ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets. Approximately 6 funds rely on the rule annually, with a total of 6 responses.[2] Thus, the total annual hour burden for rule 17f–1 is approximately 21 hours.[3]

Funds that rely on rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $978.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $9,050.[5] Therefore, the total annual cost burden for a fund that relies on rule 17f–1 would be approximately $10,028.[6] As noted above, the staff estimates that 6 funds rely on rule 17f–1 each year, for an estimated total annualized cost burden of $60,168.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 22, 2020.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–28768 Filed 12–28–20; 8:45 am]

BILLING CODE 8011–01–P

that comply with the rule. The actual number of hours may vary significantly depending on individual fund assets. The hour burden for rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

[2] Based on a review of Form N–17f–1 filings over the last three years the Commission staff estimates that an average of 6 funds rely on rule 17f–1 each year.

[3] This estimate is based on the following calculation: (6 Respondents × 3.5 hours = 21 hours). The annual burden for rule 17f–1 does not include time spent preparing Form N–17f–1. The burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time × $489 = $978). The staff has estimated the average cost of outside counsel at $489 per hour, based on information received from funds and their counsel.

[5] This estimate is based on information received from fund representatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: ($978 + $9,050 = $10,028).

[7] This estimate is based on the following calculation: (6 funds × $10,028 = $60,168).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90766; File No. S7–22–20]

Notice of Substituted Compliance Application Submitted by the French Autorité des Marchés Financiers and the Autorité de Contrôle Prudential et de Résolution in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic; 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 French Autorité des Marchés Financiers (''AMF'') and the Autorité de Contrôle Prudential et de Résolution (''ACPR'') 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 (''SBS Entities'') that are not U.S. persons and that are subject to certain regulation in the French Republic (''France'') may comply with certain requirements under the Exchange Act via compliance with corresponding requirements of France and the European Union. 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 January 25, 2021.

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–22–20 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 S7–22–20. 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*). 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 10:00 a.m. and 3:00 p.m. 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 or Laura Compton, Senior 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 AMF

and the ACPR (''French Authorities'') requesting that the Commission determine that SBS Entities that are not U.S. persons and that are subject to certain regulation in France may satisfy certain requirements under the Exchange Act by complying with comparable requirements in France including relevant European Union (''EU'') requirements. The Commission also is soliciting comment on a proposed Order, set forth in Attachment A, providing for conditional substituted compliance in connection with that application.

I. Background

Exchange Act rule 3a71–6 conditionally provides that non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F by complying with comparable regulatory requirements of a foreign jurisdiction.[1] 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, and portfolio reconciliation, portfolio compression and trading relationship documentation.[2]

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 foreign authority's supervisory and enforcement frameworks.[3] Substituted compliance further requires that the Commission and 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.[4] Also, foreign regulatory authorities may submit a substituted compliance application only if the authorities provide ''adequate assurances'' that no law or policy would impede the ability of any entity that is directly supervised by the authorities 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.'' [5]

Commission rule 0–13 addresses procedures for filing substituted compliance applications, and provides that the Commission will publish 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.'' [6]

II. French Authorities' Substituted Compliance Request

The French Authorities have submitted a complete substituted compliance application to the Commission.[7] Pursuant to rule 0–13, the Commission is publishing notice of the application together with a proposed Order to conditionally grant substituted compliance to certain French SBS Entities in connection with certain requirements under the Exchange Act. The Commission will consider public comments on the French Authorities' Application and the proposed Order.

The French Authorities seek substituted compliance for French market participants in connection with a number of requirements under Exchange Act section 15F:

A. Relevant Market Participants

The Commission will consider whether to make substituted compliance available to any entity that: (i) Is registered with the Commission as a security-based swap dealer or major security-based swap participant; (ii) is not a U.S. person; (iii) has been authorized by the AMF as an investment firm or by the ACPR as a credit institution after approval by the AMF of the credit institution's program of operations; and (iv) is subject to relevant French and EU financial regulatory requirements and to supervision and enforcement by the French Authorities' in connection with its security-based swap activity.

B. Relevant Section 15F Requirements

The French Authorities request that the Commission issue an order determining that—for substituted compliance purposes—applicable requirements in France 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.[8]

Capital and margin requirements—Requirements related to capital and margin applicable to non-prudentially regulated security-based swap dealer and major security-based swap participants.[9]

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[1] The Commission has also discussed the parameters of substituted compliance in connection with a substituted compliance request and accompanying Order regarding the Federal Republic of Germany. *See* Exchange Act Release No. 34–90378 (Nov. 9, 2020), 85 FR 72726 (Nov.13, 2020) (''German Notice and Proposed Order''); Exchange Act Release No. 34–90765 (Dec. 22, 2020), (''German Substituted Compliance Order'').

[2] *See* Exchange Act rule 3a71–6(d). Substituted compliance under rule 3a71–6 is not available in connection with certain antifraud prohibitions (Exchange Act sections 10(b) and 15F(h)(4)(A), Exchange Act rules 10b–5 and 15Fh–4(a), and Securities Act of 1933 section 17(a)), information-related provisions (15F(j)(2) and 15F(j)(4)(B)), requirements related to transactions with counterparties that are not eligible contract participants (''ECPs'') (Exchange Act section 6(l) and Securities Act section 5(e)), provisions related to segregation of customer assets (Exchange Act section 3E and Exchange Act rule 18a–4), required clearing upon counterparty election (Exchange Act section 3C(g)(5)), regulatory reporting and public dissemination (Regulation SBSR, 17 CFR 242.900 et seq.) and registration of offerings (Securities Act section 5).

[3] *See* Exchange Act rule 3a71–6(a)(2)(i).

[4] *See* Exchange Act rule 3a71–6(a)(2)(ii). The Commission and the French Authorities are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance. In light of the ECB's authority with respect to certain requirements, including margin and capital, for which the French Authorities seek substituted compliance, the Commission and the ECB are also in the process of developing a memorandum of understanding or other arrangement to address cooperation matters related to substituted compliance. These MOUs or other arrangements will need to be in place before the Commission may allow Covered Entities 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.

[5] *See* Exchange Act rule 3a71–6(a)(3). The French Authorities have satisfied this prerequisite in the Commission's preliminary view, taking into account information and representations that French Authorities provided regarding certain French and EU requirements that are relevant to the Commission's ability to inspect, and access the books and records of, security-based swap dealers in France.

[6] *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**.

[7] *See* Letter from Robert Ophèle, Chairman, AMF and Denis Beau, Chairmen, ACPR to Vanessa A. Countryman, Secretary, Commission, dated December 10, 2020 (''French Authorities' Application''). The application is available on the Commission's website at *https://www.sec.gov/files/full-french-application.pdf.*

[8] *See* part IV, *infra.*

[9] *See* part V, *infra.* The French Authorities request substituted compliance in connection with capital and margin requirements that are applicable to non-prudentially regulated SBS Entities pursuant to Exchange Act section 15F(e) and Exchange Act

Continued

Internal supervision, chief compliance officer and additional section 15F(j) requirements—Requirements related to diligent supervision and chief compliance officers, as well as requirements related to conflicts of interest and information gathering under Exchange Act section 15F(j).[10]

Counterparty protection requirements—Requirements related to disclosure of material risks and characteristics and material incentives or conflicts of interest, disclosure of daily marks, fair and balanced communications, disclosure of clearing rights, ''know your counterparty'' and suitability of recommendations.[11]

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.[12]

C. Comparability Considerations and Proposed Order

Because France is a member of the European Union, market participants in France are subject to French regulations implemented pursuant to EU directives, and to applicable EU regulations. Those include requirements related to: Organization, compliance and conduct[13]; risk-mitigation;[14] prudential matters;[15] and certain other matters relevant to the application.[16] In the view of the French Authorities, French and EU requirements taken as a whole produce regulatory outcomes that are comparable to those of the relevant requirements under the Exchange Act.[17]

In the Commission's preliminary view, requirements under the Exchange Act and French/EU 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.[18]

Based on the Commission's analysis of the application and review of relevant French and EU requirements, the Commission is proposing an Order, located at Attachment A, granting substituted compliance subject to specific conditions and limitations. When SBS Entities seek to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable French and EU 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).

rules 18a–1 through 18a–1d, and 18a–3. 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). *See* para. (g)(24) to the proposed Order.

