore, in complying with Exchange rule 18a-1 and its appendices. Therefore, substituted compliance with respect to these recordkeeping and reporting requirements is subject to the condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a-1 and its appendices (i.e., the Rule 18a-1 Condition). This approach is designed to ensure that, if the Covered Entity does not apply substituted compliance with respect to Exchange Act rule 18a-1, it makes and preserves records and files reports that the Commission uses to monitor and examine for compliance with the Exchange Act rule 18a-1 and its appendices, and that the firm makes and preserves records to assist it in complying with these rules.

2. Scope of substituted compliance

The structure of the preliminary substituted compliance determinations with respect to Exchange Act rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9 as well as Exchange Act Section 15F(g) would permit a covered entity to apply substituted compliance with respect to certain of these rules (e.g., Exchange Act rules 18a-5 and 18a-6) and comply with the Exchange Act requirements of the remaining rules and statute (i.e., Exchange Act rules 18a-7, 18a-8, and 18a-9,

as well as Exchange Act Section 15F(g)). Moreover, as discussed above, the Commission is structuring its preliminary substituted compliance determinations in the Order with respect to the recordkeeping and reporting rules to provide Covered Entities with greater flexibility to select distinct requirements within the broader recordkeeping and reporting rules for which they want to apply substituted compliance. As applied to Exchange Act rules 18a-5 and 18a-6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities to make, keep current, and/or preserve. For example, a Covered Entity could apply substituted compliance with respect Exchange Act rule 18a-5 requirements to make and keep current records of trade blotters¹⁵² but comply directly with Exchange Act rule 18a-5 requirements to make and keep current employment records.¹⁵³

In this regard, the Commission found the recordkeeping, reporting, notification, and securities count rules to be entity-level when adopting amendments to Exchange Act rule 3a71-6 to make substituted compliance available with respect to them.¹⁵⁴ Consequently, aside from a limited exception for recordkeeping requirements linked to customer protection rules,¹⁵⁵ a Covered Entity must apply substituted compliance at the entity level if it chooses to apply substituted compliance with respect to Exchange Act rule 18a-9 and Exchange Act Section

¹⁵² See para. (f)(1)(i)(A) to the proposed Order (relating to substituted compliance for Exchange Act rule 18a-5(a)(1) and (b)(1)).

¹⁵³ See para. (f)(1)(i)(K) to the proposed Order (relating to substituted compliance for Exchange Act rule 18a-5(a)(10) and (b)(8)).

¹⁵⁴ See 84 FR 68550, 68596-97 (Dec. 16, 2019), Exchange Act Release No. 87005 (Sept. 19, 2019) (“Recordkeeping Adopting Release”).

¹⁵⁵ See paras. (f)(1)(i)(M) and (f)(2)(i)(K) to the proposed Order (permitting substituted compliance on a transaction level). As discussed below, these recordkeeping requirements are linked to transaction level counterparty protection requirements.

15F(g). Further, with respect to a distinct substituted compliance determination for a requirement within rule 18a-5, 18a-6, 18a-7, or 18a-8, a Covered Entity must apply substituted compliance with respect to the determination at the entity level. For example, a Covered Entity applying substituted compliance for Exchange Act rule 18a-5 requirements to make and keep current records of trade blotters pursuant to paragraph (f)(1)(i)(A) of the proposed Order would have to comply with the comparable UK requirements at the entity level. The Covered Entity could not choose to comply with the Exchange Act for one part of its trade blotters and with UK requirements for another part of its trade blotters. The Commission preliminarily believes that this scope of substituted compliance strikes the right balance between providing Covered Entities flexibility to tailor the application of substituted compliance to their business needs and ensuring that substituted compliance is consistent with the Commission's classification of the Exchange Act recordkeeping, reporting, notification and securities count requirements as entity-level requirements.¹⁵⁶

With respect to requirements in Exchange Act rules 18a-5 and 18a-6 linked to counterparty protection rules (i.e., Exchange Act rules 15Fh-3(b), (c), (e), (f) and (g)), the proposed Order would permit a Covered Entity to apply substituted compliance to some security-based swap activities and comply directly with Exchange Act requirements for other activities.¹⁵⁷ As discussed in section VII.B.2. of this notice, a Covered Entity may decide to apply substituted compliance for a particular set of counterparty protection requirements, such as fair and balanced

¹⁵⁶ Id.

¹⁵⁷ See paras. (f)(1)(ii)(B) and (f)(2)(ii)(A) of the proposed Order; see also para. (f)(1)(i)(M) of the proposed Order (the preliminary substituted compliance determination with respect to Exchange Act rules 18a-5(a)(17) and (b)(13)) and para. (f)(2)(i)(K) of the proposed Order (the preliminary substituted compliance determination with respect to Exchange Act rules 18a-6(b)(1)(xii) and (b)(2)(vii)).

communications, for some activities and comply directly with Exchange Act requirements for other activities.¹⁵⁸ For example, the proposed Order would allow a Covered Entity applying substituted compliance for fair and balanced communications requirements to comply with the comparable UK requirements with respect to communications with UK counterparties that are subject to the Exchange Act and to comply directly with Exchange Act requirements with respect to U.S. person counterparties.

To accommodate the transaction-level approach to the counterparty protection rules, the proposed Order would allow a Covered Entity to apply substituted compliance to requirements of Exchange Act rules 18a-5 and 18a-6 linked to the counterparty protection rules consistently with how the firm is applying substituted compliance with respect to the counterparty protection rules. For example, if the Covered Entity is applying substituted compliance with respect to Exchange Act rule 15Fh-3(g) for UK counterparties and complying with Exchange Act rule 15Fh-3(g) for U.S. person counterparties, the Covered Entity could apply substituted compliance with respect to the linked requirements of Exchange Act rule 18a-5 for UK counterparties and comply with the linked requirements of Exchange Act rule 18a-5 for U.S. person counterparties.

The Commission preliminarily believes that this scope of substituted compliance would provide Covered Entities flexibility to tailor the application of substituted compliance to their business needs in a manner consistent with the Commission's classification of the relevant Exchange Act counterparty protection requirements as transaction-level requirements. In proposing this significant flexibility for the application of substituted compliance, the Commission nevertheless would expect Covered Entities to ensure that the manner in which they

¹⁵⁸ See Business Conduct Adopting Release, 81 FR at 30065 (counterparty protection requirements are transaction-level requirements).

choose to apply substituted compliance allows them to comply with the requirements to keep books and records open to inspection by any representative of the Commission and promptly furnish to a representative of the Commission legible, true, complete and current copies of the Covered Entity's records.¹⁵⁹

3. Exchange Act Rule 18a-5

Exchange Act rule 18a-5 requires SBS Entities to make and keep current various types of records. The requirements for SBS Entities that do not have a prudential regulator are set forth in paragraph (a) of the rule.¹⁶⁰ The requirements for SBS Entities that do have a prudential regulator are set forth in paragraph (b) of the rule.¹⁶¹ The Commission preliminarily is making a positive substituted compliance determination for many of the requirements set forth in these paragraphs.

However, certain of these requirements are linked to substantive Exchange Act requirements for which a positive substituted compliance is not being made under the proposed Order. In these cases, a positive substituted compliance determination is not being made for the linked requirement in Exchange Act rule 18a-5 or the portion of the requirement in Exchange Act rule 18a-5 that is linked to the substantive Exchange Act requirement.¹⁶²

¹⁵⁹ See also para. (f)(7) to the proposed Order.

¹⁶⁰ See paras. (a)(1) through (18) of Exchange Act rule 18a-5.

¹⁶¹ See paras. (b)(1) through (14) of Exchange Act rule 18a-6.

¹⁶² A positive substituted compliance determination is not being made for the following requirements of Exchange Act rule 18a-5 because they are linked to a substantive Exchange Act requirement for which a positive substituted compliance determination is not being made: (1) the portion of Exchange Act rules 18a-5(a)(6) and (b)(6) that relates to confirmations with respect to securities (other than security based swaps) is subject to the Rule 10b-10 Exclusion; (2) the portion of Exchange Act rule 18a-5(a)(9) that relates to Exchange Act rule 18a-2 is subject to the Rule 18a-2 Exclusion; (3) Exchange Act rules 18a-5(a)(13) and (14) and (b)(9) and (10) are fully linked to Exchange Act rule 18a-4 and, therefore, are subject to the Rule 18a-4 Exclusion; (4) the portions of Exchange Act rules 18a-5(a)(16) and (b)(12) that relate to Exchange Act rule 15Fh-6 are

In addition, certain of the requirements in Exchange Act rule 18a-5 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-5 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹⁶³

Moreover, there are certain requirements in Exchange Act rule 18a-5 that are not expressly linked to Exchange Act rule 18a-1, but that would be important records in terms of the Commission's ability to examine for compliance with that rule, and the Covered Entity's ability to monitor its net capital position. Therefore, substituted compliance with respect to these requirements of Exchange Act rule 18a-5 is subject to the condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a-1 and its appendices (i.e., the Rule 18a-1 Condition).¹⁶⁴

subject to the Rule 15Fh-6 Exclusion; (5) the portions of Exchange Act rules 18a-5(a)(17) and (b)(13) that relate to Exchange Act rules 15Fh-4 are subject to the Rule 15Fh-4 Exclusion; and (6) the portions of Exchange Act rules 18a-5(a)(17) and (b)(13) that relate to Exchange Act rule 15Fh-5 are subject to the 15Fh-5 Exclusion.

¹⁶³ Substituted compliance with the following requirements of Exchange Act rule 18a-5 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a-5(a)(6), (a)(15), (b)(6) and (b)(11) are linked to Exchange Act rule 15Fi-2 and, therefore, are subject to the Rule 15Fi-2 Condition; (2) Exchange Act rule 18a-5(a)(9) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; (3) Exchange Act rule 18a-5(a)(12) is linked to Exchange Act rule 18a-3 and, therefore, is subject to the Rule 18a-3 Condition; (4) Exchange Act rules 18a-5(a)(17) and (b)(13) are linked to Exchange Act rule 15Fh-3 and, therefore, are subject to the Rule 15Fh-3 Condition; (5) Exchange Act rules 18a-5(a)(17) and (b)(13) are linked to Exchange Act rule 15Fk-1, and therefore, are subject to the Rule 15Fk-1 Condition; (6) Exchange Act rules 18a-5(a)(18)(i) and (ii) or (b)(14)(i) and (ii) are linked to Exchange Act rule 15Fi-3 and, therefore, are subject to the Rule 15Fi-3 Condition; and (7) Exchange Act rules 18a-5(a)(18)(iii) and (b)(14)(iii) are linked to Exchange Act rule 15Fi-4 and, therefore, are subject to the Rule 15Fi-4 Condition.

¹⁶⁴ Substituted compliance with the requirements of Exchange Act rules 18a-5(a)(1), (2), (3), (4), (5), (7), (8), and (9) is conditioned on the SBS Entity applying substituted compliance to Exchange Act rule 18a-1 and its appendices.

Under the proposed Order, substituted compliance in connection with the recordmaking requirements of Exchange Act rule 18a-5 is subject to the condition that the SBS Entity: (1) preserves all of the data elements necessary to create the records required by Exchange Act rules 18a-5(a)(1), (2), (3), (4), and (7) (if not prudentially regulated) or Exchange Act rules 18a-5(b)(1), (2), (3), and (7) (if prudentially regulated); and (2) upon request furnishes promptly to representatives of the Commission the records required by those rules (“SEC Format Condition”).¹⁶⁵ This condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a-5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a-5 would need to comply with the comparable UK requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of rule 18a-5 at the request of Commission staff. The objective is to require – on a very limited basis – the production of a record that consolidates the information required by Exchange Act rules 18a-5(a)(1), (2), (3), (4), and (7) (if not prudentially regulated) or Exchange Act rules 18a-5(b)(1), (2), (3), and (7) (if prudentially regulated) in a single record and, as applicable, in a blotter or ledger format. This will assist the Commission staff in reviewing the information on the record.

The following table summarizes the Commission’s proposed positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-5 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-5 to which the determination applies; (3) a brief

¹⁶⁵ See para. (f)(1)(ii) to the proposed Order.

description of the records required by those paragraphs; and (4) any additional conditions, including any partial exclusions from positive substituted compliance.¹⁶⁶

Exchange Act rule 18a-5 (record making)				
Order Paragraph	Rule Paragraph		Rule Description	Additional Conditions and Partial Exclusions
(f)(1)(i)(A)	(a)(1)	(b)(1)	Trade blotters	(1) SEC Format Condition (2) Rule 18a-1 Condition for ¶ (a)(1)
(f)(1)(i)(B)	(a)(2)		General ledger	(1) SEC Format Condition (2) Rule 18a-1 Condition for ¶ (a)(2)
(f)(1)(i)(C)	(a)(3)	(b)(2)	Account ledgers	(1) SEC Format Condition (2) Rule 18a-1 Condition for ¶ (a)(3)
(f)(1)(i)(D)	(a)(4)	(b)(3)	Stock record	(1) SEC Format Condition (2) Rule 18a-1 Condition for ¶ (a)(4)
(f)(1)(i)(E)		(b)(4)	Memoranda of brokerage orders	N/A
(f)(1)(i)(F)	(a)(5)	(b)(5)	Memoranda of proprietary orders	Rule 18a-1 Condition for ¶ (a)(5)
(f)(1)(i)(G)	(a)(6) (a)(15)	(b)(6) (b)(11)	Confirmations, trade verification	(1) Rule 15Fi-2 Condition (2) Rule 10b-10 Exclusion
(f)(1)(i)(H)	(a)(7)	(b)(7)	Accountholder information	(1) SEC Format Condition (2) Rule 18a-1 Condition for ¶ (a)(7)
(f)(1)(i)(I)	(a)(8)		Options positions	Rule 18a-1 Condition
(f)(1)(i)(J)	(a)(9)		Trial balances, computation of net capital and tangible net worth	(1) Rule 18a-1 Condition (2) Rule 18a-2 Exclusion
(f)(1)(i)(K)	(a)(10)	(b)(8)	Associated person's employment application	N/A
(f)(1)(i)(L)	(a)(12)		Non-cleared margin rule calculations	Rule 18a-3 Condition

¹⁶⁶ The chart below does not include the additional conditions for applying substituted compliance to Exchange Act rule 18a-5; namely that the SBS Entity: (1) must be subject to and comply with specified requirements of foreign law; (2) remains subject to the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of certain records (see discussion below); and (3) must promptly furnish to a representative of the Commission upon request an English translation of certain records (see discussion below). See paras. (f)(7) and (8) to the proposed Order (with respect to the second and third conditions).

Exchange Act rule 18a-5 (record making)				
Order Paragraph	Rule Paragraph		Rule Description	Additional Conditions and Partial Exclusions
(f)(1)(i)(M)	(a)(17)	(b)(13)	Compliance with business conduct requirements	(1) Rule 15Fh-3 Condition (2) Rule 15Fk-1 Condition (3) Rule 15Fh-4 Exclusion (4) Rule 15Fh-5 Exclusion
(f)(1)(i)(N)	(a)(18)(i) (a)(18)(ii)	(b)(14)(i) (b)(14)(ii)	Portfolio reconciliation	Rule 15Fi-3 Condition
(f)(1)(i)(O)	(a)(18)(iii)	(b)(14)(iii)	Portfolio compression	Rule 15Fi-4 Condition

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a-5 for which a positive substituted compliance determination is not being made because they are fully linked to substantive Exchange Act requirements for which a positive substituted compliance determination is not being made by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-5 to which the determination applies; (3) a brief description of the records required by those paragraphs; and (4) the exclusion from substituted compliance.