[10] *See* part VI, *infra.*

[11] *See* part VII, *infra.* The French Authorities are not requesting substituted compliance in connection with: Eligible contract participant (''ECP'') verification requirements (Exchange Act section 15F(h)(3)(A) and Exchange Act rule 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); and political contribution provisions (Exchange Act rule 15Fh–6).

[12] *See* part VIII, *infra.*

[13] *See* EU's Markets in Financial Instruments Directive (''MiFID''), Directive 2014/65/EU, which has been implemented in France as part of article L. 511 to the French Monetary and Financial Code—Code monétaire et financier (''MFC''). These address, *inter alia,* organizational, compliance and conduct requirements applicable to nonbank ''investment firms.'' In relevant part, those requirements also apply to credit institutions that provide investment services or perform investment activities. Additional relevant requirements are: (i) Commission Delegated Regulation (EU) 2017/565 (''MiFID Org Reg''), which in part supplements MiFID with respect to organizational requirements for firms; (ii) Markets in Financial Instruments Regulation (''MiFIR''), Regulation (EU) 648/2012, which generally addressing trading venues and transparency; (iii) Commission Delegated Directive (EU) 2017/593 (''MiFID Delegated Directive''), which in part supplements MiFID with regard to safeguarding client property, and in France is implemented in relevant part by the Règlement Général de L'Autorité des Marchés Financiers (''AMF General Regulation''); and (iv) Directive (EU) 2015/849 (''MLD'') addresses requirements on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and in France has been implemented by article L.561 to the MFC.

[14] Relevant requirements are: (i) European Market Infrastructure Regulation (''EMIR''), Regulation (EU) 648/2012, which in part imposes certain risk-mitigation requirements on counterparties in connection with uncleared OTC transactions; (ii) Delegated Regulation (EU) 149/2013 (''EMIR RTS''), which supplements EMIR with various regulatory technical standards, including standards addressing confirmations, portfolio reconciliation, portfolio compression and dispute resolution; and (iii) Delegated Regulation (EU) 2016/2251 (''EMIR Margin RTS''), which further supplements EMIR with regulatory technical standards related to risk mitigation techniques.

[15] The EU's Capital Requirements Directive IV (''CRD''), Directive 2013/36/EU has been adopted in France as part of article L.533 to the MFC, and set forth prudential requirements and certain related requirements applicable to credit institutions and certain nonbank investment firms. Certain CRD requirements regarding reporting obligations have been incorporated into French law as part of articles L. 511 and L.634 to the MFC. The Capital Requirements Regulation (''CRR''), Regulation (EU) 575/2013, further addresses prudential requirements and related recordkeeping requirements for credit institutions and certain investment firms. Commission Implementing Regulation (EU) 680/2014 (''CRR Reporting ITS'') sets forth implementing technical standard regarding supervisory reporting. Pursuant to amendments that will become effective in June 2021, the requirements of CRD and the CRR will apply to credit institutions and to certain nonbank undertakings (that carry on activities involving dealing, portfolio management, investment advice and underwriting/placing) that meet specified thresholds (*e.g.,* consolidated assets of €30 billion or more). *See generally* Investment Firms Regulation (''IFR''), Regulation (EU) 2019/2033, art. 62 (amending certain definitions in the CRR).

[16] The Market Abuse Regulation (''MAR''), Regulation (EU) 596/2014, sets forth requirements to enhance market integrity and investor protection. The Investment Recommendations Regulation adopted pursuant to MAR (''MAR Investment Recommendations Regulation''), Commission Delegated Regulation (EU) 2016/958, supplements MAR with respect to regulatory technical standards regarding investment recommendations.

[17] In support, the application incorporates and relies on a series of European Commission analyses that compare EU requirements with applicable requirements under the Exchange Act, in addition to analyses specific to French law and practices. The application particularly incorporates and builds upon European Commission analyses related to: Risk control (*see* French Authorities' Application Annex 1 category 1), books and records (*see* the French Authorities' Application Annex 1 category 2), internal supervision and compliance (*see* the French Authorities' Application Annex 1 category 3), and counterparty protection (*see* the French Authorities' Application Annex 1 category 4).

[18] 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 under the Exchange Act. Where the Commission preliminarily has found that the French 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.

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 would be available to ''Covered Entities''—a term that would limit the scope of the substituted compliance determination to SBS Entities that are subject to applicable French and EU requirements and oversight. Consistent with the parameters of substituted compliance under Exchange Act rule 3a71–6, the proposed ''Covered Entity'' definition would provide that the relevant entities must be security-based swap dealers or major security-based swap participants registered with the Commission, and that those entities cannot be U.S. persons.[19]

The proposed ''Covered Entity'' definition further would provide that the entities must be investment firms that the AMF authorize to provide investment services or perform investment activities in France or credit institutions that the ACPR authorize after approval by the AMF of the credit institution's program of operations to provide investment services or perform investment activities in France.[20] This is intended to help ensure that those entities are subject to relevant French and EU 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 French and EU requirements that form the basis for substituted compliance in practice will apply to the SBS 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 French and EU requirements that are needed to establish comparability. Accordingly, the proposed Order would not provide substituted compliance when an SBS Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant member French or EU requirements do not apply to the security-based swap activities of a third-country branch of a French SBS Entity.

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 French and EU requirements, and to facilitate the Commission's oversight of firms that avail themselves of substituted compliance. In particular:

- *MiFID ''investment services or activities''*—The Covered Entity's security-based swap activities must constitute ''investment services or activities'' for purposes of applicable provisions under MiFID, provisions under MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, and must fall within the scope of the firm's authorization from the AMF or from the ACPR after approval by the AMF of the firm's program of operations.[21]
- *MiFID ''clients''*—The Covered Entity's counterparties (or potential counterparties) must be ''clients'' (or potential ''clients'') for purposes of applicable provisions under MiFID, provisions under MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions.[22]
- *MiFID ''financial instruments''*—The relevant security-based swaps must be ''financial instruments'' for purposes of applicable provisions under MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions.[23]
- *CRD ''institutions''*—The Covered Entity must be an ''institution'' for purposes of applicable provisions under CRD, provisions of MFC that implement CRD, CRR and/or other EU and French requirements adopted pursuant to those provisions.[24]
- *Memoranda of Understanding*—The Commission and the AMF and ACPR must have an applicable memorandum of understanding or other arrangement addressing cooperation with respect to the Order at the time the Covered Entity makes use of substituted compliance.[25] For Covered Entities that are credit institutions, the AMF, ACPR and ECB share responsibility for supervising compliance with some of the provisions of EU and French law addressed by the proposed Order.[26] To ensure the Commission's ability to receive information about these Covered Entities that may belong to the ECB, the proposed Order would require that, at the time such a Covered Entity makes use of substituted compliance with respect to those requirements, the Commission and the ECB, and/or AMF and/or the ACPR also must have a memorandum of understanding and/or other arrangement addressing cooperation with respect to the Order as it pertains to this ECB-owned information.[27]
- *Notice of reliance on substituted compliance*—An SBS Entity relying on the substituted compliance order must provide notice of its intent to rely on the order by notifying the Commission in writing.[28]

3. European Union Cross-Border Matters

The cross-border application of MiFID, MAR and EU and Member State

[19] *See* para. (g)(1)(i) and (ii) to the proposed Order.

[20] *See* para. (g)(1)(iii) to the proposed Order.

[21] *See* para. (a)(1) to the proposed Order (relevant activities must constitute ''investment services'' or ''investment activities'' as defined in MiFID art. 4(1)(2) and MFC L. 321–1 in connection with applicable provisions). Under this condition, an SBS Entity's security-based swap activities must constitute ''investment services or activities'' only to the extent that the relevant part of the Order requires the entity to be subject to and comply with provisions of MiFID, MFC or related EU and French requirements. The security-based swap activities need not be ''investment services or activities'' when the relevant part of the Order does not require compliance with one of those provisions (*e.g.,* paragraph (e)(6) addressing substituted compliance for daily mark disclosure requirements).

[22] *See* para. (a)(2) to the proposed Order (relevant counterparties or potential counterparties must be ''clients'' or potential ''clients'' as defined in MiFID art. 4(1)(9) and as used in the relevant provision of MFC, in connection with applicable provisions).

[23] *See* para. (a)(3) to the proposed Order (relevant security-based swaps must be ''financial instruments'' as defined in MiFID art. 4(1)(15) and MFC L. 211–1 and D. 211–1A in connection with applicable provisions).

[24] *See* para. (a)(4) to the proposed Order (relevant Covered Entities must be ''institutions,'' as defined in CRD art. 3(1)(3) and CRR art. 4(1)(3), and either a credit institution or finance company, each as defined in MFC L. 511–1).

[25] *See* para. (a)(5) to the proposed Order.

[26] *See, e.g.,* para. (c)(1) to the proposed Order (substituted compliance for Exchange Act capital requirements available to Covered Entities that are subject to and comply with certain provisions of CRR, BRRD, CRD and provisions of French law that implement BRRD and/or CRD and/or other EU and French requirements adopted pursuant to those provisions); para. (c)(2) of the proposed Order (substituted compliance for Exchange Act margin requirements available to Covered Entities that are subject to and comply with certain provisions of CRR, CRD and provisions of French law that implement CRD and/or other EU and French requirements adopted pursuant to those provisions).

[27] *See* para. (a)(6) to the proposed Order. In accordance with the terms of the proposed Order, this arrangement will need to be in place at the time a Covered Entity makes use of substituted compliance by complying with any EU or French requirements for which the ECB, AMF and ACPR share supervisory responsibility.

[28] See para. (a)(7) to the proposed Order.

requirements adopted pursuant to MiFID or MAR raises special issues. For some EU requirements under MiFID (and other EU and French requirements adopted pursuant to MiFID), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of the Member State in whose territory a Covered Entity provides certain services.[29] To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order requires a Covered Entity to be subject to or comply with one of those MiFID requirements (or other EU or French requirements adopted pursuant to MiFID), the AMF or the ACPR must be the authority responsible for supervision and enforcement of those requirements in relation to the particular service for which substituted compliance is used.[30] Similarly, for some of the EU requirements under MAR (and other EU requirements adopted pursuant to MAR), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of potentially multiple Member States. To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order requires a Covered Entity to be subject to or comply with one of those MAR requirements (or other EU requirements adopted pursuant to MAR), the Covered Entity may use substituted compliance only if one of the authorities responsible for supervision and enforcement of those requirements is the AMF or the ACPR.[31]

IV. Substituted Compliance for Risk Control Requirements

A. The French Authorities' Request and Associated Analytic Considerations

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

- *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). Those provisions address the obligation of registered entities to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.[32]
- *Trade acknowledgment and verification*—Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–2. 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.[33]
- *Portfolio reconciliation and dispute reporting*—Portfolio reconciliation and dispute reporting requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–3. 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.[34]
- *Portfolio compression*—Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–4. Those provisions require that SBS Entities have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.[35]
- *Trading relationship documentation*—Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–5. 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.[36]

Taken as a whole, these risk control requirements help to promote market stability by mandating that registered entities follow practices that are appropriate to manage the market, credit, counterparty, operational and legal 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 registered 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 French Authorities' Application and the Commission's review of applicable provisions, relevant French and EU requirements would produce regulatory outcomes that are comparable to those associated with these risk control requirements, by subjecting French SBS 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 French and EU provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with these risk control requirements under the Exchange Act.[37]

[29] *See* MiFID art. 35(8).

[30] *See* para. (a)(8) to the proposed Order.

[31] *See* para. (a)(8) to the proposed Order.

[32] *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 French Authorities' application discusses French and EU requirements that address SBS Entities' obligations related to risk management. *See* French Authorities' Application Annex 1 category 1 at 66–79.

[33] *See* Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39808, 39809 & 39820 (Jun. 17, 2019) (''Trade Acknowledgment and Verification Adopting Release''). The French Authorities' Application discusses French and EU requirements that address SBS Entities' obligations related to confirmations and to information to be provided to clients regarding executed orders. *See* French Authorities' Application Annex 1 category 1 at 80–102.

[34] *See* Exchange Act Release No. 87782 (Dec. 18, 2019), 85 FR 6359, 6360–61 (Feb. 4, 2020) (''Risk Mitigation Adopting Release''). The French Authorities' Application discusses French and EU requirements that address portfolio reconciliation and dispute resolution and reporting. *See* French Authorities' Application Annex 1 category 1 at 104–12.

[35] *See* Risk Mitigation Adopting Release, 85 FR at 6361. The French Authorities' Application discusses EU portfolio compression requirements. *See* French Authorities' Application Annex 1 category 1 at 113–16.

[36] *See* Risk Mitigation Adopting Release, 85 FR at 6361. The French Authorities' Application discusses French and EU requirements regarding records of rights, obligations and terms of investment firm services. *See* French Authorities' Application Annex 1 category 1 at 116–32.

[37] In connection with risk management system requirements, Covered Entities particularly must comply with: MiFID art. 16(4)–(5) and MFC L. 533–10.II (4) and (5) (addressing administrative and accounting procedures, internal control mechanisms, risk assessment procedures and information processing system safeguards); MiFID Org Reg art. 21–24 (addressing risk management and internal audit); CRD art. 74, 76 and 79–87 and MFC L. 511–41–1–B and L. 511–41–1–C, L. 511–55 through L. 511–57, L. 511–60 through L. 511–66, L. 511–89 through L. 511–97; Internal Control Order articles 106, 111, 114–15, 121–22, 130–34, 146–86, 211–12, 214–15; Prudential Supervision and Risk Assessment Order article 7 (addressing internal governance and the treatment of various categories of risk); EMIR Margin RTS art. 2 (addressing required risk management procedures for the exchange of collateral for non-centrally cleared over-the-counter derivatives contracts); CRR art.

While the Commission recognizes that there are certain differences between those French and EU requirements and the applicable risk control 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.

2. 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—MiFID ''Eligible Counterparty'' Exception Not Applicable

Under the proposed Order, substituted compliance in connection with the trading relationship documentation provisions of Exchange Act rule 15Fi–5 would be conditioned on the requirement that the non-U.S. firm not treat its counterparties as ''eligible counterparties'' for purposes of the relevant MiFID provisions needed to establish comparability.[38]

Certain of the relevant French and EU requirements that provide for this type of documentation [39] do not apply to investment firms' transactions with ''eligible counterparties.'' [40] Frameworks that completely exclude compliance in connection with a particular category of security-based swap counterparty would not promote the associated risk control purposes sufficiently to produce a comparable regulatory outcome.