Exchange Act rule 18a-5 (record making)				
Order Paragraph	Rule Paragraph		Rule Description	Exclusion
(f)(1)(ii)(B)	(a)(13)	(b)(9)	Possession or control records	Rule 18a-4 Exclusion
(f)(1)(ii)(B)	(a)(14)	(b)(10)	Reserve computations	Rule 18a-4 Exclusion
(f)(1)(ii)(B)	(a)(16)	(b)(12)	Political contribution records	Rule 15Fh-6 Exclusion

4. Exchange Act Rule 18a-6

Exchange Act rule 18a-6 requires an SBS Entity to preserve certain types of records if it makes or receives them (in addition to the records the SBS Entity is required to make and keep current pursuant to Exchange Act rule 18a-5). Exchange Act rule 18a-6 also prescribes the time period that these additional records and the records required to be made and kept current

pursuant to Exchange Act rule 18a-5 must be preserved and the manner in which they must be preserved.¹⁶⁷ Paragraphs (a) through (d) of Exchange Act rule 18a-6 identify the records that an SBS Entity must retain if it makes or receives them and prescribes the retention periods for these records as well as for the records that must be made and kept current pursuant to Exchange Act rule 18a-5. Certain of these paragraphs prescribe requirements separately for SBS Entities that do not have a prudential regulator and SBS Entities that do have a prudential regulator.¹⁶⁸

Paragraph (e) of Exchange Act rule 18a-6 sets forth the requirements for preserving records electronically. Paragraph (f) sets forth requirements for when records are prepared or maintained by a third party. Paragraph (g) requires that an SBS Entity must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the SBS Entity that are subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act that are requested by a representative of the Commission.

The Commission is making a preliminary positive substituted compliance determination for many of the requirements set forth in paragraphs (a) through (f) of Exchange Act rule 18a-6.¹⁶⁹ However, certain of these requirements are fully or partially linked to substantive

¹⁶⁷ See 17 CFR 240.18a-5.

¹⁶⁸ Paragraphs (a)(1), (b)(1), (d)(2)(i), and (d)(3)(i) of Exchange Act rule 18a-6 apply to SBS Entities that do not have a prudential regulator. Paragraphs (a)(2), (b)(2), (d)(2)(ii), and (d)(3)(ii) of Exchange Act rule 18a-6 apply to SBS Entities that have a prudential regulator. Paragraphs (c), (d)(1), (d)(4), (d)(5), (e), (f), (g), and (h) of Exchange Act rule 18a-6 apply to SBS Entities irrespective of whether they have a prudential regulator.

¹⁶⁹ The Commission does not believe it would be appropriate to grant substituted compliance with respect to the requirements in paragraph (g) of Exchange Act rule 18a-6 because there is no comparable requirement in the UK to produce these records to a representative of the Commission.

Exchange Act requirements for which a positive substituted compliance determination is not being made under the proposed Order. In these cases, a positive substituted compliance determination is not being made for the linked requirement in Exchange Act rule 18a-6.¹⁷⁰

In addition, certain of the requirements in Exchange Act rule 18a-6 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-6 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹⁷¹

¹⁷⁰ A positive substituted compliance determination is not being made for the following requirements of Exchange Act rule 18a-6 because they are linked to a substantive Exchange Act requirement for which a positive substituted compliance determination is not being made: (1) the portion of Exchange Act rule 18a-6(b)(1)(v) relating to Exchange Act rule 18a-2 is subject to the Rule 18a-2 Exclusion; (2) Exchange Act rule 18a-6(b)(1)(viii)(L) is fully linked to Exchange Act Rule 18a-4 and, therefore, is subject to the Rule 18a-4 Exclusion; (3) the portion of Exchange Act rule 18a-6(b)(1)(viii)(M) relating to Exchange Act rule 18a-2 is subject to the Rule 18a-2 Exclusion; (4) Exchange Act rules 18a-6(b)(1)(xi) and (b)(2)(vi) are fully linked to Regulation SBSR and, therefore, are subject to the Regulation SBSR Exclusion; (5) Exchange Act rules 18a-6(b)(1)(xiii) and 18a-6(b)(2)(viii) are fully linked to Exchange Act rules 15Fh-4 and, therefore, are subject to the Rule 15Fh-4 Exclusion; and (6) Exchange Act rules 18a-6(b)(1)(xiii) and 18a-6(b)(2)(viii) are fully linked to Exchange Act rules 15Fh-5 and, therefore, are subject to the Rule 15Fh-5 Exclusion.

¹⁷¹ Substituted compliance with the following requirements of Exchange Act rule 18a-6 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a-6(b)(1)(v) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; (2) Exchange Act rules 18a-6(b)(1)(viii) and (b)(2)(v) are linked to Exchange Act rule 18a-7 and, therefore are subject to the Rule 18a-7 Condition; (3) Exchange Act rule 18a-6(b)(1)(viii) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; (4) Exchange Act rule 18a-6(b)(1)(ix) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; (5) Exchange Act rule 18a-6(b)(1)(x) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; (6) Exchange Act rules 18a-6(b)(1)(xii) and (b)(2)(vii) are linked to Exchange Act rule 15Fh-3 and, therefore, is subject to the Rule 15Fh-3 Condition; (7) Exchange Act rules 18a-6(b)(1)(xii) and (b)(2)(vii) are linked to Exchange Act rule 15Fk-1 and, therefore, is subject to the Rule 15Fk-1 Condition; (8) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange act rule 15Fi-3 and, therefore, are subject to the Rule 15Fi-3 Condition; (9) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange act rule 15Fi-4 and, therefore, are subject to the Rule 15Fi-4 Condition; and (10) Exchange Act rules 18a-

Moreover, there are certain requirements in Exchange Act rule 18a-6 that are not expressly linked to Exchange Act rule 18a-1, but that would be important records in terms of the Commission’s ability to examine for compliance with that rule, and the Covered Entity’s ability to monitor its net capital position. Therefore, substituted compliance with respect to these requirements of Exchange Act rule 18a-6 is subject to the Rule 18a-1 Condition.¹⁷²

The following table summarizes the Commission’s proposed positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-6 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-6 to which the determination applies; (3) a brief description of the records required by those paragraphs; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which a positive substituted compliance is not being made under this Order.¹⁷³

Exchange Act rule 18a-6 (record preservation)				
Order Paragraph	Rule Paragraph		Rule Description	Conditions and Partial Exclusions
(f)(2)(i)(A)	(a)(1)	(a)(2)	6 year record preservation	N/A

6(d)(4) and (d)(5) are linked to Exchange act rule 15Fi-3 and, therefore, are subject to the Rule 15Fi-5 Condition.

¹⁷² Substituted compliance with the requirements of Exchange Act rules 18a-6(b)(1)(ii), (b)(1)(iii), (b)(1)(vi), (b)(1)(vii), (d)(2)(i), and (d)(3)(i) is conditioned on the SBS Entity applying substituted compliance to Exchange Act rule 18a-1 and its appendices.

¹⁷³ The chart below does not include the additional conditions for applying substituted compliance to Exchange Act rule 18a-6; namely that the SBS Entity: (1) is subject to and complies with the requirements of foreign law; (2) remains subject to the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of certain records; and (3) must promptly furnish to a representative of the Commission upon request an English translation of certain records. See para. (f)(7) and (8) to the proposed Order (with respect to the second and third conditions).

Exchange Act rule 18a-6 (record preservation)				
Order Paragraph	Rule Paragraph		Rule Description	Conditions and Partial Exclusions
(f)(2)(i)(B)	(b)(1)(i)	(b)(2)(i)	3 year record preservation	N/A
(f)(2)(i)(C)	(b)(1)(ii) (b)(1)(iii)		Bank records, bills	Rule 18a-1 Condition
(f)(2)(i)(D)	(b)(1)(iv)	(b)(2)(ii)	Communications	N/A
(f)(2)(i)(E)	(b)(1)(v)		Trial balances	(1) Rule 18a-1 Condition (2) Rule 18a-2 Exclusion
(f)(2)(i)(F)	(b)(1)(vi)	(b)(2)(iii)	Account documents	Rule 18a-1 Condition for ¶ (b)(1)(vi)
(f)(2)(i)(G)	(b)(1)(vii)	(b)(2)(iv)	Written agreements	Rule 18a-1 Condition for ¶ (b)(1)(vii)
(f)(2)(i)(H)	(b)(1)(viii)	(b)(2)(v)	Information supporting financial reports	(1) Rule 18a-7 Condition (2) Rule 18a-2 Exclusion for ¶ (b)(1)(viii)(M)
(f)(2)(i)(I)	(b)(1)(ix)		Rule 15c3-4 risk management records	Rule 18a-1 Condition
(f)(2)(i)(J)	(b)(1)(x)		Credit risk determinations	Rule 18a-1 Condition
(f)(2)(i)(K)	(b)(1)(xii)	(b)(2)(vii)	Business conduct standard records	(1) Rule 15Fh-3 Condition (2) Rule 15Fk-1 Condition
(f)(2)(i)(L)	(c)		Corporate documents	N/A
(f)(2)(i)(M)	(d)(1)		Associated person's employment application	N/A
(f)(2)(i)(N)	(d)(2)(i)	(d)(2)(ii)	Regulatory authority reports	Rule 18a-1 Condition for ¶ (d)(2)(i)
(f)(2)(i)(O)	(d)(3)(i)	(d)(3)(ii)	Compliance, supervisory, and procedures manuals	Rule 18a-1 Condition for ¶ (d)(3)(i)
(f)(2)(i)(P)	(d)(4) (d)(5)		Portfolio reconciliation	(1) Rule 15Fi-3 Condition (2) Rule 15Fi-4 Condition (3) Rule 15Fi-5 Condition
(f)(2)(i)(Q)	(e)		Electronic storage system	N/A
(f)(2)(i)(R)	(f)		Third-party recordkeeper	N/A

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-6 for which for which a positive substituted compliance determination is not being made because they are fully linked to substantive Exchange Act requirements for which for which a positive substituted compliance determination

is not being made by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-6 to which the determination applies; (3) a brief description of the records required by those paragraphs; and (4) the exclusion from substituted compliance.

Exchange Act rule 18a-6 (preservation)				
Order Paragraph	Rule Paragraph		Rule Description	Exclusion
(f)(2)(ii)	(b)(1)(xi)	(b)(2)(vi)	Regulation SBSR information	Regulation SBSR Exclusion
(f)(2)(i)(H)(4)	(b)(1)(viii)(L)		Possession or control information	Rule 18a-4 Exclusion
(f)(2)(ii)	(b)(1)(xiii)	(b)(2)(viii)	Special entity documents	(1) Rule 15Fh-4 Exclusion (2) Rule 15Fh-5 Exclusion

5. Exchange Act Rule 18a-7

Paragraph (a)(1) of Exchange Act rule 18a-7 requires SBS Entities that are not prudentially regulated to file monthly unaudited reports about its financial and operational condition using the FOCUS Report Part II. Paragraph (a)(2) of Exchange Act rule 18a-7 requires SBS Entities that are prudentially regulated to file quarterly periodic unaudited reports about their financial and operational condition using the FOCUS Report Part IIC. The FOCUS Report Part IIC elicits less information than the FOCUS Report Part II because the Commission does not have responsibility for overseeing the capital and margin requirements applicable to these entities. Paragraph (a)(3) of Exchange Act rule 18a-7 requires SBS Entities that are not prudentially regulated and have been authorized by the Commission to compute net capital under Exchange Act rule 18a-1 using models to file certain monthly or quarterly information related to their use of models. Paragraph (b) of Exchange Act rule 18a-7 requires SBS Entities that are not prudentially regulated to make certain financial information available on their websites. Paragraphs (c), (d), (e), (f), (g), and (h) of Exchange Act rule 18a-7 set forth requirements for

SBS Entities that are not prudentially regulated to annually file financial statements and certain reports, as well as reports covering those statements and reports prepared by an independent public accountant. Paragraph (i) of Exchange Act rule 18a-7 requires SBS Entities that do not have a prudential regulator to notify the Commission when they change their fiscal year. Finally, Paragraph (j) of Exchange Act rule 18a-7 sets forth requirements with respect to the reports that must be filed with the Commission under the rule.¹⁷⁴

The Commission preliminarily is making a positive substituted compliance determination for all of these paragraphs of Exchange Act rule 18a-7. As discussed below, substituted compliance with respect to these paragraphs of Exchange Act rule 18a-7 is subject to certain conditions.

First, certain of the requirements in Exchange Act rule 18a-7 are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-7 is conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹⁷⁵

Second, under the proposed Order, substituted compliance with respect to the requirement in Exchange Act rule 18a-7 to file periodic unaudited financial and operational information on the FOCUS Report Part II or Part IIC is subject to the condition that the Covered

¹⁷⁴ See 17 CFR 240.18a-7.

¹⁷⁵ Substituted compliance with the following requirements of Exchange Act rule 18a-7 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a-7(a)(1) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; (2) Exchange Act rule 18a-7(a)(3) is linked to Exchange Act rule 18a-1 and, therefore, is subject to the Rule 18a-1 Condition; and (3) Exchange Act rules 18a-7(c), (d), (e), (f), (g) and (h) taken as a whole are linked to Exchange Act rule 18a-1 and, therefore, are subject to the Rule 18a-1 Condition.

Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule (“Manner and Format Condition”) and present the financial information in accordance with GAAP that the firm uses to prepare general purpose publicly available or available to be issued financial statements in the UK (“UK GAAP Condition”).¹⁷⁶

As noted above, Exchange Act rule 18a-7 requires SBS Entities, on a monthly basis (if not prudentially regulated) or on a quarterly basis (if prudentially regulated), to file an unaudited financial and operational report on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The Commission will use the FOCUS Reports filed by the SBS Entities to both monitor the financial and operational condition of individual SBS Entities and to perform comparisons across SBS Entities. The FOCUS Report Parts II and IIC are standardized forms that elicit specific information through numbered line items. This facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. Further, the Commission has designated the Financial Industry Regulatory Authority, Inc. (“FINRA”) to receive the FOCUS Reports from SBS Entities.¹⁷⁷ Broker-dealers registered with the Commission currently file their FOCUS Reports with FINRA through the eFOCUS system it administers. Using FINRA’s eFOCUS system will enable broker-dealers,

¹⁷⁶ See para. (f)(3)(i) to the proposed Order. Under this approach, Covered Entities would be permitted to present the information reported in the FOCUS Report in accordance with GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home jurisdiction instead of U.S. GAAP if other GAAP, such as International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), is used by the SBS Entity in preparing publicly available or available to be issued general purpose financial statements in the UK.

¹⁷⁷ 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. 88866 (May 14, 2020).

security-based swap dealers, and major security-based swap participants to file FOCUS Reports on the same platform using the same preexisting templates, software, and procedures.

The Commission preliminarily believes that it would be appropriate to condition substituted compliance with respect to Exchange Act rule 18a-7 on the Covered Entity filing unaudited financial and operational information in a manner and format that facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. For example, the Commission could by order or rule require SBS Entities to file the financial and operational information with FINRA using the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) but permit the information input into the form to be the same information the SBS Entity reports to the FCA or PRA.¹⁷⁸

Third, under the proposed Order, substituted compliance in connection with the requirement that Covered Entities without a prudential regulator file audited annual reports under Exchange Act rule 18a-7 is subject to five conditions.¹⁷⁹ The first condition is that the SBS Entity simultaneously sends a copy of the financial statements the Covered Entity is required to file with the UK PRA or FCA, including a report of an independent public accountant covering the financial statements, to the Commission in the manner specified on the Commission's website ("SEC Filing Condition"). Because UK laws would not otherwise require the financial

¹⁷⁸ The Commission anticipates that it would be appropriate to tailor the line items required to be reported pursuant to this condition and is requesting comment on which, if any, line items in FOCUS Report Part II (if not prudentially regulated) and Part IIC (if prudentially regulated) the SBS Entity does not otherwise report or record pursuant to applicable laws or regulations. Further, the Commission is requesting comment on whether it would be appropriate as a condition to substitute compliance for SBS Entities to file a FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) with a limited number of the required line items filled out for two years. During this time, the Commission could further evaluate the scope of information SBS Entities should file.

¹⁷⁹ See para. (f)(3)(iv) to the proposed Order.

statements and report of the independent public accountant covering the financial statements to be filed with the Commission, the purpose of this condition is to ensure the Commission receives the financial statements and report to more effectively supervise and monitor SBS Entities.