The Commission is mindful that compliance with this condition may require French SBS Entities that wish to rely on substituted compliance to supplement their existing practices and incur additional time and cost burdens to follow relevant French and EU documentation requirements in connection with their security-based swap business involving ''eligible counterparties.'' On balance, however, this prerequisite to substituted compliance is necessary to promote comparability in light of the risk control purposes of the trading relationship documentation requirement, and that requirement's lack of a comparable carveout based on counterparty categories.

b. 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 rule 15Fi–5 when the counterparty is a U.S. person.[41] Documentation requirements under applicable French and EU law do not address the disclosure of information related to insolvency procedures under U.S. law.

c. Dispute Reporting—Provision of Dispute Reports Consistent With EU 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 competent authorities pursuant to EU law.[42] This condition promotes comparability with the Exchange Act rule requiring reporting to the Commission regarding significant valuation disputes,[43] while leveraging EU reporting provisions to avoid the need for Covered Entities to create additional *de novo* reporting frameworks.[44]

286–88 and 293 (addressing counterparty credit risk management and risk management systems); and EMIR Margin RTS art. 2 (addressing general provisions for risk management procedures). *See* para. (b)(1) to the proposed Order. In connection with trade acknowledgement and verification requirements, firms must comply with MiFID art. 25(6) and MFC L. 533–15 (addressing reports on services), MiFID Org Reg art. 59–61 (addressing essential information regarding executed orders and portfolio management), EMIR art. 11(1)(a) (addressing required bilateral confirmations for uncleared over-the-counter derivatives) and EMIR RTS art. 12 (addressing timeliness of confirmations). *See* para. (b)(2) to the proposed Order. In connection with portfolio reconciliation and dispute reporting requirements, firms must comply with EMIR art. 11(1)(b) (addressing required portfolio reconciliation and dispute resolution for uncleared over-the-counter derivatives) and EMIR RTS art. 13 and 15 (addressing further requirements related to portfolio reconciliation and dispute resolution). *See* para. (b)(3) to the proposed Order. In connection with portfolio compression requirements, firms must comply with EMIR RTS art. 14 (also addressing portfolio protection). *See* para. (b)(4) to the proposed Order. In connection with trading relationship documentation requirements, firms must comply with: MiFID art. 25(5) and MFC L. 533–14 (addressing required records of documents regarding parties' rights and obligations and other terms on which the investment firm will provide services); MiFID Org Reg art. 24, 58, 73 and applicable parts of Annex I (addressing audit requirements, records related to appropriateness assessments, client agreements and parties' rights and obligations); and EMIR Margin RTS art. 2 (addressing general provisions for risk management procedures, including procedures providing for or specifying the terms of agreements). *See* para. (b)(5) to the proposed Order. The above EMIR requirements apply only to ''OTC derivatives contracts,'' which are defined as derivatives contracts not executed on certain ''regulated markets'' or equivalent ''third-country markets.'' *See* EMIR art. 2(7). The EMIR-related conditions accordingly will not impede substituted compliance in connection with exchange-traded or market-traded security-based swaps that do not constitute ''OTC derivatives contracts.''

[38] *See* para. (b)(5)(ii) to the proposed Order (incorporating condition that the Covered Entity cannot treat applicable counterparties as ''eligible counterparties'' for purposes of MiFID art. 30 or MFC article L. 533–14 in relation to the relevant MiFID and MFC provisions). Because trading relationship documentation is an entity-level requirement, this condition generally would disapply the ''eligible counterparty'' exception in connection with the relevant MiFID and MFC provisions for all of the entity's applicable counterparties, including non-U.S. counterparties. Rule 15Fi–5 does not apply to existing security-based swaps, or to cleared and certain security-based swaps executed anonymously on a national security exchange or a security-based swap execution facility. *See* rule 15Fi–5(a)(1).

[39] E.g., MiFID art. 25(5) (requiring that investment firms establish a record that includes documents ''that set out the rights and obligations of the parties, and the other terms on which the investment firm will provide services to the client''); MFC L.533–14; MiFID Org Reg art. 58.

[40] See MiFID art. 30(1); MFC L.533–20.

[41] 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 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). The absence of such disclosure would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, as the insolvency-related consequences that are the subject of the disclosure would not be applicable to non-U.S. counterparties in most cases. *See* also 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-cleared derivatives, and further providing that counterparties which enter into a netting or collateral exchange agreement must perform an independent legal review regarding enforceability).

[42] *See* para. (b)(3)(ii) to the proposed Order (requiring that the Covered Entity provide the Commission with reports regarding counterparty disputes on the same basis that it provides those reports to competent authorities pursuant to EMIR RTS art. 15(2)).

[43] 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 registered entities.

[44] 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 EMIR

Continued

V. Substituted Compliance for Capital and Margin Requirements

A. The French Authorities' Request and Associated Analytic Considerations

The French Authorities' 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 *et seq.* (for non-prudentially regulated security-based swap dealers). The capital provisions for non-prudentially regulated security-based swap dealers help to ensure the registered 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 covered potential market, credit, and other risks.[45] This net liquid assets test standard protects customers and counterparties and mitigates the consequences of a firm's failure by promoting the ability of the firm to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.[46] As part of the capital requirements, non-prudentially regulated 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.[47]

• *Margin*—Margin requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–3 for non-prudentially regulated security-based swap dealers and major security-based swap participants. The margin provisions are designed to protect the registered entity from the consequences of a counterparty's default.[48]

Taken as a whole, these capital and margin requirements help to promote market stability by mandating that registered entities follow practices that are appropriate 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 registered entities follow capital and margin requirements that are appropriate to the risks associated with their security-based swap businesses.

B. Preliminary Views and Proposed Order

In the Commission's preliminary view, based on the French Authorities' Application and the Commission's review of applicable provisions, relevant French and EU requirements would produce regulatory outcomes that are comparable to those associated with the above capital and margin requirements, by subjecting French SBS Entities to financial responsibility practices that are appropriate to the risks associated with their security-based swap businesses. Substituted compliance accordingly would be conditioned on SBS Entities being subject to the French and EU provisions that, in the aggregate, establish a framework that produces outcomes comparable to those associated with the capital and margin requirements under the Exchange Act.[49] 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 Organizations of Securities Commissions (''IOSCO'') with respect to margin requirements for non-centrally cleared derivatives.[50]

While the Commission recognizes that there are certain differences between those French and EU requirements and the applicable risk control 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.

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

A. The French Authorities' Request and Associated Analytic Considerations

The French Authorities also request substituted compliance in connection with requirements under the Exchange Act relating to:

RTS art. 15(2), firms must report at least monthly, to competent authorities, disputes between counterparties in excess of £15 million and outstanding for at least 15 business days. The Commission is mindful that the EU provision does not provide for notice as quickly as rule 15Fi–3(c), but in the Commission's preliminary view, on 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.

[45] *See* Exchange Act Release No. 86175 (June 21, 2019), 84 FR 42872, 43947 (August 22, 2019) (''Capital and Margin Adopting Release''). The French Authorities' Application discusses French and EU requirements that address firms' capital requirements. *See* the French Authorities' Application Annex 1 category 1 capital portion at 1–24. *See also* French Authorities' Application Annex 1 category 1 at 75–79 (generally discussing internal risk management requirements).

[46] *See* Capital and Margin Adopting Release, 84 FR at 43881. The Exchange Act rule 18a–1 capital requirement (applicable to non-prudentially regulated security-based swap dealers that are not also registered broker-dealers, other than OTC derivatives dealers) is grounded in the net liquid asset test applicable to registered-broker dealers. The net liquid asset 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* Capital and Margin Adopting Release, 84 FR at 43879.

[47] *See* Exchange Act rule 18a–1(f).