The second condition is that the SBS Entity includes with the transmission of the annual financial statements and report the contact information of an individual who can provide further information about the financial statements and reports (“Contact Information Condition”). This would assist the Commission staff in promptly contacting an individual at the SBS Entity who can respond to questions that information on the financial statements or report may raise about the Covered Entity’s financial or operational condition.

The third condition is that the SBS Entity includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a-7(c)(1)(i)(C) covering the annual financial statements if UK laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements (“Accountant’s Report Condition”). The third condition further provides that the report of the independent public accountant may be prepared in accordance with generally accepted auditing standards (“GAAS”) in the UK that are used to perform audit and attestation services and the accountant complies with UK independence requirements. According to the FCA Application, UK laws only require certain investment firms (depending on their size) to have their financial statements audited, so this condition ensures that all SBS Entities subject to the requirement in rule 18a-7 to file audited annual reports are required to have their financial statements audited.

The fourth condition is that an SBS Entity that is a security-based swap dealer must file the reports required by Exchange Act rule 18a-7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a-7(c)(3) or (c)(4), as applicable, that relate to Exchange Act

rule 18a-4 (“Rule 18a-4 Limited Exclusion”).¹⁸⁰ These reports are designed to provide the Commission with information about an SBS Entity’s compliance with Rule 18a-4. As discussed above, a positive substituted compliance determination is not being made for Exchange Act rule 18a-4 and, therefore, this condition is designed to provide the Commission with similar compliance information. Under this condition, Covered Entities will need to file a limited compliance report that includes the statements relating to Rule 18a-4¹⁸¹ or exemption report if the Covered Entity claims an exemption from Rule 18a-4. The Covered Entity also will need to file the report of an independent public accountant covering the limited compliance report or exemption report. The fourth condition further provides that the report of the independent public accountant may be prepared in accordance with GAAS in the UK that are used to perform audit and attestation services and the accountant complies with UK independence requirements.

The fifth condition is that a Covered Entity that is a security-based swap dealer files the supporting schedules required by Exchange Act rule 18a-7(c)(1)(i)(A) and (C) addressing the statements identified in Exchange Act rules 18a-7(c)(2)(ii) and (iii) that relate to Exchange Act rule 18a-4 if the SBS Entity is not exempt from Exchange Act rule 18a-4 (i.e., a Rule 18a-4 Limited Exclusion). These supporting schedules are the Computation for Determination of Security-Based Swap Customer Reserve Requirements and the Information Relating to the

¹⁸⁰ The Commission views this as a limited exclusion from the availability of substituted compliance for these requirements because the proposed Order permits these reports relating Exchange Act rule 18a-4 to be included with the UK regulatory reports the Covered Entities will file with the Commission and because the reports can be prepared in accordance with UK GAAS (as discussed below).

¹⁸¹ The limited compliance report would not need to address Exchange Act rule 18a-9 if the Covered Entity is applying substituted compliance to this requirement. Further, as discussed above, substituted compliance with paragraphs (c) through (h) of Exchange Act rule 18a-7 is conditioned on the Covered Entity applying substituted compliance to Exchange Act rule 18a-1. Therefore, the Covered Entity would not need to address that rule in the compliance report. Finally, the Covered Entity would not need to address an account statement rule of a self-regulatory organization.

Possession or Control Requirements for Security-Based Swap Customers, which are designed to provide the Commission with information about an SBS Entity's compliance with Rule 18a-4.

Fourth, under the proposed Order, substituted compliance in connection with the requirement that Covered Entities file notice of a change in fiscal year under Exchange Act rule 18a-7(i) is conditioned on the SBS Entity simultaneously sending a copy of the notice of change in fiscal year that the Covered Entity is required to file with the UK PRA or FCA to the Commission in the manner specified on the Commission's website ("SEC Filing Condition"). Because UK laws would not otherwise require the notice of a change in fiscal year to be filed with the Commission, the purpose of this condition is to ensure the Commission receives the notice to more effectively supervise and monitor SBS Entities.

The following table summarizes the Commission's proposed positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-7 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-7 to which the determination applies; (3) a brief description of the records required by those paragraphs; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which a positive substituted compliance determination is not being made under the proposed Order.¹⁸²

¹⁸² The chart below does not include the additional conditions for applying substituted compliance to Exchange Act rule 18a-7; namely that the SBS Entity: (1) is subject to and complies with the requirements of foreign law; (2) remains subject to the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of certain records; and (3) must promptly furnish to a representative of the Commission upon request an English translation of certain

Exchange Act rule 18a-7 (reporting)				
Order Paragraph	Rule Paragraph		Rule Description	Conditions and Partial Exclusions
(f)(3)(i)	(a)(1)	(a)(2)	File FOCUS Reports	(1) Manner and Format Condition (2) UK GAAP Condition (3) Rule 18a-1 Condition for ¶ (a)(1)
(f)(3)(ii)	(a)(3)		Information related to capital models	(1) Rule 18a-1 Condition
(f)(3)(iii)	(b)		Publish certain financial information	N/A
(f)(3)(iv)	(c) (d) (e) (f) (g) (h)		File annual audited reports	(1) SEC Filing Condition (2) Contact Information Condition (3) Accountant's Report Condition (4) Rule 18a-4 Limited Exclusion (5) Rule 18a-1 Condition
(f)(3)(v)	(i)		Notice of fiscal year change	SEC Filing Condition

6. Exchange Act Rule 18a-8

Exchange Act rule 18a-8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.¹⁸³ Paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a-8 require an SBS Entity that is a security-based swap dealer and that does not have a prudential regulator to provide notifications related to the capital requirements of Exchange Act rule 18a-1. Paragraphs (a)(2) and (b)(3) Exchange Act rule 18a-8 require an SBS Entity that is a major security-based swap participant and that does not have a prudential regulator to provide notifications related to the capital requirements of Exchange Act rule 18a-8. Paragraph (c) Exchange Act rule 18a-8 requires an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator to transmit a copy of the notice to the Commission. Paragraph (d) of Exchange Act rule 18a-8, in pertinent part, requires an SBS Entity to provide notification to the Commission if

records. See paras. (f)(7) and (8) to the proposed Order (with respect to the second and third conditions).

¹⁸³ See 17 CFR 240.18a-8.

it fails to make and keep current books and records under Exchange Act rule 18a-5 and to transmit a subsequent report on what is being done to correct the situation. Paragraph (e) of Exchange Act rule 18a-8, in pertinent part, requires an SBS Entity that is a security-based swap dealer and that does not have a prudential regulator to provide notification if it has a material weakness under Exchange Act rule 18a-7 and to transmit a subsequent report on what is being done to correct the situation. Paragraph (g) of Exchange Act rule 18a-8, in pertinent part, requires an SBS Entity that is a security-based swap dealer to provide notification if it fails to make a required deposit into its special reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a-4. Finally, paragraph (h) sets forth requirements for transmitting the notifications described above.

The Commission preliminarily makes a positive substituted compliance determination for a number of the notification requirements set forth in these paragraphs. However, certain of these requirements are linked to substantive Exchange Act requirements for which a positive substituted compliance determination is not being made under the proposed Order. In these cases, a positive substituted compliance determination is not being made for the linked requirement in Exchange Act rule 18a-8 or the portion of the requirement in Exchange Act rule 18a-8 that is linked to the substantive Exchange Act requirement.¹⁸⁴

¹⁸⁴ A positive substituted compliance determination is not being made for the following requirements of Exchange Act rule 18a-8 because they are linked to a substantive Exchange Act requirement for which a positive substituted compliance determination is not being made: (1) Exchange Act rules 18a-8(a)(3) and (b)(3) are fully linked to Exchange Act rule 18a-2 and, therefore, are subject to the Rule 18a-2 Exclusion; (2) the portion of Exchange Act rule 18a-8(e) that relates to Exchange Act rule 18a-2 is subject to the Rule 18a-2 Exclusion; (3) the portion of Exchange Act rule 18a-8(e) that relates to Exchange Act rule 18a-4 is subject to the Rule 18a-4 Exclusion; and (4) Exchange Act rule 18a-8(g) is fully linked to Exchange act rule 18a-4 and, therefore, is subject to the Rule 18a-4 Exclusion.

In addition, certain of the requirements in Exchange Act rule 18a-8 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-8 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement.¹⁸⁵

Under the proposed Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a-8 is subject to the condition that the SBS Entity: (1) simultaneously sends a copy of any notice required to be sent by UK notification laws to the Commission in the manner specified on the Commission’s website; and (2) includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice (i.e., the “Contact Information Condition”). The purpose of this condition is to alert the Commission to financial or operational problems that could adversely affect the firm – the objective of Exchange Act rule 18a-8.

The following table summarizes the Commission’s proposed positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-8 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-8 to which the determination applies; (3) a brief

¹⁸⁵ Substituted compliance with the following requirements of Exchange Act rule 18a-8 is conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a-8(a)(1)(i) and (ii), (b)(1), (b)(2), and (b)(4) are linked to Exchange Act rule 18a-1 and, therefore, are subject to the Rule 18a-1 Condition; and (2) Exchange Act rules 18a-8(d) is linked to Exchange Act rule 18a-5 and, therefore, is subject to the Rule 18a-5 Condition with respect to any category of records required to be made and kept current by that rule. Consequently, if the Covered Entity does not apply substituted compliance with respect to a category of record required to be made and kept current by Exchange Act rule 18a-5, the Covered Entity would need to provide the notification required by Exchange Act rule 18a-8(d) if it fails to make and keep current that category of record.

description of the records required by those paragraphs; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which a positive substituted compliance determination is not being made.¹⁸⁶

Exchange Act rule 18a-8 (notification)			
Order Paragraph	Rule Paragraph	Rule Description	Conditions and Partial Exclusions
(f)(4)(i)(A)	(a)(1)(i) (a)(1)(ii) (b)(1) (b)(2) (b)(4)	Capital notices	(1) Rule 18a-1 Condition (2) SEC Filing Condition (3) Contact Information Condition
(f)(4)(i)(B)	(c)	Prudential regulator capital category adjustment notices	(1) SEC Filing Condition (2) Contact Information Condition
(f)(4)(i)(C)	(d)	Books and records notices	(1) Rule 18a-5 Condition (2) SEC Filing Condition (3) Contact Information Condition
(f)(4)(i)(D)	(e)	Material weakness notices	(1) Rule 18a-1 Condition (2) Rule 18a-2 Exclusion (3) Rule 18a-4 Limited Exclusion (4) SEC Filing Condition (5) Contact Information Condition

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a-8 for which for which a positive substituted compliance determination is not being made because they are fully linked to substantive Exchange Act requirements for which for which a positive substituted compliance determination

¹⁸⁶ The chart below does not include the additional conditions for applying substituted compliance to Exchange Act rule 18a-8; namely that the SBS Entity: (1) is subject to and complies with the requirements of foreign law; (2) remains subject to the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of certain records; and (3) must promptly furnish to a representative of the Commission upon request an English translation of certain records. See paras. (f)(7) and (8) to the proposed Order (with respect to the second and third conditions).

is not being made by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the records required by those paragraphs; and (4) the exclusion from substituted compliance.

Exchange Act rule 18a-8 (notification)				
Order Paragraph	Rule Paragraph		Rule Description	Exclusion
(f)(4)(ii)(B)	(a)(2)	(b)(3)	MSBSP capital notices	Rule 18a-2 Exclusion
(f)(4)(ii)(C)	(g)		Reserve account notices	Rule 18a-4 Exclusion

7. Exchange Act Rule 18a-9

Exchange Act rule 18a-9 requires SBS Entities that are security-based swap dealers and that do not have a prudential regulator to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.¹⁸⁷ The Commission preliminarily is making a positive substituted compliance determination¹⁸⁸ for this rule.

8. Exchange Act Section 15F(g)

Exchange Act Section 15F(g) requires SBS Entities to maintain daily trading records.¹⁸⁹ The Commission preliminarily believes UK law produces a comparable result in terms of its daily trading recordkeeping requirements.¹⁹⁰ Accordingly, the Commission preliminarily is

¹⁸⁷ See 17 CFR 240.18a-9.

¹⁸⁸ See para. (f)(5) to the proposed Order.

¹⁸⁹ See 15 USC 78o-10(g).

¹⁹⁰ See FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR.

making a positive substituted compliance determination for the self-executing requirements in this paragraph.¹⁹¹

9. Examination and production of records

Every Covered Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, is required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act.¹⁹² Covered Entities may make, keep, and preserve records, subject to the conditions described above, in a manner prescribed by applicable UK requirements. The Commission notes that as an element of its substituted compliance application, the FCA has provided the Commission with adequate assurances that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission “to provide prompt access to the Commission to such entity’s books and records or to submit to onsite inspection or examination by the Commission.” Consistent with those assurances and the requirements that apply to all Covered Entities under the Exchange Act, Covered Entities will need to keep books and records open to inspection by any representative of the Commission and to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the firm that these entities are required to preserve under Exchange Act rule 18a-6 (which would include records for which a positive substituted compliance determination is being made with respect to Exchange Act rule 18a-6 under the Order), or any other records of the firm that are subject to examination

¹⁹¹ See para. (f)(6) to the proposed Order.

¹⁹² See Exchange Act section 15F(f); Exchange Act rule 18a-6(g).

or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.¹⁹³

10. English translations

The proposed Order states that to the extent documents are not prepared in the English language, SBS Entities must furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the SBS Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F or the UK Order.¹⁹⁴ This requirement addresses difficulties that Commission examinations staff would have examining SBS Entities that furnish documents in a foreign language. While acknowledging that English is widely spoken in the UK, this requirement is included to address foreign branches of UK SBS Entities that may prepare documents in foreign languages. Such English translations would be required to be provided promptly.

IX. Additional Considerations Regarding Supervisory and Enforcement Effectiveness in the UK

A. General considerations

As noted above, Exchange Act rule 3a71-6 provides that the Commission's assessment of the comparability of the requirements of the foreign financial regulatory system must account for "the effectiveness of the supervisory program administered, and the enforcement authority exercised" by the foreign financial regulatory authority. This prerequisite accounts for the understanding that substituted compliance determinations should reflect the reality of the foreign regulatory framework, in that rules that appear high-quality on paper nonetheless should not form the basis for substituted compliance if – in practice – market participants are permitted to

¹⁹³ See para. (f)(6) to the proposed Order.

¹⁹⁴ See para. (f)(7) to the proposed Order.

fall short of their regulatory obligations. This prerequisite, however, also recognizes that differences among the supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.¹⁹⁵

In connection with these considerations, the FCA Application includes information regarding the UK supervisory and enforcement framework applicable to derivatives markets and market participants. This includes information regarding the supervisory and enforcement authority afforded to the FCA and the PRA to promote compliance with applicable requirements, applicable supervisory and enforcement tools and capabilities, consequences of non-compliance, and the application of the FCA's and PRA's supervisory and enforcement practices in the cross-border context. After review of this information, the Commission preliminarily believes that the framework is reasonably designed to promote compliance with the laws where substituted compliance has been requested.

In preliminarily concluding that the relevant supervisory and enforcement considerations are consistent with substituted compliance, the Commission particularly has considered the following factors:

B. Supervisory framework in the UK

Supervision of banks and investment firms (together, "firms") that conduct security-based swap business in the UK is conducted by the FCA and the PRA. At the time of this application, all firms that will be using substituted compliance are dually-regulated by the FCA and PRA. Although both supervisors take a broad view of their supervisory powers, the FCA is primarily responsible for conduct, anti-money laundering, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, trading

¹⁹⁵ See generally Business Conduct Adopting Release, 81 FR at 30079.

relationship documentation and securities count requirements, while the PRA is primarily responsible for capital, margin, internal supervision, chief compliance officer and risk management requirements. Both the FCA and the PRA are responsible for recordkeeping, reporting and notification requirements, and both have the ability to request records needed for supervision from firms through the supervisory process. In addition, the FCA and the PRA set priorities in their annual business plans which also sets forth the thematic reviews that will be conducted each year. These thematic reviews focus on particular areas of risk or products across several firms and key findings are made public to promote consistency across the market.

1. FCA

For large firms, such as those that will be applying to be security-based swap dealers in the United States, the FCA uses a firm-specific supervision program (“fixed supervision”) and assigns at least one supervisor dedicated to supervising the firm. The supervisor has regular interaction with the firm, including meetings, emails, phone calls and video calls. The supervisor reviews the monthly and quarterly reports that are submitted by firms. If a supervisor sees a red flag on a report, the supervisor may take a number of actions such as contacting the firm’s senior management or requiring a skilled person review. This supervisor also works with specialists, who monitor specific activities at the firm, such as financial crimes, and provide support to the primary supervisor.

The FCA meets with each firm subject to fixed supervision to conduct a strategy meeting, which allows the firm to inform the FCA of their business strategy for the next two years.¹⁹⁶ This strategy meeting feeds into the firm evaluation, which is the FCA’s assessment of the firm

¹⁹⁶ Depending on the regulatory cycle of the firm, these meetings typically occur at least every two years.

using the FAM methodology.¹⁹⁷ Before a firm evaluation is finalized, the supervisor presents the FAM analysis, a description of the key risks at the firm, and a workplan to address those risks to senior management for approval. Once the workplan is approved, the firm is sent a letter that summarizes the supervisory team's assessment of the firm and gives the firm an overview of what to expect from a supervisory perspective over the next year.

When the FCA identifies a risk or issue at a firm that requires remediation, the FCA can take a number of corrective actions and strives to choose the one that is appropriate and proportionate to the circumstances. If the FCA determines that the issue is minor then the supervisor may discuss with the firm how the matter is best resolved and follow up with the firm to ensure adequate steps have been taken. For more significant issues, the supervisor can deploy a range of regulatory tools to achieve a specific outcome. The common tools used by the FCA include starting a deep dive;¹⁹⁸ requiring the firm to commit to certain action (for example, varying a firm's ability to conduct business until a prescribed action is taken); or requiring review by a third party, such as a skilled person review.¹⁹⁹ If these actions fail, or if the issue is considered harmful enough, the matter will be referred to the FCA Enforcement division for investigation.

¹⁹⁷ More information on FCA's supervisory approach, including a description of the FAM methodology, is available at: <https://www.fca.org.uk/publication/corporate/our-approach-supervision-final-report-feedback-statement.pdf>.

¹⁹⁸ A deep dive is a focused, forward-looking assessment of a firm to investigate a specific area of potential risk. Deep dives are designed to be focused assessments, looking at specific risks, rather than wide ranging assessments that, for example, look at controls within a firm generally.

¹⁹⁹ More information on skilled person reviews is available at: <https://www.fca.org.uk/about/supervision/skilled-persons-reviews>.

2. PRA

The PRA divides all firms into the five categories for supervisory purposes, with category 1 (“CAT1”) being the most significant firms whose size, interconnectedness, complexity and business type give them the capacity to cause significant disruption to the UK financial system by failing, or by carrying on their business in an unsafe manner.²⁰⁰ All firms that will be registering as security-based swap dealers in the United States are CAT1 firms and are assigned several supervisors to monitor the firm. These supervisors have frequent interactions (typically daily) with the firms, including regular meetings with the firm’s executive management. Supervisors review information submitted by a firm and this information is periodically validated, either through onsite inspection by the PRA supervisory and specialist risk staff, or by third-parties. Supervisors examine for risks in the firm’s business model and analyze where and how a firm makes money, the risks involved in doing so, and how the firm is funded. PRA staff regularly engages with firms on business performance, governance and management, external context impact, capital, liquidity, risk controls, and resolvability. The supervisors work with risk specialists and other staff who offer expertise in certain areas (e.g., credit risk, operational risk, governance) to monitor the firm.

The PRA conducts an annual internal meeting regarding each firm called a “periodic summary meeting” (“PSM”) to discuss the major risks at the firm, the supervisory strategy, and proposed remedial actions, including guidance about the adequacy of a firm’s capital and liquidity. After the PSM, the PRA sends an annual letter to each firm outlining the key risks that

²⁰⁰ Information on the PRA’s supervisory approach, including the factors it uses to divide firms into the different categories, is available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/banking-approach-2018.pdf?la=en&hash=3445FD6B39A2576ACCE8B4F9692B05EE04D0CFE3>.

are of greatest concern, which require action by the firm. The PRA verifies that action is taken on the key risks identified in the PSM, and actively engages with the firm's audit committee and non-executive directors on the progress made to address the most significant risks. Less significant issues identified in the PSM are conveyed to the firm to be addressed autonomously and the PRA expects confirmation by the most appropriate senior individual within the firm (e.g., the chief executive officer, finance director, or chair of the audit committee) that these issues have been closed.

When the PRA detects supervisory issues at a firm, it has the power to require firms to take corrective actions, such as conducting an internal audit or appointing a monitor to review certain aspects of the firm's regulatory reports. The PRA may also determine that further information is needed and can, for example, require an external audit, conduct its own inspection or appoint an independent skilled person that will produce a report on the topic to the PRA. The PRA may conduct its own onsite inspection, which involves risk specialists and other technical staff, when it wants to review a certain area, such as a particular business line or a model review. The inspections are in-depth, focused reviews that involve discussions with staff, reviews of internal documents at the firm, and testing to ensure the information provided by the firm to the PRA is accurate. If a firm does not take appropriate corrective action as required, the PRA may open an enforcement proceeding.

C. Enforcement authority in the UK

Similar to the supervision regime, enforcement of banks and investment firms located in the UK is conducted by the FCA and the PRA. As with supervisory powers, the FCA is primarily responsible for conduct, anti-money laundering, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, trading relationship documentation and securities count requirements, while the PRA is primarily

responsible for capital, margin, internal supervision, chief compliance officer and risk management requirements. Both the FCA and PRA are responsible for recordkeeping, reporting and notification requirements.

1. FCA

Within the FCA, enforcement investigations are carried out by the relevant department of the organization's Enforcement and Market Oversight Division ("EMO"). EMO has three investigation departments: (1) unauthorized business; (2) retail; and (3) wholesale. Most investigations into firms subject to substituted compliance would fall into the wholesale category. The FCA gathers information through voluntary submissions and interviews, and may compel information, documents or testimony as necessary, and subject to limitations on use. In addition to the authority to investigate and impose sanctions for regulatory misconduct, the FCA can simultaneously prosecute criminal offenses such as insider trading and unauthorized business and promotion activities. The FCA has many sanctions and remedies for wrongdoing available for use. Among its sanctioning powers are: public censure, financial penalties, disciplinary prohibitions, and suspension or restriction orders. In deciding which sanction to apply, the FCA considers relevant circumstances including steps taken to mitigate or remedy the harm and the level of cooperation. The FCA resolves many matters by settlement. Additionally, as required by law, it publishes Final Notices regarding enforcement, subject to certain public interest limitations on publication.

2. PRA

The decision to open an investigation at the PRA is typically made jointly by a senior supervisor and a senior representative of the PRA's enforcement team. Once these individuals decide to investigate, investigators are appointed and the PRA sends a notice to the subject. Like the FCA, the PRA is empowered to require certain information or documents from authorized

firms. Under certain circumstances, investigators also can require a person that is neither the subject of the investigation nor connected with the subject to attend an interview and answer questions and/or provide information necessary to the investigation. At the end of an investigation, the investigators will report to the PRA and make a recommendation. The possible recommendations include, among others, (1) taking no further action; (2) imposing an enforcement sanction against the subject, which may start settlement discussions or steps towards a contested process; (3) imposing requirements or other supervisory measures against a firm; or (4) opening additional investigations.²⁰¹ The PRA is empowered to impose sanctions such as publishing a public statement regarding misconduct, called “public censure,” directing persons to refrain from conduct, prohibiting a person from holding an office or position, or imposing a financial penalty.²⁰² In determining the appropriate amount of penalty, the PRA considers: (1) any disgorgement to be ordered; (2) the seriousness of the misconduct; (3) any adjustment for aggravating or mitigating factors; (4) any adjustment for deterrence; and (5) reductions for settlement discount and/or serious financial hardship. In resolving actions, the PRA seeks first to determine whether an appropriate settlement can be reached. If one cannot be reached, the investigation team recommends action to the Enforcement Decision Making Committee, which is the PRA’s decision-making body for contested enforcement cases.²⁰³ As

²⁰¹ See PRA Regulatory Investigations Guide, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/pru-statutory-powers/regulatory-investigations-guide.pdf?la=en&hash=7170036F5249F21F15236504A8CC94E6F65D5EE2>, April 2019 at 8.

²⁰² See Enforcement Decision Making Committee Policy Statement PS/EDMC2018, available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/enforcement-decision-making-committee-policy-statement.pdf?la=en&hash=2F1E211F8BDB9B23A054DD770CBE342EB381020E> (“Enforcement Decision Making Committee Policy Statement PS/EDMC2018”), at 1 (citing Section 832ZR of the Banking Act of 2009).

²⁰³ Enforcement Decision Making Committee Policy Statement PS/EDMC2018.

with the FCA, the PRA is required by law to publish Final Notices regarding enforcement, subject to certain public interest limitations on publication.

X. Request for Comment

Commenters are invited to address all aspects of the application, the Commission's preliminary views and the proposed Order.

A. General aspects of the comparability assessments and proposed Order

The Commission requests comment regarding the preliminary views and proposed Order in connection with each of the general "regulatory outcome" categories addressed above.

Commenters particularly are invited to address, among other issues, whether the relevant UK provisions generally are sufficient to produce regulatory outcomes that are comparable to the outcomes associated with requirements under the Exchange Act, and whether the conditions and limitations of the proposed Order would adequately address potential gaps in the relevant regulatory outcomes or would otherwise result in any implementation or other practical issues.

Further, the Commission requests comment regarding whether the proposed conditions and limitations guard against comparability gaps arising from the cross-border application of UK requirements (including when SBS Entities conduct security-based swap business through branches located in the United States or in third countries).

With respect to the proposed conditions and limitations, commenters also are invited to address any differences between UK regulatory requirements and frameworks and either the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance for Germany or the French requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for

France.²⁰⁴ Would the responses to any of the questions that the Commission asked in connection with the German Notice and Proposed Order and/or the French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?

B. Risk control requirements

The Commission further requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal risk management systems, trade acknowledgement and verification, portfolio reconciliation and dispute reporting, and trading relationship documentation. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

In addition to these general matters, the Commission invites commenters to address the Commission's preliminary analysis that UK EMIR trade acknowledgment and verification and trading relationship documentation requirements are comparable to Exchange Act requirements when viewed in light of the ESMA EMIR Q&A and the addition of the new general condition concerning a Covered Entity's application of UK EMIR requirements, and without the need to rely on UK requirements that implement MiFID documentation requirements. Should the Commission instead require Covered Entities to comply both with UK EMIR requirements related to trade acknowledgment and verification and trading relationship documentation and with UK requirements that implement MiFID documentation requirements?

²⁰⁴ See German Substituted Compliance Order, 85 FR at 85868; French Notice and Proposed Order, 85 FR at 85720; see also German Notice and Proposed Order, 85 FR at 72729-30.

With respect to portfolio reconciliation and dispute reporting requirements, the Commission also invites commenters to address the condition requiring a Covered Entity to provide the Commission with reports regarding disputes between counterparties on the same basis as the Covered Entity provides those reports to the FCA pursuant to UK law. Would differences in the timing of dispute reports made pursuant to Exchange Act requirements as compared to reports made pursuant to UK law make UK portfolio reconciliation and dispute reporting requirements not comparable to Exchange Act requirements?

With respect to all risk control requirements, commenters also are invited to address any differences between UK regulatory requirements and frameworks and either the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance for Germany or the French requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for France.²⁰⁵ Would the responses to any of the questions about risk control requirements that the Commission asked in connection with the German Notice and Proposed Order and/or the French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?

C. Capital and margin requirements

1. Capital

The Commission further requests comment regarding the comparability analysis of UK capital requirements with Exchange Act capital requirements for non-prudentially regulated security-based swap dealers. Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and

²⁰⁵ See German Substituted Compliance Order, 85 FR at 85689-91; French Notice and Proposed Order, 85 FR 85724-25; see also German Notice and Proposed Order, 85 FR at 72730-32.

limitations connected to substituted compliance for those requirements. Does UK law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act rule 18a-1? Are there any additional conditions that should be applied to substituted compliance for these capital requirements to promote comparable regulatory outcomes?

The Commission also requests comment and supporting data on the proposed capital conditions. The purpose of the potential conditions would be to address the concern that, while the Basel capital standard contains requirements designed to address liquidity such as the LCR, net stable funding ratio (“NSFR”), and an internal liquidity adequacy assessment process (“liquidity assessment process”), the Basel capital standard does not impose a net liquid assets test that requires a Covered Entity to maintain more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities. The Commission requests comment on how the liquidity provisions in the Basel capital standard (the LCR, NSFR, and liquidity assessment process) impact the liquidity of Covered Entities that would apply substituted compliance with respect to Exchange Act rule 18a-1 (i.e., nonbanks). Do these requirements in practice result in Covered Entities maintaining more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities? If so, explain why. If not, explain why not.

The Commission also requests comment on whether Covered Entities that are not banks have access to short-term liquidity through Central Bank facilities in the UK that are available to banks (e.g., Sterling Monetary Framework through the Bank of England). Please identify and describe each facility that is available to nonbank Covered Entities, including any limitations on their ability to access the facility.

The Commission also requests comment on how the proposed capital conditions compare to any existing capital requirements under the Basel capital standards. For example, are there differences in the frequency or nature of calculations under the Basel capital standards?

The Commission also requests comment on and seeks information about the assets, liabilities, and capital of the Covered Entities that would apply substituted compliance with respect to Exchange Act rule 18a-1. The Commission further requests comment on what specific types of non-prudentially regulated security-based swap dealers in the UK would be relying on a substituted compliance determination with respect to capital requirements under Exchange Act rule 18a-1. What are the primary business lines engaged in by these entities and what types of assets and liabilities do they typically carry on their balance sheets? Are the balance sheets of these entities primarily composed of liquid or illiquid assets? The Commission would use this information to analyze the liquidity of these entities in the context of considering the proposed capital conditions. For example, do the Covered Entities that would apply substituted compliance with respect to Exchange Act rule 18a-1 engage primarily in a securities business? If so, are their balance sheets similar to those of U.S. broker-dealers that deal in securities in terms of holding highly liquid assets? If their balance sheets are similar to U.S. broker-dealers, are the additional capital conditions discussed above necessary? Alternatively, would the additional capital conditions serve to ensure that these firms do not engage in non-securities business activities that could impair their liquidity? Should the Commission consider the relevance of a Covered Entity's business model in determining whether to impose any potential capital conditions? For example, should the Commission take into account the fact that a Covered Entity does not engage in unsecured lending and other activities more typical of banks?

The Commission requests comment on the capital conditions that would require a Covered Entity to: (1) maintain an amount of assets that are allowable under Exchange Act rule 18a-1, after applying applicable haircuts under the Basel capital standard, that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days; and (2) makes a quarterly record listing: (a) the assets maintained pursuant to the first proposed condition, their value, and the amount of their applicable haircuts; and (b) the aggregate amount of the liabilities coming due in the next 365 days. Is the term "current liabilities" understood by market participants? If not, please explain why and suggest alternative language. Is 365 days an appropriate number of days to use in connection with covering "current liabilities"? If not, please explain why and suggest an alternative number of days. For example, would a period of 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 420, 510 days or some other period of days be more appropriate in terms of enhancing the liquidity of Covered Entities applying substituted compliance to Exchange Act rule 18a-1? If so, explain why. If the Commission determines to use a number of days that is less than 365, should the Commission use a term other than "current liabilities" such as "short-term liabilities"? If so, explain why. The Commission requests comment on whether the haircuts under the Basel capital standard are the appropriate haircuts to apply under the proposed capital condition. If so, please explain why. Are they comparable to the haircuts under Exchange Act rule 18a-1? Would it impose a significant burden on Covered Entities to apply the haircuts under Exchange Act rule 18a-1 rather than under the Basel capital standard? If so, please explain why. Please identify any regulatory or operational issues in connection with these proposed capital conditions, including with maintaining a quarterly record. The Commission requests comment on how these conditions would compare to the LCR.