[48] 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 French Authorities' Application discusses French and EU requirements that address firms' margin requirements. *See* the French Authorities' Application Annex 1 category 1 at 7–74.

[49] In connection with capital requirements, Covered Entities must comply with: The capital requirements of the CRR, including recitals 40, 43 and 87, and articles 26, 28, 50–52, 61–63, 92, 111, 113(1), 114–122, 143, 153(8), 177(2), 283, 290, 300–311, 312(2), 362–377, 382–383, 412(1), 413(1), 416(1), 427(1), 413, 429, 430, and 499; MiFid Org. Reg., article 23(1); BRRD, articles 27(1), 31(2), 31(1)(a) and (5), 32(5), 45(6) and 81(1); CRD, articles 73, 79, 86, 97, 98(1)(e), 98(6), 99, 100(1), 102(1), 104, 104(1), 105, 129, 129(1), 130, 130(1), 130(5), 131, 133, 133(1), 133(4), 141, 142, 142(2), and 142(4); MFC articles L. 511–13, L. 511–15, 511–41–1 A, 511–41–1 A(XIV), L. 511–41–1 B, L. 511–41–1 C, L. 511–41–3, L. 511–41–3.II, L. 511–41–3.III, L. 511–41–3.IV, L. 511–41–4, L. 511–41–5, L. 511–42, L. 532–6, L. 533–2–1, L. 533–2–2, L. 533–2–3, L. 612–24, R. 612–30, L. 612–32, R. 612–32, L. 612–33.I, L. 612–33.II, L. 612–40, L. 613–44, L. 613–49. L. 613–49.II, L. 613–50.I, L. 631–2–1; Decree of 3 November 2014 on internal control, articles 10, 94–197, and 211–230; Ministerial Order on the Supervisory Review and Evaluation Process, articles 6–10; Decree of 3 November 2014 relating to capital buffers, articles 2, 16, 23, 37, 38, 56–64; and EMIR Margin RTS, recital 31, articles 2, 3(b), 7, and 19(1)(d)–(e), (3) and (8). In connection with margin requirements, Covered Entities must comply with: EMIR article 11; EMIR Margin RTS; 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); MiFID Org Reg. article 23(1); CRD articles 74 and 79(b); MFC articles L. 511–41–1–B, L. 533–2–2, L. 533–29, I al. 1, and L. 511–55 al. 1; and Decree *of* 3 November 2014 on internal control, article 114.

[50] *See* Capital and Margin Adopting Release, 84 FR at 43908–43909. *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 EU and French margin requirements also are based on the recommendation in the BCBS/IOSCO Paper.

• *Internal supervision*—Diligent supervision is required pursuant to Exchange Act section 15F(h)(1)(B) and Exchange Act rule 15Fh–3(h), and additional conflict of interest provisions under Exchange Act section 15F(j)(5). These provisions generally require that SBS Entities establish, maintain 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.[51]

• *Chief compliance officers*—Chief compliance officer requirements are set out in Exchange Act section 15F(k) and Exchange Act rule 15Fk–1. 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.[52]

• *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).[53]

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, 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 registered 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 French Authorities' Application and the Commission's review of applicable provisions, in the Commission's preliminary view the relevant French and EU 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 French SBS 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.[54] As elsewhere, this part of the proposed Order conditions substituted compliance on SBS Entities being subject to and complying with specified French and EU requirements that are necessary to establish comparability.[55]

In taking this proposed approach, the Commission recognizes that certain differences are present between those French and EU 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. 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 French and EU 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 relevant French SBS Entities complying with applicable French and EU supervisory and compliance provisions *as if* those provisions also require SBS Entities to comply with applicable requirements under the Exchange Act and the other applicable conditions to the Order.[56]

This condition addresses the fact that, even with substituted compliance, SBS Entities still would be subject directly to a number of requirements under the Exchange Act and to the conditions to the final Order.[57] In some cases,

[51] The French Authorities' Application addresses French and EU 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* French Authorities' Application Annex 1 category 3 at 3–27, 29–74.

[52] The French Authorities' Application discusses French and EU requirements that address compliance officers and their responsibilities, compliance officer appointment, removal and compensation, related conflict of interest provisions, and compliance-related reports. *See* French Authorities' Application Annex 1 category 3 at 75–108.

[53] 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 French Authorities' application in turn discusses French and EU provisions generally addressing information gathering and disclosure. *See* French Authorities' Application Annex 1 category 3 at 27–28. 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 French Authorities' application addresses EU antitrust requirements. *See* French Authorities' Application Annex 1 category 3 at 32.

[54] This portion of the proposed Order accordingly would extend generally to the internal supervision provisions of Exchange Act rule 15Fh–3(h), the information gathering provisions of Exchange Act section 15F(j)(4)(A), 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 applicable portions of rule 15Fh–3(h) as that rule mandates supervisory policies and procedures in connection with: The risk management system provisions of Exchange Act section 15F(j)(2) (which are addressed by proposed paragraph (b)(1) to the 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); and the 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.

[55] In connection with these internal supervision, chief compliance officer and conflict of interest and information gathering provisions, SBS Entities particularly must comply with: MiFID art. 16 and 23 and MFC articles L. 533–2, L. 533–10.II and III, L. 533–24 and L. 533–24–1 (addressing organizational requirements and conflicts of interest); MiFID Org Reg art. 21–37 (addressing organizational requirements, compliance, risk management, internal audit, senior management responsibility, complaints handling, remuneration policies and practices, personal transaction restrictions, outsourcing, conflicts of interest and investment research and marketing); MiFID Org Reg 72–76 and Annex IV (addressing recordkeeping, including records of orders, transactions and communications); and CRD articles 74, 76, 79–87, 88(1) and 91(1)–(2), 91(7)–(9), 92–95 and MFC articles L. 511–41–1–B and L. 511–41–1–C, L. 511–51, L. 511–52 I, L. 511.53, L. 511–55 through L. 511–69, L. 511–71 through 86, L. 511–89 through L. 511–97, L. 511–102, R. 511–16–2 and R. 511–16–3; Internal Control Order articles 106, 111, 114, 115, 121–22, 130–34, 146–86, 211–12, 214–15; and Prudential Supervision and Risk Assessment Order article 7 (addressing internal governance, recovery and resolution plans, risk management policies, and management body and remuneration policies). *See* para. (d)(3) to the proposed Order.

[56] *See* para. (d)(4) to the proposed Order.

[57] 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 eligible contract participants (''ECP''), segregation requirements). *See* note 2, *supra.* Also, substituted compliance also does not extend to requirements under the Exchange Act that are outside of the scope of the French Authorities' request (*e.g.,* ECP verification and special entity requirements), *see* note 11, *supra,* or to requirements under the Exchange Act for which the Commission has not found comparability.

particular requirements under the Exchange Act are outside the ambit of substituted compliance.[58] In other cases, certain requirements under the Exchange Act may not have comparable French or EU requirements, or may be outside the scope of the French Authorities' request.[59] While the French and EU regulatory frameworks in general reasonably appear to promote SBS Entities' compliance with applicable French and EU laws, those requirements do not appear to promote SBS Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance, or promote SBS Entities' compliance with the applicable conditions to substituted compliance. This condition would allow SBS 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 MiFID Org Reg article 22(2)(c) must: (a) Be provided to the Commission annually and in the English language, (b) include a certification under penalty of law that the report is accurate and complete, and (c) address the SBS Entity's compliance with other applicable conditions to this Order.[60]

Although certain French and EU requirements address firms' use of internal compliance reports, those provisions do not require those entities to submit compliance reports to the Commission. Under this condition, SBS Entities could leverage the compliance reports that they otherwise are required to produce, by extending those reports to address compliance with the conditions to the Order.[61]

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 appear to lead to outcomes comparable to that statutory prohibition.[62]

VII. Substituted Compliance for Counterparty Protection Requirements

A. The French Authorities' Request and Associated Analytic Considerations

The French Authorities further request 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) requires that SBS Entities disclose to certain 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.[63]
- *Daily mark disclosure*—Exchange Act rule 15Fh–3(c) 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.[64]
- *Fair and balanced communications*—Exchange Act rule 15Fh–3(g) 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.[65]
- *Clearing rights disclosure*—Exchange Act rule 15Fh–3(d) requires that SBS Entities provide certain counterparties with information regarding clearing rights under the Exchange Act.[66]
- ''*Know your counterparty*''—Exchange Act rule 15Fh–3(e) 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.[67]

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[58] Substituted compliance does not extend to certain Exchange Act antifraud prohibitions and other requirements under the Exchange Act (*e.g.,* requirements related to transactions with non-ECPs, and segregation requirements). Substituted compliance also does not extend to requirements under the Exchange Act that are outside of the scope of the French Authorities' request (*e.g.,* ECP verification and special entity requirements), or to requirements under the Exchange Act for which the Commission has not found comparability.

[59] For example, the French Authorities are not requesting substituted compliance in connection with ECP verification requirements, ''special entity'' provisions and political contribution provisions. *See* note 11, *supra.*

[60] *See* para. (d)(2)(ii) to the proposed Order. MiFID Org Reg art. 22(2)(c) particularly requires that a firm'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 firm's management body, also would address SBS Entities' compliance with the other conditions to the Order (in addition to addressing those firms' compliance with applicable French and EU provisions).

[61] In practice, SBS Entities may satisfy this condition by identifying relevant Order conditions, and reporting on the implementation and effectiveness of their controls with regard to compliance with those Order conditions.

[62] *See also* German Substituted Compliance Order part IV.B, 85 FR at ____. 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.

[63] *See* Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 29983–86 (May 13, 2016) (''Business Conduct Adopting Release''). The French Authorities' Application discusses French and EU requirements that address disclosure of product information and firm information. *See* French Authorities' Application Annex 1 category 4 at 24–41.

[64] *See* Business Conduct Adopting Release, 81 FR at 29986–91. The French Authorities' Application discusses French and EU requirements that address valuation, portfolio reconciliation and trade reporting. *See* French Authorities' Application Annex 1 category 4 at 42–53.

[65] *See* Business Conduct Adopting Release, 81 FR at 30000–02. The French Authorities' Application discusses French and EU requirements that address communications standards. *See* French Authorities' Application Annex 1 category 4 at 2–24.

[66] Exchange Act section 3C(g)(5) [15 U.S.C. 78c–3(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)) 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 French Authorities' Application discusses French and EU provisions that address clearing rights. *See* French Authorities' Application Annex 1 category 4 at 76–83.

[67] *See* Business Conduct Adopting Release, 81 FR at 29993–94. The French Authorities' Application discusses French and EU suitability requirements regarding information that firms must obtain

• *Suitability*—Exchange Act rule 15Fh–3(f) 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 believe that the recommendation is suitable for the counterparty.[68] This provision accounts for the need to guard against security-based swap dealers making unsuitable recommendations.[69]

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 registered [entities] to treat parties to these transactions fairly.'' [70] 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 SBS Entities to treat parties fairly.

B. Preliminary Views and Proposed Order

1. General Considerations

Based on the French Authorities' Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant French and EU requirements produce regulatory outcomes that are comparable to counterparty protection requirements under Exchange Act section 15F(h) related to fair and balanced communications; disclosure of material risks and characteristics; disclosure of material incentives or conflicts of interest; ''know your counterparty''; suitability; and daily mark disclosure, by subjecting French SBS 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.[71] 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 French and EU requirements, on the one hand, and the relevant communications, disclosure, ''know your counterparty'' and suitability 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 context. As elsewhere, the counterparty protection provisions of the proposed Order in part condition substituted compliance on SBS Entities being subject to, and complying with, specified French and EU requirements that are necessary to establish comparability.[72] 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. 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 French and EU requirements.[73] The

regarding counterparties. *See* French Authorities' Application Annex 1 category 4 at 54–62.

[68] *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 rules 15Fh–3(f)(2) and (3).

[69] *See* Business Conduct Adopting Release, 81 FR at 29997. The French Authorities' Application discusses French and EU suitability requirements that are more targeted for transactions with ''professional clients.'' *See* French Authorities' Application Annex 1 category 4 at 63–75.

[70] *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 rules 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'').

[71] *See generally* para. (e) to the proposed Order.

[72] In connection with requirements related to disclosure of information regarding material risks and characteristics, Covered Entities must be subject to and comply with: MiFID art. 24(4); MFC L. 533–12.II and D. 533–15; and MiFID Org Reg art. 48–50, 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, Covered Entities must be subject to and comply with either: (i) MiFID art. 23(2)–(3); MFC L .533–10.II(3); and MiFID Org Reg art. 33–35; (ii) MiFID art. 24(9); MFC L. 533–12–4; MiFID Delegated Directive art. 11(5); and AMF General Regulation art. 314–17; or (iii) MAR art. 20(1), 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, Covered Entities must be subject to and comply with: MiFID art. 16(2); MFC L. 533–10.II(2); MiFID Org Reg art. 21–22, 25–26 and applicable parts of Annex I; CRD art. 74(1) and 85(1); MFC L. 511–55 and L. 511–41–1–B; MLD art. 11 and 13; MFC L. 561–5, L. 561–5–1, L. 561–6, L. 561–10, L. 561–4–1, R. 561–5, R. 561–5–1, R. 561–5–2, R. 561–5–4, R. 561–7, R. 561–10–3, R. 561–11–1 and R. 561–12; MLD art. 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and MFC L. 561–4–1 as applied to vigilance measures regarding recordkeeping of customer due diligence activities, in each case in relation to the security-based swap for which substituted compliance is applied. *See* para. (e)(3) to the proposed Order. In connection with suitability requirements, Covered Entities must be subject to and comply with: MiFID art. 24(2)–(3) and 25(1)–(2); MFC L. 533–24, L. 533–24–1, L. 533–12.I, L. 533–12–6 and L. 533–13.I; and MiFID Org Reg art. 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, Covered Entities must be subject to and comply with: (i) either MiFID art. 24(1), (3) and MFC L. 533–11 and L. 533–12.I or MiFID art. 30(1) and MFC L. 533–20; and (ii) MiFID art. 24(4)–(5); MFC L. 533–12.II–III and D. 533–15; MiFID Org Reg art. 46–48; MAR art. 12(1)(c) and 15; and MAR Investment Recommendations Regulation art. 5, 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 EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13. *See* para. (e)(6) to the Proposed Order.

[73] 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

Continued

French Authorities' Application takes the view that EU 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 EU mark-to-market (or mark-to-model) requirements are not comparable to Exchange Act requirements because the EU requirements do not require disclosure to counterparties. In the alternative, the French Authorities' Application notes that certain derivatives counterparties must report to an EU trade repository updated daily valuations for each OTC derivative contract and that all counterparties have the right to access these valuations at the relevant EU 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 EU 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.[74] For these reasons, in the Commission's preliminary view, these EU reporting requirements also are not comparable to Exchange Act requirements. Finally, the French Authorities' 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 EU'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 EMIR, if the counterparties have 500 or more OTC derivatives contracts outstanding with each other[75]), 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 EU's portfolio reconciliation requirements as not comparable to Exchange Act requirements.