The Commission also requests comment and supporting data on the proposed condition that a Covered Entity maintain at least \$100 million of equity capital composed of “highly liquid assets” as defined in the Basel capital standard. How would this potential minimum capital amount compare with the amounts of equity capital currently maintained by Covered Entities that would apply substituted compliance to Exchange Act rule 18a-1? Should the condition require a different amount of equity capital? For example, should the amount be \$50, \$75, \$125, or \$150 million or some other amount? If so, explain why. Are the terms “highly liquid assets” and “equity capital” understood by market participants? If not, please explain why and suggest alternative terms.

The Commission also requests comment and supporting data on the proposed condition that a Covered Entity includes its most recent audited or unaudited statement of financial condition filed with its local supervisor with its initial written notice to the Commission of its intent to rely on substituted compliance. Are there other means for the Commission to efficiently obtain this information? If so, explain how. Is the information presented in these reports prepared in accordance with the GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home jurisdiction?

The Commission requests comment on the potential benefits and costs of the potential capital conditions? Would the conditions promote comparable regulatory outcomes between the capital requirements applied to Covered Entities in the UK and capital requirements under Exchange Act rule 18a-1? If so, explain why. If not, explain why not. The Commission is mindful that compliance with these capital conditions would require Covered Entities applying substituted compliance to Exchange Act rule 18a-1 to supplement their existing capital calculations and practices, as well as to incur additional time and cost burdens to implement the

potential conditions and integrate them into existing business operations. The Commission requests comment and supporting data on these potential time and cost burdens, including quantitative information about the amount of the burdens. The Commission also requests comment on any potential operational or regulatory issues or burdens associated with adhering to the proposed capital conditions.

The Commission requests comment on the potential impacts the capital conditions would have on competition. For example, how would they impact competition between Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1 and SBS Entities that will comply with Exchange Act rule 18a-1? Would the conditions eliminate or mitigate potential competitive advantages that Covered Entities adhering to the Basel capital standard might have over SBS Entities adhering to the more stringent net liquid assets test standard of Exchange Act rule 18a-1? Alternatively, would the conditions create competitive disadvantages for Covered Entities applying substituted compliance with respect to Exchange Act rule 18a-1 as compared to SBS Entities complying with Exchange Act rule 18a-1? Please describe and explain.

Please identify and describe any potential impacts on the way Covered Entities currently conduct their business with respect to implementing the proposed capital conditions.

The Commission further requests comment on whether the Commission should consider other potential conditions with respect to applying substituted compliance to Exchange Act rule 18a-1. Should the Commission consider imposing a potential capital condition that is more consistent with Exchange Act rule 18a-1? Please explain why or why not. Should the capital condition include higher requirements for a Covered Entity that holds a significant amount of illiquid assets? For example, if 20%, 30%, 40%, 50%, or some other percent of the Covered

Entity's assets would not be allowable under Exchange Act rule 18a-1, should the firm be required to hold an amount of allowable assets to cover liabilities coming due over a longer period of time than a firm that does not exceed the percent threshold? If so, explain why and identify the appropriate percent threshold. Should there be a percent threshold of non-allowable assets under Exchange Act rule 18a-1 held by the Covered Entity over which substituted compliance with respect to capital would not be permitted? If so, explain why and identify the appropriate percent threshold.

The Commission also requests comment on whether the Commission should consider imposing other capital conditions (or no conditions) if a Covered Entity's business with U.S. persons falls below a certain notional threshold, such as \$8 billion, \$20 billion, \$50 billion, or some other threshold. If so, explain why? Please explain which threshold may be appropriate or suggest an alternative.

The Commission further requests comment on whether there will be any non-prudentially regulated security-based swap dealers in the UK other than PRA-designated investment firms that would be seeking substituted compliance. In addition, HM Treasury, the PRA and the FCA published a joint statement announcing that they had decided to target an implementation date of January 1, 2022 for the new prudential rules for investment firms. The Commission further requests comment on whether any investment firms that may be relying on the Commission's proposed substituted compliance determination with respect to Exchange Act rule 18a-1 would potentially be covered under this new capital regime for investment firms in the UK. If so, should these capital requirements be included in any Commission final order regarding the determination of substituted compliance with respect to the capital requirements of the

Commission and the UK? If so, explain how they are comparable to the capital requirements for non-prudentially regulated security-based swap dealers under the Exchange Act.

With respect to capital requirements, commenters also are invited to address any differences between UK regulatory requirements and frameworks and the French requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for France.²⁰⁶ Would the responses to any of the questions about capital requirements that the Commission asked in connection with the French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?²⁰⁷

The Commission further requests comment on whether there would be any non-prudentially regulated major security-based swap participants in the UK that would be seeking substituted compliance with respect to Exchange Act rule 18a-2.

2. Margin

The Commission further requests comment regarding the Commission's preliminary view that the UK margin requirements are comparable to the Exchange Act margin requirements for non-prudentially regulated security-based swap dealers and major security-based swap participants. Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements. Does UK law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act rule 18a-3? Are there any additional conditions that should be applied to substituted compliance for these margin requirements to promote comparable regulatory outcomes?

²⁰⁶ See French Notice and Proposed Order, 85 FR 85726.

²⁰⁷ See French Notice and Proposed Order, 85 FR 85736-37.

The Commission further requests comment on whether the haircuts required under the UK EMIR Margin RTS are comparable to the collateral haircuts required under paragraph (c)(3) of Exchange Act rule 18a-3. The Commission also requests comment whether the standardized grid for computing initial margin under the UK EMIR Margin RTS is comparable to the standardized approach for computing initial margin under paragraph (d)(1) of Exchange Act rule 18a-3.

With respect to margin requirements, commenters also are invited to address any differences between UK regulatory requirements and frameworks and the French requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for France.²⁰⁸ Would the responses to any of the questions about margin requirements that the Commission asked in connection with the French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?²⁰⁹

D. Internal supervision, chief compliance officer and additional Exchange Act section 15F(j) requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal supervision and chief compliance officers, as well as additional Exchange Act section 15F(j) requirements. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

With respect to internal supervision and chief compliance officers requirements, as well as additional Exchange Act section 15F(j) requirements, commenters also are invited to address

²⁰⁸ See French Notice and Proposed Order, 85 FR 85726.

²⁰⁹ See French Notice and Proposed Order, 85 FR 85736.

any differences between UK regulatory requirements and frameworks and either the German requirements and frameworks that formed the basis for the Commission’s conditional grant of substituted compliance for Germany or the French requirements and frameworks that formed the basis for the Commission’s proposed conditional grant of substituted compliance for France.²¹⁰ In particular, the proposed Order would require a Covered Entity to be subject to, and comply with, in part provisions of UK law that implement CRD article 92, whereas the German Substituted Compliance Order requires, and the French Notice and Proposed Order would require, compliance with provisions that implement CRD articles 92 through 95. Should the Commission apply to these three orders (and to any other substituted compliance orders in jurisdictions with requirements based on CRD) the approach to these provisions in the proposed Order or the approach in the German Substituted Compliance Order and French Notice and Proposed Order? Similarly, the proposed Order would require a Covered Entity to be subject to, and comply with, in part UK CRR articles 286 through 288 and 293, whereas the German Substituted Compliance Order does not require, and the French Notice and Proposed Order would not require, compliance with comparable provisions of EU law. Should the Commission apply to these three order (and to any other substituted compliance orders in jurisdictions with requirements based on CRR) the approach to these provisions in the proposed Order or the approach in the German Substituted Compliance Order and French Notice and Proposed Order? In addition, would the responses to any of the questions about internal supervision or chief compliance officer requirements, or the additional Exchange Act section 15F(j) requirements, that the Commission asked in connection with the German Notice and Proposed Order and/or the

²¹⁰ See generally German Substituted Compliance Order, 85 FR at 85691-92; French Notice and Proposed Order, 85 FR 85726-28; see also German Notice and Proposed Order, 85 FR at 72732-34.

French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?

E. Counterparty protection requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with counterparty protection requirements under the Exchange Act. Commenters particularly are invited to address the basis for substituted compliance in connection with the counterparty protection requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

The Commission also requests comment on the scope of UK “know your counterparty” and daily mark requirements to which a Covered Entity must be subject if it relies on substituted compliance. Third country investment firms (a term that includes third country credit institutions when providing investment services or performing investment activities in the UK) are not subject to these UK requirements and therefore would not be eligible to apply substituted compliance for Exchange Act “know your counterparty” or daily mark requirements. Do any such third country investment firms currently plan to apply, or believe they might in the future apply, substituted compliance for Exchange Act “know your counterparty” or daily mark requirements? Are any other UK requirements applicable to third country investment firms comparable to Exchange Act “know your counterparty” or daily mark requirements?

With respect to all counterparty protection requirements, commenters also are invited to address any differences between UK regulatory requirements and frameworks and either the German requirements and frameworks that formed the basis for the Commission’s conditional grant of substituted compliance for Germany or the French requirements and frameworks that formed the basis for the Commission’s proposed conditional grant of substituted compliance for

France.²¹¹ Would the responses to any of the questions about counterparty protection requirements that the Commission asked in connection with the German Notice and Proposed Order and/or the French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?

F. Recordkeeping, reporting, notification, and securities count

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to recordkeeping, reporting, notification, and securities counts, as well as the requirement of Exchange Act section 15F(g). Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Does UK law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, 18a-8, and 18a-9? In this regard, commenters are invited to address the UK laws cited for each substituted compliance determination with respect to the distinct requirements within Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8 (i.e., the rules for which a more granular approach to substituted compliance is being taken). With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) will the UK laws cited for the determination result in a comparable regulatory outcome; (2) are there additional or alternative UK laws that should be cited to achieve a comparable regulatory outcome; and (3) are any of the UK laws cited for the determination unnecessary to achieve a comparable regulatory outcome?

²¹¹ See generally German Substituted Compliance Order, 85 FR at 85692-95; French Notice and Proposed Order, 85 FR 85728-30; see also German Notice and Proposed Order, 85 FR at 72734-36.

Commenters particularly are invited to address the proposed condition with respect to Exchange Act rule 18a-5 that the Covered Entity: (1) preserve all of the data elements necessary to create the records required by Exchange Act rules 18a-5(a)(1), (2), (3), (4), and (7) (if not prudentially regulated) or Exchange Act rules 18a-5(b)(1), (2), (3), and (7) (if prudentially regulated); and (2) upon request furnish promptly to representatives of the Commission the records required by those rules. Do the relevant UK laws require SBS Entities to retain the data elements necessary to create the records required by these rules? If not, please identify which data elements are not preserved pursuant to the relevant UK laws. Further, how burdensome would it be for an SBS Entity to format the data elements into the records required by these rules (e.g., a blotter, ledger, or securities record, as applicable) if the firm was requested to do so? In what formats do SBS Entities in the UK produce this information to the PRA, FCA, or other UK authorities? How do those formats differ from the formats required by Exchange Act rules 18a-5(a)(1), (2), (3), (4), and (7) (if not prudentially regulated) or Exchange Act rules 18a-5(b)(1), (2), (3), and (7) (if prudentially regulated)?

Is it appropriate to structure the Commission's substituted compliance determinations in the Order with respect to the recordkeeping and reporting rules to provide Covered Entities with greater flexibility to select which distinct requirements within the broader recordkeeping, reporting, notification, and securities count rules for which they want to apply substituted compliance? Explain why or why not. For example, would it be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping or reporting rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them? If so, explain why. If not, explain why not. Is it appropriate to permit Covered Entities to take a more granular approach

to the requirements within these recordkeeping rules? For example, would this approach make it more difficult for the Commission to get a comprehensive understanding of the Covered Entity's security-based swap activities and financial condition? Explain why or why not. Would it be overly complex for the Covered Entity to administer a firm-wide recordkeeping system under this approach? Explain why or why not.

Certain of the Commission's recordkeeping, reporting, and notification requirements are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination is preliminarily not being made under the proposed Order. In these cases, should the Commission not make a positive substituted compliance determination for the fully linked requirement in the recordkeeping or reporting rules or to the portion of the requirement that is linked to a substantive Exchange Act requirement? In particular, should the Commission not make a positive substituted compliance determination for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which a positive substituted compliance determination is preliminarily not being made: (1) Exchange Act rule 10b-10; (2) Exchange Act rule 15Fh-4; (3) Exchange Act rule 15Fh-5; (4) Exchange Act rule 15Fh-6; (5) Exchange Act rule 18a-2; (6) Exchange Act rule 18a-4; and (7) Regulation SBSR? If not, explain why.

Certain of the requirements in the Commission's recordkeeping, reporting, and notification rules are linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, should a positive substituted compliance determination for the linked requirement in the recordkeeping, reporting, or notification rule be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement? If not, explain why.

Should this be the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement? If not, explain why. In particular, should substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules be conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3; (2) Exchange Act rule 15Fi-2; (3) Exchange Act rule 15Fi-3; (4) Exchange Act rule 15Fi-4; (5) Exchange Act rule 15Fi-5; (6) Exchange Act rule 15Fk-1; (7) Exchange Act rule 18a-1; (8) Exchange Act rule 18a-3; (8) Exchange Act rule 18a-5; and (9) Exchange Act rule 18a-7? If not, explain why.

While certain recordkeeping and reporting requirements are not expressly linked to Exchange Act rule 18a-1, they would be important to the Commission's ability to monitor or examine for compliance with the capital requirements under this rule. The records also will assist the firm in monitoring its net capital position and, therefore, in complying with Exchange Act rule 18a-1 and its appendices. Should a positive substituted compliance determination with respect to these recordkeeping and reporting requirements be subject to the condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a-1 and its appendices? If not, explain why.

Commenters also are invited to address the proposal that a positive substituted compliance determination with respect to Exchange Act rule 18a-7 would be conditioned on the Covered Entity filing financial and operational information with the Commission in the manner and format specified by the Commission by order or rule. With respect to FOCUS Report Part II, not all of the line items on the report may be as pertinent to a non-prudentially regulated SBS Entity if a positive substituted compliance determination is made with respect to capital or margin. With respect to FOCUS Report Part IIC, because the Commission does not have

responsibility to administer capital and margin requirements for prudentially regulated SBS Entities, the FOCUS Report Part IIC elicits much less information than the FOCUS Report Part II or the financial reports SBS Entities file with UK authorities. Should the Commission require Covered Entities to file the financial and operational information using the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated)? Are there line items on the FOCUS Report Part II or Part IIC that elicit information that is not included in the reports SBS Entities file with the FCA or PRA? If so, do SBS Entities record that information in their required books and records? Please identify any information that is elicited in the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) that is not: (1) included in the financial reports filed by SBS Entities with the FCA or PRA; or (2) recorded in the books and records required of SBS Entities. With respect to FOCUS Report Part IIC, would the answer to these questions change if references to FFIEC Form 031 were not included in the FOCUS Report Part IIC? If so, how? As a preliminary matter, as a condition of substituted compliance should SBS Entities file a limited amount of financial and operational information on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated) for a period of two years to further evaluate the burden of requiring all applicable line items to be filled out? If so, which line items should be required? To the extent that SBS Entities otherwise report or record information that is responsive to the FOCUS Report Part II or Part IIC, how could the information on these reports be integrated into a database of filings the Commission or its designee will maintain for filers of the FOCUS Report Parts II and IIC (e.g., the eFOCUS system) to achieve the objective of being able to perform cross-form analysis of information entered into the uniquely numbered line items on the forms?