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 French Authorities' Application cites certain provisions related to clearing rights in the EU that are unrelated to the clearing rights provided by Exchange Act section 3C(g)(5).[76] The section 3C(g)(5) clearing rights are not eligible for substituted compliance, and the EU provisions do not require disclosure of these section 3C(g)(5) clearing rights. In the Commission's preliminary view, substituted compliance based on EU 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 MiFID and not be a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).[77] 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 MiFID,[78] or for a ''special entity'' as defined in the Exchange Act. In the Commission's preliminary view, absent such a condition the MiFID suitability requirement 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.[79]

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

A. French Authorities' Request and Associated Analytic Considerations

The French Authorities' 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.[80]

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 in response to BaFin's application. See German Substituted Compliance Order. Similarly, the Commission is proposing one approach to substituted compliance for daily mark requirements in response to the French Authorities' 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.

[74] The Commission received a comment on the German Notice and Proposed Order that the same EU reporting requirements cited by the French Authorities are comparable to Exchange Act daily mark requirements. *See* SIFMA Letter at 5. The commenter stated that these 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 U.S. counterparties, as well as non-U.S. counterparties without existing business relationships with multiple EU trade repositories, still may encounter challenges in receiving timely marks from these trade reports. *See also* German Substituted Compliance Order.

[75] *See* EMIR RTS article 13(3)(a)(i); EMIR article 10.

[76] *See* note 66, *supra.*

[77] *See* para. (e)(4)(ii) to the proposed Order.

[78] Annex II of MiFID describes which clients are ''professional clients.'' Section I of Annex II describes the types of clients considered to be professional clients unless the client elects non-professional treatment; these clients are per se professional clients. Section II of Annex II describes the types of clients who may be treated as professional clients on request; these clients are elective professional clients. *See* MiFID Annex II.

[79] 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 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 MiFID. 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.

[80] The French Authorities' Application discusses French and EU requirements that address firms' record creation obligations related to matters such as transactions, counterparties and their property, personnel and business conduct. *See* the French Authorities' Application Annex 1 category 2 at 2–42.

• *Record Preservation*—Exchange Act rule 18a–6 requires preservation of records.[81]

• *Reporting*—Exchange Act rule 18a–7 requires certain reports.[82]

• *Notification*—Exchange Act rule 18a–8 requires notification of the Commission when certain financial or operational problems occur.[83]

• *Securities Count*—Exchange Act rule 18a–9 requires non-prudentially regulated SBS Entities to perform a quarterly securities count.[84]

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.[85]

For certain of the recordkeeping, reporting, and notification requirements, the comparability assessment also appropriately may consider the extent to which those requirements are linked to separate requirements in the Exchange Act that may be subject to a substituted compliance application. In particular, a number of recordkeeping requirements serve a primary purpose of promoting and/or documenting SBS Entities' compliance with associated Exchange Act requirements.[86] When substituted compliance is permitted for the associated Exchange Act requirements, substituted compliance also may be appropriate for the linked recordkeeping, reporting, and notification requirements. Conversely, when substituted compliance is not available or requested for Exchange Act requirements, substituted compliance may not be appropriate for linked recordkeeping, reporting, or notification requirements.

B. Preliminary Views and Proposed Order

1. General Considerations

Based on the French Authorities' Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant French and EU requirements, subject to the conditions and limitations of the proposed Order, would produce regulatory outcomes that are comparable to the outcomes associated with the recordkeeping, reporting, notification, and securities count requirements under the Exchange Act applicable to SBS Entities pursuant to 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 French and EU 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.

As discussed below, in select areas, substituted compliance in connection with these requirements is subject to specific conditions necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available in connection with associated Exchange Act rules.

2. Additional Conditions

i. Additional Conditions Applicable to Exchange Act Rule 18a–5

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.[87] This condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a–5. In effect, a firm will not be required to create a record formatted pursuant to the Commission's rules each day, but instead only when requested to do so by 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.

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 make and keep current the records required by Exchange Act rules 18a–5(a)(13) and (14) (if not prudentially regulated) or Exchange Act rules 18a–5(b)(9) and (10) (if prudentially regulated) if the firm is not exempt from the requirements of Exchange Act rule 18a–4.[88] These recordmaking rules require the SBS Entity to make a record of compliance with the possession or control

[81] The French Authorities' Application discusses French and EU 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* the French Authorities' Application Annex 1 category 2 at 43–81.

[82] The French Authorities' Application discusses French and EU requirements that address firms' obligations to make certain reports. *See* the French Authorities' Application Annex 1 category 2 at 82–95, 98–104.

[83] The French Authorities' Application discusses French and EU requirements that address firms' obligations to make certain notifications. *See* the French Authorities' Application Annex 1 category 2 at 95–98.

[84] The French Authorities' Application discusses French and EU requirements that address firms' obligations to perform securities counts. *See* the French Authorities' Application Annex 1 category 2 at 32–38.

[85] 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.''

[86] Recordkeeping, reporting, and notification rules that are linked to other Exchange Act rules include provisions that address: (1) Unverified security-based swap transactions (Exchange Act rules 18a–5(a)(15) and (b)(11), and 18a–6(b)(1)(i) and (b)(2)(i)); (2) compliance with business conduct requirements (Exchange Act rules 18a–5(a)(16) and (17) and (b)(12) and (13), 18a–6(b)(1)(i), (b)(1)(xii), (b)(2)(i), and 18a–6(b)(2)(vii)); (3) preservation of records relating to certain risk mitigation requirements (Exchange Act rules 18a–6(d)(4) and (5); (4) segregation requirements (Exchange Act rules 18a–5(a)(13) and (14) and (b)(9) and (10), 18a–6(b)(1)(viii)(L) and (b)(2)(v), 18a–7(c)(3) and (4), and 18a–8(g)); (5) capital requirements (Exchange Act rules 18a–5(a)(9) and (b)(1)(v), 18a–7(a)(3), and 18a–8(b); and (6) margin requirements (Exchange Act rules 18a–5(a)(12) and (b)(1)(viii)).

[87] *See* para. (f)(1)(ii) to the proposed Order.

[88] *See* para. (f)(1)(iii) to the proposed Order.

requirements of Exchange Act rule 18a–4 and a record of the reserve computation required by Exchange Act rule 18a–4, respectively. Substituted compliance is not available with respect to Exchange Act rule 18a–4. Instead, provisions of the rule address cross-border transactions and provide exemptions from its requirements depending on the nature of the transaction.[89] For example, a security-based swap dealer that is a foreign bank is subject to the possession or control and reserve account requirements of Exchange Act rule 18a–4 with respect to a security-based swap customer that is a U.S. person or, in the case of a non-U.S. person, if the security-based swap dealer holds funds or other property arising out of a transaction had by such non-U.S. person with a branch or agency in the United States of the foreign security-based swap dealer. Further, Exchange Act rule 18a–4 contains a complete exemption from its requirements if the security-based swap dealer limits its business activities and meets certain conditions.[90] SBS Entities that are not subject to the requirements of Exchange Act rule 18a–4 will not need to make the records required by Exchange Act rules 18a–5(a)(13) and (14) (if not prudentially regulated) or Exchange Act rules 18a–5(b)(9) and (10) (if prudentially regulated) under this condition in the proposed Order. However, if a firm is subject to Exchange Act rule 18a–4, it will need to make these records under this condition of the Order.

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 prudentially regulated SBS Entity makes and keeps current the records required by Exchange Act rule 18a–5(a)(16) (if not prudentially regulated) or Exchange Act rule 18a–5(b)(12) (if prudentially regulated).[91] This rule requires the firm to document compliance with Exchange Act rule 15Fh–6, which imposes restrictions related to political contributions to municipal entities. The French Authorities have not requested substituted compliance with respect to Exchange Act rule 15Fh–6.