Commenters also are invited to address the proposal that a positive substituted compliance determination with respect to the requirement to file annual audited reports pursuant to Exchange Act rule 18a-7 would be subject to five conditions. For example, comment is sought on the first and third conditions that would permit the SBS Entity to simultaneously transmit to the Commission a copy of the financial statements the SBS Entity is required to file annually with a UK regulator, and, if not already required, require the SBS Entity to engage an independent public accountant to prepare a report covering the annual financial statements. Are there any concerns with the Commission accepting financial statements that are prepared in accordance with UK GAAP and audited by an independent public accountant in accordance with UK GAAS? In addition, are there any concerns with the public accountant being independent in accordance with local UK requirements? Further, the third condition would require SBS Entities that are not required under UK law to file a report of an independent public accountant covering their financial statements to file such an accountant's report. This condition is based on the fact that UK law only requires certain investment firms (depending on their size) to have their financial statements audited. Do the firms in the UK that are not subject to the requirement to file audited financial reports engage in security-based swap activities? If so, are they likely to register with the Commission as a non-prudentially regulated security-based swap dealer or major security-based swap participant?

With respect to recordkeeping, reporting, notification, and securities count requirements, commenters also are invited to address any differences between UK regulatory requirements and frameworks and either the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance for Germany or the French requirements and frameworks that formed the basis for the Commission's proposed conditional

grant of substituted compliance for France.²¹² Would the responses to any of the questions about recordkeeping, reporting, notification, and securities count requirements that the Commission asked in connection with the German Notice and Proposed Order and the French Notice and Proposed Order differ if those questions applied to UK regulatory requirements and frameworks?

G. Supervisory and enforcement issues

The Commission further requests comment regarding how to weigh considerations regarding supervisory and enforcement effectiveness in the UK as part of the comparability assessments. Commenters particularly are invited to address relevant issues regarding the effectiveness of UK supervision and enforcement over firms that may register with the Commission as SBS Entities, including but not limited to issues regarding:

- UK supervisory and enforcement authority, supervisory inspection practices and the use of alternative supervisory tools, and enforcement tools and practices;
- UK supervisory and enforcement effectiveness with respect to derivatives such as security-based swaps; and
- UK supervision and enforcement in the cross-border context (e.g., any differences between the oversight of firms' businesses within the UK and the oversight of activities and branches outside of the UK, including within the United States).

By the Commission.

Dated: April 5, 2021.

Vanessa A. Countryman,
Secretary.

²¹² See generally German Substituted Compliance Order, 85 FR at 85695-97; French Notice and Proposed Order, 85 FR 85730-34.

ATTACHMENT A

IT IS HEREBY DETERMINED AND ORDERED, pursuant to rule 3a71-6 under the Exchange Act, that a Covered Entity (as defined in paragraph (g)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (f) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the United Kingdom and with the conditions to this Order, as amended or superseded from time to time.

(a) General conditions.

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (f):

(1) Activities as UK “regulated activities.” For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9 and/or 10, PRA General Organisational Requirements, PRA Recordkeeping Rules, PRA Remuneration Rules, PRA Risk Control Rules and/or MLR 2017, the Covered Entity’s relevant security-based swap activities constitute “regulated activities” as defined for purposes of the relevant UK provisions, are carried on by the Covered Entity from an establishment in the United Kingdom and fall within the scope of the Covered Entity’s authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.

(2) Activities as UK MiFID “investment services or activities.” For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FCA PROD 3 and/or UK MiFID Org Reg, the Covered Entity’s relevant security-based swap activities constitute “investment services or activities,” as defined in the FCA Handbook Glossary, are carried on by the Covered Entity from an establishment in

the United Kingdom and fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.

(3) Activities as UK "MiFID or equivalent third country business." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA COBS 2, 4, 6, 8A, 9A, 14 and/or 14A, the Covered Entity's relevant security-based swap activities constitute "MiFID or equivalent third country business," as defined in the FCA Handbook Glossary, are carried on by the Covered Entity from an establishment in the United Kingdom and fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.

(4) Activities as UK "designated investment business." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA COBS 11, the Covered Entity's relevant security-based swap activities constitute "MiFID business" that is also "designated investment business," each as defined in the FCA Handbook Glossary; are carried on by the Covered Entity from an establishment in the United Kingdom; and fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.

(5) Activities as UK "MiFID business." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, the Covered Entity is not an ICVC as defined in the FCA Handbook Glossary and the Covered Entity's relevant security-based swap activities constitute "regulated activities" as defined for purposes of the relevant UK provisions and "MiFID business" as defined in the FCA Handbook Glossary; are carried on by the Covered Entity from an establishment in the United Kingdom and fall within the scope of the Covered Entity's

authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.

(6) Activities covered by FCA SYSC 10A. For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 10A, the Covered Entity's relevant security-based swap activities constitute activities described in FCA SYSC 10A.1.1(2)(a), (b) and/or (c); are carried on by the Covered Entity from an establishment in the United Kingdom and fall within the scope of the Covered Entity's authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.

(7) Counterparties as UK MiFID "clients." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14 and/or 14A, FCA PROD 3, FCA SYSC 10.1.8, FCA SYSC 10A and/or UK MiFID Org Reg, the relevant counterparty (or potential counterparty) to the Covered Entity is a "client" (or potential "client"), as defined in COBS 3.2.1R.

(8) Security-based swaps as UK MiFID "financial instruments." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14 and/or 14A, FCA PROD 3, FCA SYSC 10A, UK MAR, UK MAR Investment Recommendations Regulation and/or UK MiFID Org Reg, the relevant security-based swap is a "financial instrument," as defined in Part 1 of Schedule 2 of the UK Regulated Activities Order.

(9) Covered Entity as UK CRD/CRR "institution." For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance

with, provisions of UK CRR, the Covered Entity is an “institution,” as defined in UK CRR article 4(1)(3).

(10) Covered Entity as UK “common platform firm” or “third country firm.” For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9 and/or 10, the Covered Entity is either a “common platform firm” (other than a “UCITS investment firm”) or a “third country firm,” each as defined in the FCA Handbook Glossary.

(11) Covered Entity as UK “IFPRU investment firm.” For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FCA SYSC 19A, FCA IFPRU and/or FCA BIPRU, the Covered Entity is an “IFPRU investment firm,” as defined in the FCA Handbook Glossary.

(12) Covered Entity as “UK bank” or “UK designated investment firm.” For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FCA SYSC 19D, PRA Internal Capital Adequacy Assessment Rules, PRA Internal Liquidity Adequacy Assessment Rules, PRA General Organisational Requirements, PRA Remuneration Rules and/or PRA Risk Control Rules, the Covered Entity is a “UK bank” or “UK designated investment firm,” each as defined in the FCA Handbook Glossary (in the case of a provision of FCA SYSC 19D) or as defined in the PRA Rulebook Glossary (in the case of a provision of a PRA rule).

(13) Covered Entity’s counterparties as UK EMIR “counterparties.” For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of UK EMIR, UK EMIR RTS and/or UK EMIR Margin RTS, if the counterparty to the Covered Entity is not a “financial counterparty” or “non-financial

counterparty” as defined in UK EMIR articles 2(8) or 2(9), respectively, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were a financial counterparty, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the UK and authorized by an appropriate UK authority, or, otherwise, as if the counterparty were a non-financial counterparty; and

(ii) Without regard to the application of UK EMIR article 13.

(14) Security-based swap status under UK EMIR. For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of UK EMIR and/or other UK requirements adopted pursuant to those provisions, either:

(i) The relevant security-based swap is an “OTC derivative” or “OTC derivative contract,” as defined in UK EMIR article 2(7), that has not been cleared by a CCP and otherwise is subject to the provisions of UK EMIR article 11, UK EMIR RTS articles 11 through 15, and UK EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that has been authorized or recognized to clear derivatives contracts in the UK.

(15) Memorandum of Understanding with the FCA and the PRA. The Commission has a supervisory and enforcement memorandum of understanding and/or other arrangement with the FCA and the PRA addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(16) Notice to Commission. A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must identify each specific substituted compliance determination within paragraphs (b) through (f) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(b) Substituted compliance in connection with risk control requirements.

This Order extends to the following provisions related to risk control:

(1) Internal risk management. The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I), provided that the Covered Entity is subject to and complies with the requirements of:

(i) Either {FCA IFPRU 2.2.7R(2), 2.2.17R through 2.2.28R, 2.2.30R and 2.2.32R through 2.2.35R; and FCA BIPRU 12.3.4R, 12.3.5R, 12.3.7R, 12.3.8R, 12.3.22AR, 12.3.22BR, 12.3.27R, 12.4.-2R, 12.4.-1R, 12.4.5AR, 12.4.10R and 12.4.11R} or {PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2 and 11.1 through 11.3; and PRA Internal Liquidity Adequacy Assessment Rules 3.1, 3.2, 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4};

(ii) FCA PRIN 2.1.1R(3);

(iii) FCA SYSC 4.1.1R(1), 4.1.2R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R and 7.1.22R and, if the Covered Entity is a UK bank or UK designated

investment firm, also PRA General Organisational Requirements Rule 2.1 and 2.2 and PRA Risk Control Rules 2.3, 2.7 and 3.1 through 3.5;

(iv) Either {FCA SYSC 19A.2.1R} or {FCA SYSC 19D.2.1R and PRA Remuneration Rule 6.2};

(v) Either {FSMA schedule 6 part 2D and FCA COND 2.4.1A} or {FSMA schedule 6 parts 3C and 5D, FCA COND 2.4.1C and PRA Fundamental Rules 3 through 6};

(vi) UK CRR articles 286 through 288 and 293;

(vii) UK EMIR Margin RTS article 2; and

(viii) UK MiFID Org Reg articles 21 through 24.

(2) Trade acknowledgement and verification. The requirements of Exchange Act rule 15Fi-2, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(a) and UK EMIR RTS article 12.

(3) Portfolio reconciliation and dispute reporting. The requirements of Exchange Act rule 15Fi-3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b) and UK EMIR RTS articles 13 and 15;

(ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to the FCA pursuant to UK EMIR RTS article 15(2).

(4) Portfolio compression. The requirements of Exchange Act rule 15Fi-4, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR RTS article 14.

(5) Trading relationship documentation. The requirements of Exchange Act rule 15Fi-5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the

Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(a), UK EMIR RTS article 12 and UK EMIR Margin RTS article 2.

(c) Substituted compliance in connection with capital and margin

(1) Capital. The requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1, and 18a-1a through d, provided that:

(i) The Covered Entity is subject to and complies with the capital requirements of: the UK CRR, including recitals 40, 43 and 87, and articles 26, 28, 50 through 52, 61, 63, 92, 111, 113(1), 114 through 122, 143, 153(8), 177(2), 283, 290, 300 through 311, 312(2), 362 through 377, 382 through 383, 412(1), 413(1), 416(1), 427(1), 413, 429, 430, and 499; UK MiFID Org Reg article 23; UK EMIR Margin RTS, recital 31, articles 2, 3(b), 7, and 19(1)(d) and (e), (3) and (8); FCA SYSC 4.1.1R, 7.1.4R and 7.1.18R; Chapters 2,7, 10, 11 of FCA IFPRU; Chapter 12 of FCA BIPRU; FCA PRIN; Client asset protection requirements under the FCA CASS; PRA General Organisational Requirements Rule 2.1; PRA Risk Control Rules 2.3 and 3.1(1); PRA Capital Buffers Rules; PRA Internal Capital Adequacy Assessment Rules; PRA Internal Liquidity Adequacy Assessment Rules; PRA Liquidity Coverage Requirement — UK Designated Investment Firms Rules; PRA Notifications Rules; Banking Act 2009; Capital Requirements Regulations 2013; Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014; Part 8 and Part 9 of the Bank Recovery and Resolution (No 2) Order 2014; Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015; and Parts 4A and 12A of FSMA; and

(ii) The Covered Entity:

(A) Maintains an amount of assets that are allowable under Exchange Act rule 18a-1, after applying applicable haircuts under the Basel capital standard, that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days;

(B) Makes a quarterly record listing:

(1) The assets maintained pursuant to paragraph (c)(1)(ii)(A), their value, and the amount of their applicable haircuts;

(2) The aggregate amount of the liabilities coming due in the next 365 days; and

(C) Maintains at least \$100 million of equity capital composed of “highly liquid assets” as defined in the Basel capital standard; and

(D) Includes its most recent statement of financial condition filed with its local supervisor whether audited or unaudited with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(16) above.

(2) Margin. The requirements of Exchange Act section 15F(e) and Exchange Act rule 18a-3, provided that the Covered Entity is subject to and complies with the requirements of: UK EMIR article 11; UK EMIR Margin RTS; UK CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); UK MiFID Org Reg article 23(1); FCA SYSC 4.1.1R; FCA IFPRU 2.2.18R; PRA General Organisational Requirements Rule 2.1; and PRA Internal Capital Adequacy Assessment Rule 4.2.

(d) Substituted compliance in connection with internal supervision and compliance requirements and certain Exchange Act section 15F(j) requirements.

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) Internal supervision. The requirements of Exchange Act rule 15Fh-3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) to this Order;

(ii) The Covered Entity complies with paragraph (d)(4) to this Order; and

(iii) This paragraph (d) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh-3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh-3 in connection with those Exchange Act sections.

(2) Chief compliance officers. The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk-1, provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) to this Order;

(ii) All reports required pursuant to UK MiFID Org Reg article 22(2)(c) must also:

(A) Be provided to the Commission at least annually and in the English language;

(B) Include a certification that, under penalty of law, the report is accurate and complete;

and

(C) Address the firm's compliance with other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order.

(3) Applicable supervisory and compliance requirements. Paragraphs (d)(1) and (d)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements:

(i) FCA CASS 6.2.1R, 7.11.1R and 7.12.1R;

(ii) FCA COBS 11.7A.3R;

(iii) Either {FCA IFPRU 2.2.7R(2), 2.2.17R through 2.2.28R, 2.2.30R and 2.2.32R through 2.2.35R; and FCA BIPRU 12.3.4R, 12.3.5R, 12.3.7R, 12.3.8R, 12.3.22AR, 12.3.22BR, 12.3.27R, 12.4.-2R, 12.4.-1R, 12.4.5AR, 12.4.10R and 12.4.11R} or {PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2

and 11.1 through 11.3; and PRA Internal Liquidity Adequacy Assessment Rules 3.1, 3.2, 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3 and 12.4};

(iv) FCA PRIN 2.1.1R(3);

(v) FCA SYSC 4.1.1R(1), 4.1.2R, 4.3A.1R, 4.3A.3R, 4.3A.4R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R, 7.1.22R, 9.1.1AR, 10.1.3R, 10.1.7R, 10.1.8R, 10A.1.6R, 10A.1.8R, 10A.1.11R and 24.2.6R(8) and, if the Covered Entity is a UK bank or UK designated investment firm, also PRA Allocation of Responsibilities Rule 4.1(16); PRA General Organisational Requirements Rules 2.1, 2.2 and 5.1 through 5.3; PRA Record Keeping Rule 2.1; PRA Risk Control Rules 2.3, 2.7 and 3.1 through 3.5; and PRA Senior Management Functions Rule 8.2;

(vi) Either {FCA SYSC 19A.2.1R, 19A.3.1R(1), 19A.3.3R, 19A.3.7R through 19A.3.11R, 19A.3.14R, 19A.3.16R and 19A.3.35AR} or {FCA SYSC 19D.2.1R, 19D.3.1R, 19D.3.3R, 19D.3.7R through 19D.3.11R, 19D.3.15R, 19D.3.17R and 19D.3.37R and PRA Remuneration Rules 3.1, 4.2, 5.1, 6.2, 6.3, 6.4, 7.2, 7.3, 8.1, 8.2 and 15.2};

(vii) Either {FSMA schedule 6 part 2D and FCA COND 2.4.1A} or {FSMA schedule 6 parts 3C and 5D, FCA COND 2.4.1C and PRA Fundamental Rules 3 through 6};

(viii) UK CRR articles 286 through 288 and 293;

(ix) UK EMIR Margin RTS article 2; and

(x) UK MiFID Org Reg articles 21 through 37 and 72 through 76 and Annex IV.

(4) Additional condition to paragraph (d)(1). Paragraph (d)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (d)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order.

(e) Substituted compliance in connection with counterparty protection requirements.

This Order extends to the following provisions related to counterparty protection:

(1) Disclosure of information regarding material risks and characteristics. The requirements of Exchange Act rule 15Fh-3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of:

- (i) FCA COBS 2.2A.2R, 6.1ZA.11R, 6.1ZA.12R, 6.2B.33R, 9A.3.6R and 14.3A.3R; and
- (ii) Either {UK MiFID Org Reg articles 48 through 50} or {FCA COBS 6.1ZA.9UK, 6.1ZA.14UK, and 14.3A.5UK}.

(2) Disclosure of information regarding material incentives or conflicts of interest. The requirements of Exchange Act rule 15Fh-3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

- (i) FCA SYSC 10.1.8R and UK MiFID Org Reg articles 33 to 35;
- (ii) FCA COBS 2.3A.5R, 2.3A.6R, 2.3A.7E and 2.3A.10R through 2.3A.14R; or
- (iii) UK MAR article 20(1) and UK MAR Investment Recommendations Regulation articles 5 and 6.

(3) “Know your counterparty.” The requirements of Exchange Act rule 15Fh-3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the

Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of:

(i) FCA SYSC 6.1.1R;

(ii) UK MiFID Org Reg articles 21, 22, 25, 26 and applicable parts of Annex I;

(iii) FCA SYSC 4.1.1R(1);

(iv) Either {FCA IFPRU 2.2.7R(2) and 2.2.32R} or {PRA General Organisational Requirement 2.1 and PRA Internal Capital Adequacy Assessment Rule 10.1};

(v) MLR 2017 Regulations 27 and 28; and

(v) MLR 2017 Regulations 19(1) through (3), as applied to policies, controls and procedures regarding customer due diligence.

(4) Suitability. The requirements of Exchange Act rule 15Fh-3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that:

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and

complies with the requirements of:

(A) FCA COBS 4.2.1R, 9A.2.1R and 9A.1.16R;

(B) FCA PROD 3.2.1R and 3.3.1R;

(C) FCA SYSC 5.1.5AAR and 5.1.5ABR; and

(D) UK MiFID Org Reg articles 21(1)(b) and (d), 54 and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a “professional client” mentioned in FCA COBS 3.5.2R and is not a “special entity” as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh-2(d).

(5) Fair and balanced communications. The requirements of Exchange Act rule 15Fh-3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either {FCA COBS 2.1.1R and FCA COBS 4.2.1R} or {FCA COBS 2.1.1AR and FCA COBS 4.2.1R};

(ii) FCA COBS 2.2A.2R, 2.2A.3R, 6.1ZA.11R, 6.1ZA.12R, 6.1ZA.13R, 6.2B.33R, 6.2B.34R, 9A.3.6R and 14.3A.3R;

(iii) Either {UK MiFID Org Reg articles 46 through 48} or {FCA COBS 4.5A.9UK, 4.7.-1AUK, 6.1ZA.5UK, 6.1ZA.8UK, 6.1ZA.17UK, 6.1ZA.19UK, 6.1ZA.20UK, 8A.1.5UK to 8A.1.7UK, 14.3A.5UK, 14.3A.7UK and 14.3A.9UK};

(iv) UK MAR Investment Recommendations Regulation articles 3 and 4; and

(v) UK MAR articles 12(1)(c), 15 and 20(1).

(6) Daily mark disclosure. The requirements of Exchange Act rule 15Fh-3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to UK EMIR articles 11(1)(b) and 11(2) and UK EMIR RTS article 13.

(f) Substituted compliance in connection with recordkeeping, reporting, notification, and securities count requirements.

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, notification and securities counts:

(1)(i) Make and keep current certain records. The requirements of the following provisions of Exchange Act rule 18a-5, provided that the Covered Entity complies with the

relevant conditions in this paragraph (f)(1)(i) and with the applicable conditions in paragraph (f)(1)(ii):

(A) The requirements of Exchange Act rule 18a-5(a)(1) or (b)(1), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of UK MiFID Org Reg articles 74, 75, 76 and Annex IV; UK MiFIR article 25(1); and FCA SYSC 10A.1.6R, 10A.1.8R; and

(2) With respect to the requirements of Exchange Act rule 18a-5(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order.

(B) The requirements of Exchange Act rule 18a-5(a)(2), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK MiFID Org Reg articles 72(1), 74 and 75; and UK EMIR article 39(4); and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(C) The requirements of Exchange Act rule 18a-5(a)(3) or (b)(2), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.4R, 6.6.5G, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R,

6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK MiFID Org Reg articles 72(1), 74 and 75; and UK EMIR article 39(4); and

(2) With respect to the requirements of Exchange Act rule 18a-5(a)(3), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a-5(a)(4) or (b)(3), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of UK CRR articles 103 and 103(b)(ii); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 59, 74, 75 and 76 and Annex IV; UK MiFIR article 25(1); FCA SYSC 9.1.1AR, 10A.1.6R and 10A.1.8R; FCA COBS 8A.1.9R, 9A.2.1R, 9.1.1AR, 16A.2.1 R and 16A.3.1UK; UK EMIR articles 9(2) and 11(1)(a); MLR 2017 Regulations 28(10) and (18) and 28 through 30; and FCA FCG 3.1.7; and

(2) With respect to the requirements of Exchange Act rule 18a-5(a)(4), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(E) The requirements of Exchange Act rule 18a-5(b)(4) provided that the Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R, 16A.2.1 R, 16A.3.1UK; UK MiFID Org Reg article 59; FCA SYSC 9.1.1AR; and UK EMIR articles 9(2) and 11(1)(a);

(F) The requirements of Exchange Act rule 18a-5(a)(5) or (b)(5), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of UK MiFID Org Reg articles 74, 75, 76 and Annex IV; UK MiFIR article 25(1); FCA SYSC 10A.1.6R, 10A.1.8R; and UK MiFID Org Reg article 76; and

(2) With respect to the requirements of Exchange Act rule 18a-5(a)(5), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(G) The requirements of Exchange Act rules 18a-5(a)(6) and (a)(15) or (b)(6) and (b)(11), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 59, 74, 75 76 and Annex IV; UK MiFIR article 25(1); FCA SYSC 9.1.1AR, 10A.1.6R and 10A.1.8R; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1R and 16A.3.1UK; UK EMIR articles 9(2) and 11(1)(a); MLR 2017 Regulations 28(10) and (18) and 28-30; and FCA FCG 3.1.7;

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi-2 pursuant to this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a-5(a)(6) and (b)(6) to make and keep current books and records of confirmations of purchases and sales of securities other than security-based swaps;

(H) The requirements of Exchange Act rule 18a-5(a)(7) or (b)(7), as applicable, provided that:

(I) The Covered Entity is subject to and complies with the requirements of UK MiFIR article 25(1); MLR 2017 Regulations 28 through 30; FCA FCG 3.1.7; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA SYSC 9.1.1AR, 10A.1.6R and 10A.1.8R; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 59, 74, 75 and 76 and Annex IV; and UK EMIR articles 9(2) and 11(1)(a); and

(2) With respect to the requirements of Exchange Act rule 18a-5(a)(7), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(I) The requirements of Exchange Act rule 18a-5(a)(8), provided that:

(I) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 59, 72(1), 74, 75 and 76 and Annex IV; UK MiFIR article 25(1); FCA SYSC 9.1.1AR, 10A.1.6R and 10A.1.8R; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; UK EMIR articles 9(2) and 11(1)(a); MLR 2017 Regulations 28(10) and (18) and 28 through 30; and FCA FCG 3.1.7; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order.;

(J) The requirements of Exchange Act rule 18a-5(a)(9), provided that:

(I) The Covered Entity is subject to and complies with the requirements of FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G,

7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK EMIR article 39(4); and UK MiFID Org Reg articles 72(1), 74, and 75;

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a-5(a)(9) relating to Exchange Act rule 18a-2;

(K) The requirements of Exchange Act rule 18a-5(a)(10) and (b)(8), provided that the Covered Entity is subject to and complies with the requirements of FSMA sections 63F(2), 63F(5), 63(2A), 60A(2) and (5); PRA Fitness and Propriety Rules 2.6 and 2.9; SMR Applications and Notifications Rules 2.1, 2.2 and 2.6; PRA Certification Rules; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rule 2.1; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA General Organisational Requirements Rules 5.1 and 5.2; FCA SUP 3.10.4R through 3.10.7R, 10C.10.8D, 10C.10.8AD, 10C.15, 10C.10.14G, 10C.10.16R, 10C.10.21G and 10C Annex 3D; FCA SYSC 4.3A.1R., 4.3A.3R, 4.3A.3R, 10.1.7R, 27 and 27.2.5G; FCA FIT 2.1, 2.2 and 2.3; UK MiFID Org Reg articles 21(1)(a), 35;

(L) The requirements of Exchange Act rule 18a-5(a)(12), provided that:

(I) The Covered Entity is subject to and complies with the requirements of UK CRR articles 103, 105(3) and 105(10); FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK EMIR article 39(4); and MiFID Org Reg. articles 72(1), 74 and 75;

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rule 18a-3 pursuant to this Order;

(M) The requirements of Exchange Act rule 18a-5(a)(17) and (b)(13), as applicable, regarding one or more provisions of Exchange Act rules 15Fh-3 or 15Fk-1 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR and 10A.1.6R; UK MiFID Org Reg articles 72, 73, 76(8)(b) and Annex I; and UK EMIR article 39(5), in each case with respect to the relevant security-based swap or activity;

(2) With respect to the portion of Exchange Act rule 18a-5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fh-3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh-3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(3) With respect to the portion of Exchange Act rule 18a-5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fk-1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 pursuant to this Order;

(N) The requirements of Exchange Act rule 18a-5(a)(18)(i) and (ii) or (b)(14)(i) and (ii), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b); and UK EMIR RTS article 15(1); and

(2) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi-3 pursuant to this Order; and

(O) The requirements of Exchange Act rule 18a-5(a)(18)(iii) or (b)(14)(iii), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b); and UK EMIR RTS article 15(1), in each case with respect to such security-based swap portfolio(s); and

(2) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi-4 pursuant to this Order.

(ii) Paragraph (f)(1)(i) is subject to the following further conditions:

(A) Paragraphs (f)(1)(i)(A) through (D) and (H) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (f)(1)(i)(M) to records of compliance with Exchange Act rule 15Fh-3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a-5(a)(13), (a)(14), (a)(16), (b)(9), (b)(10) or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a-6, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(2)(i) and with the applicable conditions in paragraph (f)(2)(ii):

(A) The requirements of Exchange Act rule 18a-6(a)(1) or (a)(2), as applicable, provided that the Covered Entity is subject to and complies with the requirements of UK MiFID Org Reg articles 59, 72(1), 74, 75, 76 and Annex IV; FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R and

10A.1.8R; FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rules 2.1 and 2.2; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA PRIN 2.1.1.R(2) and (3); FCA FCG 3.1.7; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK CRR articles 103 and 103(b)(ii); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; MLR 2017 Regulations 28 through 30; UK MiFID Org Reg article 72(1), 74 and 75; UK MiFIR article 25(1); and UK EMIR article 9(2), 39(4) and 11(1)(a);

(B) The requirements of Exchange Act rule 18a-6(b)(1)(i) or (b)(2)(i), as applicable, provided that the Covered Entity is subject to and complies with the requirements of UK MiFID Org Reg articles 59, 72(1), 74, 75, 76 and Annex IV; FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R and 10A.1.8R; FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rules 2.1 and 2.2; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA PRIN 2.1.1.R(2) and (3); FCA FCG 3.1.7; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK CRR articles 103 and 103(b)(ii); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; MLR 2017 Regulations 28(10) and (18) and 28 through 30; UK MiFID Org Reg articles 72(1), 74 and 75; UK MiFIR article 25(1); and UK EMIR articles 9(2), 39(4) and 11(1)(a);

(C) The requirements of Exchange Act rule 18a-6(b)(1)(ii) and (iii), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK MiFID Org Reg articles 72(1), 74 and 75; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK EMIR articles 9(2), 25(1) and 39(4); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; and PRA Fundamental Rules 2 and 6; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a-6(b)(1)(iv) or (b)(2)(ii), as applicable, provided that the Covered Entity is subject to and complies with the requirements of FCA SYSC 9.1.1AR, 10A.1.6R and 10A.1.8R; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; MLR 2017 Regulations 28(18), 28(10) and 28 through 30; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rules 2.1 and 2.2; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK CRR articles 103 and 103(b)(ii); FCA PRIN 2.1.1.R(2) and (3); FCA FCG 3.1.7; FCA IFPRU 2.2.7R(1); FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R and 10A.1.8R; UK MiFID Org Reg articles 59, 72, 72(1), 73, 74, 75, 76, 76(8)(b), Annex I and Annex IV; UK MiFIR article 25(1); and UK EMIR articles 9(2), 11(1)(a), 39(4) and 39(5);

(E) The requirements of Exchange Act rule 18a-6(b)(1)(v), provided that:

(1) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, 104(1)(j), 294, 394, 415, 430 and Part Six: Title II & Title III; UK CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII, XIII and article 14; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); UK MiFIR article 25(1); and UK EMIR article 9(2);

(2) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(v), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(v) relating to Exchange Act rule 18a-2;

(F) The requirements of Exchange Act rule 18a-6(b)(1)(vi) or (b)(2)(iii), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 72(1) and 73; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; and FCA PRIN 2.1.1.R(2) and (3); UK MiFIR article 25(1); and UK EMIR article 9(2); and

(2) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(vi), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(G) The requirements of Exchange Act rule 18a-6(b)(1)(vii) or (b)(2)(iv), as applicable, provided that:

(I) The Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R, 16A.2.1 R, and 16A.3.1; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 59, 72(1) and 73; UK MiFIR article 25(1); UK EMIR articles 9(2) and 11(1)(a); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; and FCA PRIN 2.1.1.R(2) and (3); and

(2) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(vii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(H) The requirements of Exchange Act rule 18a-6(b)(1)(viii) or (b)(2)(v), as applicable, provided that:

(I) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, 104(1)(j), 294, 394, 415, 430 and Part Six: Title II & Title III; UK CRR Reporting ITS article 14 and annexes I, II, III, IV, V, VIII, IX, X, XI, XII, XIII; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); UK MiFIR article 25(1); and UK EMIR article 9(2);

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a-7 pursuant to this Order;

(3) With respect to the requirements of Exchange Act rule 18a-6(b)(1)(viii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(4) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(viii)(L); and

(5) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(1)(viii)(M) relating to Exchange Act rule 18a-2.

(I) The requirements of Exchange Act rule 18a-6(b)(1)(ix), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA SYSC 4.1.1(1)R, 4.1.1R(1), 6.1.1R, 7.1.4R, 9.1.1AR, 9.1.2R and 10.1.7R; FCA COBS 2.3A.32R; UK MiFID Org Reg articles 22(3)(c), 23, 23(1)(b), 24, 25(2), 26, 29(2)(c), 35 and 72(1); PRA Risk Control Rule 2.3; PRA Internal Capital Adequacy Assessment Rules 3 through 11; FCA IFPRU 2.2.7R, 2.2.17R through 2.2.35R and 2.2.44R; UK CRR articles 286 and 293(1)(d); UK EMIR RTS; PRA Recordkeeping Rule 2.1 and 2.2; UK MiFIR article 25(1); UK EMIR articles 9(2) and 11; UK EMIR RTS; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; and FCA PRIN 2.1.1.R(2) and (3); and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(J) The requirements of Exchange Act rule 18a-6(b)(1)(x), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA IFPRU 2.2.7R; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); UK MiFIR article 25(1); UK EMIR article 9(2); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; and FCA SYSC 9.1.1AR; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(K) The requirements of Exchange Act rule 18a-6(b)(1)(xii) or (b)(2)(vii), as applicable, regarding one or more provisions of Exchange Act rules 15Fh-3 or 15Fk-1 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of MLD4 articles 11 and 14; MLR 2017 Regulations 27 through 30; PRA Recordkeeping Rule 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); UK MiFIR article 25(1); and UK EMIR article 9(2), in each case with respect to the relevant security-based swap or activity;

(2) With respect to the portion of Exchange Act rule 18a-6(b)(1)(xii) or (b)(2)(vii) that relates to Exchange Act rule 15Fh-3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh-3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(3) With respect to the portion of Exchange Act rule 18a-6(b)(1)(xii) or (b)(2)(vii), as applicable, that relates to Exchange Act rule 15Fk-1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 pursuant to this Order;

(L) The requirements of Exchange Act rule 18a-6(c), provided that the Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); UK MiFIR article 25(1); and UK EMIR article 9(2);

(M) The requirements of Exchange Act rule 18a-6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of PRA General Organisational Requirements Rule 5.2; FSMA sections 60A(2), 63(2A), 63F(2) and (5); PRA Fitness and Propriety Rules 2.6 and 2.9; FCA SUP 10C.10.8D, 10C.10.8AD 10C.15, 10C Annex 3D,

10C.10.14G, 10C.10.16R, and 10C.10.21G; SMR Applications and Notifications Rules 2.1, 2.2 and 2.6; PRA Certification Rule 2.1; FCA SYSC 4.3A.1R, 4.3A.3R, 9.1.1AR, 9.1.2R, 10.1.7R, 27 and 27.2.5G; FCA FIT 2.1, 2.2 and 2.3; PRA General Organisational Requirements Rules 5.1 and 5.2; UK MiFID Org Reg articles 21(1)(a), 35 and 72(1); and PRA Recordkeeping Rules 2.1 and 2.2;

(N) The requirements of Exchange Act rule 18a-6(d)(2), provided that:

(1) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 72(1) and 72(3); UK MiFIR article 25(1); and UK EMIR article 9(2); and

(2) With respect to the requirements of Exchange Act rule 18a-6(d)(2)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(O) The requirements of Exchange Act rule 18a-6(d)(3), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); FCA SYSC 6.1.1R, 9.1.1AR, 9.1.2R and 10A.1.6R; PRA Recordkeeping Rules 2.1 and 2.2; UK MiFID Org Reg articles 72, 72(1), 73, 76(8)(b) and Annex I; UK MiFIR article 25(1); and UK EMIR article 9(2) and 39(5); and

(2) With respect to the requirements of Exchange Act rule 18a-6(d)(3)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(P) The requirements of Exchange Act rule 18a-6(d)(4) and (d)(5), provided that:

(I) The Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 4.1.1R(1), 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 24, 25(2), 72(1) and 73; UK MiFIR article 25(1); and UK EMIR article 9(2); and

(2) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi-3, 15Fi-4, and 15Fi-5 pursuant to this Order;

(Q) The requirements of Exchange Act rule 18a-6(e), provided that the Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 4.1.1R, 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 21(2), 58, 72(1) and 72(3); UK MiFIR article 25(1); and UK EMIR article 9(2); and

(R) The requirements of Exchange Act rule 18a-6(f), provided that the Covered Entity is subject to and complies with the requirements of PRA Outsourcing Rule 2.1; EBA Guidelines on Outsourcing section 13.3; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 8.1.1R, 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 31(1) and 72(1); UK MiFIR article 25(1); and UK EMIR article 9(2).

(ii) Paragraph (f)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (f)(2)(i)(K) to records related to Exchange Act rule 15Fh-3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule (b)(1)(xi), (b)(1)(xiii), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports*. The requirements of the following provisions of Exchange Act rule 18a-7, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(3):

(i) The requirements of Exchange Act rule 18a-7(a)(1) or (a)(2), as applicable, and the requirements of Exchange Act rule 18a-7(j) as applied to such requirements, provided that:

(A) The Covered Entity is subject to and complies with the requirements of FSMA sections 137A, 137G and 137T; CRD article 104(1)(j); PRA Definition of Capital Rule 4.5; UK CRR articles 99, 394, 430 and Part Six: Title II & Title III; and UK CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII;

(B) The Covered Entity 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 Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in the UK; and

(C) With respect to the requirements of Exchange Act rule 18a-7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(ii) The requirements of Exchange Act rule 18a-7(a)(3) and the requirements of Exchange Act rule 18a-7(j) as applied to such requirements, provided that:

(A) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, 394, 431 to 455, 432, 433, 434, 437 to 440, 442, 443, 445 to 449, 451 to 455, 452 and 455; UK CRR Reporting ITS annexes I, II, VIII and IX; FSMA sections 137A, 137G and 137T; PRA Definition of Capital Rule 4.5; and Companies Act sections 394, 415, 442 and 475; and

(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(iii) The requirements of Exchange Act rule 18a-7(b), provided that the Covered Entity is subject to and complies with the requirements of UK CRR articles 434, 437 through 440, 442, 443, 445 through 449, 451 through 455; and Companies Act sections 394, 415, 442 and 475;

(iv) The requirements of Exchange Act rule 18a-7(c), (d), (e), (f), (g) and (h) and the requirements of Exchange Act rule 18a-7(j) as applied to such requirements, provided that:

(A) The Covered Entity is subject to and complies with the requirements of FCA CASS 6.2.2R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R and 7.15.21R; FCA SUP 3.8.5R, 3.10.4R through 3.10.7R; UK CRR articles 26(2), 132(5), 154, 191, 321, 325bi, 350, 353, 368, 418, 431 to 455, 434, 437 to 440, 442, 443, 445 to 449 and 451 to 455; Companies Act sections 394, 415, 442 and 475; and Capital Requirements Regulations 2013 Regulation 2(4);

(B) With respect to financial statements the Covered Entity is required to file annually with the UK PRA or FCA, including a report of an independent public accountant covering the financial statements, the Covered Entity:

(1) Simultaneously sends a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements to the Commission in the manner specified on the Commission's website;

(2) Includes with the transmission the contact information of an individual who can provide further information about the financial statements and report;

(3) Includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a-7(c)(1)(i)(C) covering the annual financial statements if UK

laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements; provided, however, that such report of the independent public accountant may be prepared in accordance with generally accepted auditing standards in UK that the independent public accountant uses to perform audit and attestation services and the accountant complies with UK independence requirements;

(4) Includes with the transmission the reports required by Exchange Act rule 18a-7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a-7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a-4; provided, however, that the report of the independent public accountant required by Exchange Act rule 18a-7(c)(1)(i)(C) may be prepared in accordance with generally accepted auditing standards in the UK that the independent public accountant uses to perform audit and attestation services and the accountant complies with UK independence requirements; and

(5) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a-7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rule 18a-2; and

(6) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a-7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rules 18a-4 and 18a-4a; and

(C) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(v) The requirements of Exchange Act rule 18a-7(i), provided that:

(A) The Covered Entity is subject to and complies with the requirements of FCA SUP 16.3.17R and PRA Regulatory Reporting Rule 18; and

(B) The Covered Entity:

(1) Simultaneously sends a copy of any notice required to be sent by UK law cited in paragraph (f)(3)(v)(A) of the Order to the Commission in the manner specified on the Commission's website; and

(2) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a-8, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(4)(i) and with the applicable conditions in paragraph (f)(4)(ii):

(A) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a-8 and the requirements of Exchange Act rule 18a-8(h) as applied to such requirements, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R and 11; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.12G, 15.3.14G, 15.3.15R, 15.3.17R and 15.3.21R; FCA CASS 6.6.57R, 7.15.33R and Schedule 2; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 to 2A.6; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(B) The requirements of Exchange Act rule 18a-8(c) and the requirements of Exchange Act rule 18a-8(h) as applied to such requirements, provided that the Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R and 11; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.12G, 15.3.14G, 15.3.15R, 15.3.17R and 15.3.21R; FCA

CASS 6.6.57R, 7.15.33R and Schedule 2; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 to 2A.6;

(C) The requirements of Exchange Act rule 18a-8(d) and the requirements of Exchange Act rule 18a-8(h) as applied to such requirements, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R and 11; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.12G, 15.3.14G, 15.3.15R, 15.3.17R and 15.3.21R; FCA CASS 6.6.57R, 7.15.33R and Schedule 2; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 through 2A.6; and

(2) This Order does not extend to the requirements of Exchange Act rule 18a-8(d) to give notice with respect to books and records required by Exchange Act rule 18a-5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(D) The requirements of Exchange Act rule 18a-8(e) and the requirements of Exchange Act rule 18a-8(h) as applied to such requirements, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R and 11; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.12G, 15.3.14G, 15.3.15R, 15.3.17R and 15.3.21R; FCA CASS 6.6.57R, 7.15.33R and Schedule 2; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 through 2A.6;

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order;

(3) This Order does not extend to the requirements of Exchange act rule 18a-8(e) relating to Exchange Act rule 18a-2 or to the requirements of Exchange Act rule 18a-8(h) as applied to such requirements; and

(4) This Order does not extend to the requirements of Exchange act rule 18a-8(e) relating to Exchange Act rule 18a-4 or to the requirements of Exchange Act rule 18a-8(h) as applied to such requirements;

(ii) Paragraph (f)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(1) 'Simultaneously sends a copy of any notice required to be sent by UK law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(2) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice;

(B) This Order does not extend to the requirements of paragraphs (a)(2) and (b)(3), and of Exchange Act rule 18a-8 relating to Exchange Act rule 18a-2 or to the requirements of Exchange Act rule 18a-8(h) as applied to such requirements;

(C) This Order does not extend to the requirements of paragraph (g) of rule 18a-8 or to the requirements of Exchange Act rule 18a-8(h) as applied to such requirements.

(5) *Securities Counts*. The requirements of Exchange Act rule 18a-9, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA CASS 6.2.1R, 6.2.2R, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 6.6.4R, 6.6.47G, 6.6.5G, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.5R, 7.15.9R, 7.15.3R, 7.15.8R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; FCA SUP 3.10.4R

– 3.10.7R; UK MiFID Org Reg articles 74 and 75; UK EMIR article 11(1)(b); and UK EMIR RTS articles 12 and 13; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order.

(6) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; and FCA SYSC 9.1.1AR; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d pursuant to this Order.

(7) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(8) *English Translations.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation

of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(g) Definitions.

(1) “Covered Entity” means an entity that:

(i) Is a security-based swap dealer or major security-based swap participant registered with the Commission;

(ii) Is not a “U.S. person,” as that term is defined in rule 3a71-3(a)(4) under the Exchange Act;

(iii) Is a “MiFID investment firm” or “third country investment firm,” as such terms are defined in the FCA Handbook Glossary, that has permission from the FCA or PRA under Part 4A of FSMA to carry on regulated activities relating to investment services and activities in the United Kingdom; and

(iv) Is supervised by the FCA under the fixed supervision model and, if the firm is a PRA-authorized person, also supervised by the PRA as a Category 1 firm.

(2) “Capital Requirements Regulations 2013” means the UK Capital Requirements Regulations 2013, as amended from time to time.

(3) “Companies Act” means the UK Companies Act 2006, as amended from time to time.

(4) “FCA” means the UK’s Financial Conduct Authority.

(5) “FCA BIFPRU” means the Prudential Sourcebook for Banks, Building Societies and Investment Firms of the FCA Handbook, as amended from time to time.

(6) “FCA CASS” means the Client Asset Sourcebook of the FCA Handbook, as amended from time to time.

(7) “FCA COBS” means the Conduct of Business Sourcebook of the FCA Handbook, as amended from time to time.

(8) “FCA COND” means the Threshold Conditions of the FCA Handbook, as amended from time to time.

(9) “FCA Enforcement Guide” means the Enforcement Guide of the FCA Handbook, as amended from time to time.

(10) “FCA FCG” means the Financial Crime Guide of the FCA Handbook, as amended from time to time.

(11) “FCA FIT” means the Fit and Proper test for Employees and Senior Personnel Sourcebook of the FCA Handbook, as amended from time to time.

(12) “FCA Handbook” means the FCA’s Handbook of rules and guidance, as amended from time to time.

(13) “FCA Handbook Glossary” means the Glossary part of the FCA’s Handbook of rules and guidance, as amended from time to time.

(14) “FCA IFPRU” means the Prudential Sourcebook for Investment Firms of the FCA Handbook, as amended from time to time.

(15) “FCA PRIN” means the Principles for Businesses Sourcebook of the FCA Handbook, as amended from time to time.

(16) “FCA PROD” means the Product Intervention and Product Governance Sourcebook of the FCA Handbook, as amended from time to time.

(17) “FCA SUP” means the Supervision Sourcebook of the FCA Handbook, as amended from time to time.

(18) “FCA SYSC” means the Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook, as amended from time to time.

(19) “FSMA” means the UK’s Financial Services and Markets Act 2000, as amended from time to time.

(20) “ICVC” means investment company with variable capital as defined in the FCA Handbook Glossary.

(21) “MLR 2017” means the UK’s Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended from time to time.

(22) “PRA” means the UK’s Prudential Regulation Authority.

(23) “PRA Capital Buffer Rules” means the Capital Buffer Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(24) “PRA Certification Rules” means the Certification Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(25) “PRA Definition of Capital Rules” means the Definition of Capital Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(26) “PRA Fitness and Proprietary Rules” means the Fitness and Propriety Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(27) “PRA Fundamental Rules” means the Fundamental Rules Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(28) “PRA General Organisational Requirements” means the General Organisational Requirements Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(29) “PRA Internal Capital Adequacy Assessment Rules” means the Internal Capital Adequacy Assessment Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(30) “PRA Internal Liquidity Adequacy Assessment Rules” means the Internal Liquidity Adequacy Assessment Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(31) “PRA Liquidity Coverage Requirement – UK Designated Investment Firms Rules” means the PRA Liquidity Coverage Requirement – UK Designated Investment Firms Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(32) “PRA Notifications Rules” means the Notifications Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(33) “PRA Outsourcing Rules” means the Outsourcing Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(34) “PRA Recordkeeping Rules” means the Recordkeeping Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(35) “PRA Regulatory Reporting Rules” means the Regulatory Reporting Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(36) “PRA Remuneration Rules” means the Remuneration Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(37) “PRA Risk Control Rules” means the Risk Control Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(38) “PRA Rulebook” or “PRA Rulebook for CRR Firms” means the PRA’s Rulebook for Capital Requirement Regulation Firms, as amended from time to time.

(39) “PRA Rulebook Glossary” means the Glossary part of the PRA Rulebook for CRR Firms, as amended from time to time.

(40) “PRA Senior Management Functions Rules” means the Senior Management Functions Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(41) “Prudentially regulated” means a Covered Entity that has a “prudential regulator” as that term is defined in Exchange Act section 3(a)(74).

(42) “SMR” means the Senior Managers Regime that forms part of the Senior Managers and Certification Regime, as amended from time to time.

(43) “UK” means the United Kingdom.

(44) “UK CRR” means the UK version of Regulation (EU) No 575/2013, as amended from time to time.

(45) “UK CRR Reporting ITS” means the UK version of Commission Implementing Regulation (EU) 680/2014.

(46) “UK EMIR” means the UK version of the “European Market Infrastructure Regulation,” Regulation (EU) No 648/2012, as amended from time to time.

(47) “UK EMIR Margin RTS” means the UK version of Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(48) “UK EMIR RTS” means UK version of Commission Delegated Regulation (EU) No 149/2013, as amended from time to time.

(49) “UK MAR” means the UK version of Market Abuse Regulation (EU) 596/2014, as amended from time to time.

(50) “UK MAR Investment Recommendations Regulation” means the UK version of Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(51) “UK MiFID Org Reg” means the UK version of Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(52) “UK MiFIR” means the UK version of the “Markets in Financial Instruments Regulation,” Regulation (EU) 600/2014, as amended from time to time.

(53) “UK Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order (SI 2001/544), as amended from time to time.