Finally, 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 makes and keeps current records documenting compliance with requirements referenced in Exchange Act rule 18a–5(a)(17) (if not prudentially regulated) or Exchange Act rule 18a–5(b)(13) (if prudentially regulated) for which substituted compliance is not available.[92] Exchange Act rules 18a–5(a)(17) and (b)(13) require the firm to document compliance with Exchange Act rules 15Fh–1 through 15Fh–5 and Exchange Act rule 15Fk–1—which, as discussed more fully in sections VI and VII of this notice, establish certain obligations with respect to diligent supervision, compliance, and counterparty protection. Under the proposed Order, when substituted compliance is available with respect to such an obligation, substituted compliance also would be available with respect to the corresponding recordmaking requirement of Exchange Act rule 18a–5(a)(17) or (b)(13). In circumstances where substituted compliance is not permitted,[93] has not been requested,[94] or is otherwise not available under the proposed Order, direct compliance with the relevant Exchange Act obligation would be required, and so, too, would direct compliance with the corresponding recordmaking requirement of Exchange Act rule 18a–5(a)(17) (if not prudentially regulated) or Exchange Act rule 18a–5(b)(13) (if prudentially regulated).

ii. Additional Conditions Applicable to Exchange Act Rule 18a–6

Under the proposed Order, substituted compliance in connection with the record preservation requirements of Exchange Act rule 18a–6 is subject to the condition that the SBS Entity preserves the records required by Exchange Act rule 18a–6(b)(1)(viii)(L) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(v) (if prudentially regulated) if the firm is not exempt from the requirements of Exchange Act rule 18a–4.[95] Exchange Act rules 18a–6(b)(1)(viii)(L) and (b)(2)(v) require the preservation of detail relating to information for the possession or control requirements of Exchange Act rule 18a–4. As discussed above, substituted compliance is not available for Exchange Act rule 18a–4. Consequently, under this condition, an SBS Entity will need to preserve the records required by Exchange Act rule 18a–6(b)(1)(viii)(L) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(v) (if prudentially regulated), but only if the firm is not exempt from Exchange Act rule 18a–4.

Under the proposed Order, substituted compliance in connection with the record preservation requirements of Exchange Act rule 18a–6 is subject to the condition that the SBS Entity preserves records with respect to requirements referenced in Exchange Act rule 18a–6(b)(1)(xii) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(vii) (if prudentially regulated) for which substituted compliance is not available.[96] Under Exchange Act rules 18a–6(b)(1)(xii) and (b)(2)(vii), the firm must preserve copies of documents, communications, disclosures, and notices required pursuant to Exchange Act rules 15Fh–1 through 15Fh–6 and Exchange Act rule 15Fk–1—which establish certain obligations with respect to diligent supervision, compliance, and counterparty protection. Under the proposed Order, when substituted compliance is available with respect to such an obligation, substituted compliance also would be available with respect to the corresponding record preservation requirement of Exchange Act rule 18a–6 (b)(1)(xii) or (b)(2)(vii). In circumstances where substituted compliance is not permitted, has not been requested, or is otherwise not available under the proposed Order, direct compliance with the relevant Exchange Act obligation would be required, and so, too, would direct compliance with the corresponding record preservation requirement of Exchange Act rule 18a–6(b)(1)(xii) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(vii) (if prudentially regulated).

Under the proposed Order, substituted compliance in connection with the record preservation requirements of Exchange Act rule 18a–6 is subject to the condition that the security-based swap dealer or major security-based swap participant, with respect to a security-based swap transaction, preserves the information required by Exchange Act rule 18a–6(b)(1)(xi) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(vi) (if prudentially regulated).[97] This condition is designed to ensure that the firm preserves information if the transaction is required to be reported to a registered security-based swap data

[89] *See* 17 CFR 240.18a–4(e).

[90] *See* 17 CFR 240.18a–4(f).

[91] *See* para. (f)(1)(iv) to the proposed Order.

[92] *See* para. (f)(1)(v) to the proposed Order.

[93] *See* Exchange Act rule 3a71–6(d)(1) (specifying that substituted compliance is not available in connection with the antifraud provisions of Exchange Act rule 15Fh–4(a)).

[94] The French Authorities have not requested substituted compliance in connection with the ECP verification requirements of Exchange Act rule 15Fh–3(a)(1)) or the ''special entity'' provisions of Exchange Act rules 15Fh–3(a)(2) and (3), 15Fh–4(b) and 15Fh–5.

[95] *See* para. (f)(2)(ii) to the proposed Order.

[96] *See* para. (f)(2)(iii) to the proposed Order.

[97] *See* para. (f)(2)(iv) to the proposed Order.

repository pursuant to Regulation SBSR,[98] because the French Authorities have not requested substituted compliance with respect to Regulation SBSR.

Under the proposed Order, substituted compliance in connection with the record preservation requirements of Exchange Act rule 18a–6 is subject to the condition that the SBS Entity preserves the records required by Exchange Act rule 18a–6(b)(1)(xiii) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(viii) (if prudentially regulated).[99] These rules require the preservation of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, and the investment or financing objectives of the special entity as required under Exchange Act sections 15F(h)(4)(C) and (5)(A). The French Authorities are not seeking substituted compliance with respect to these Exchange Act requirements.

iii. Additional Conditions Applicable to Exchange Act Rule 18a–7

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 and Part IIC is subject to the condition that the SBS Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule and present the financial information in accordance with generally accepted accounting principles (''GAAP'') that the firm uses to prepare general purpose publicly available or available to be issued financial statements in France.[100] 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 known as FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The Commission will use the FOCUS Report 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.[101] Broker-dealers registered with the Commission currently file their FOCUS reports with FINRA through the eFOCUS system it administers. FINRA's eFOCUS system will enable broker-dealers, 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 SBS 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.[102] 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 French Authorities or other European supervisors.[103]

Under the proposed Order, substituted compliance in connection with the requirement for non-prudentially regulated SBS Entities to file audited annual reports under Exchange Act rule 18a–7 is subject to four conditions. The first condition is that the SBS Entity simultaneously transmits to the principal office of the Commission or to an email address provided on the Commission's website a copy of the financial statements the Covered Entity is required to file annually with French and/or European authorities, including a report of an independent public accountant covering the financial statements.[104] Because French or EU laws would not otherwise require the financial 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.[105] 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 SBS 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 French or EU laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements.[106] 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 France or the EU that are used to perform audit and attestation services. According to the French Authorities' Application, French or EU 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

[98] *See* 17 CFR 242.900–909.

[99] *See* para. (f)(2)(iv) to the proposed Order.

[100] *See* para. (f)(3)(ii) to the proposed Order. Under this approach, SBS Entities would be permitted to present the information reported in the FOCUS Report in accordance with GAAP that the SBS Entity 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 France.

[101] *See* Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X–17A–5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Release No. 34–88866 (May 14, 2020).

[102] *See* para. (f)(3)(ii) to the proposed Order.

[103] 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 substituted 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.

[104] *See* para. (f)(3)(iii)(A) to the proposed Order.

[105] *See* para. (f)(3)(iii)(B) to the proposed Order.

[106] *See* para. (f)(3)(iii)(C) to the proposed Order.

annual reports are required to have their financial statements audited.

The fourth condition is that the SBS Entity files 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.[107] These reports are designed to provide the Commission with information about an SBS Entity's compliance with Rule 18a–4. As discussed above, substituted compliance is not available for Exchange Act rule 18a–4 and, therefore, this condition is designed to provide the Commission with similar compliance information. Under this condition, SBS Entities will need to file a limited compliance report that includes the statements relating to Rule 18a–4 [108] or exemption report if the SBS Entity claims an exemption from Rule 18a–4. The SBS 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 France or the EU that are used to perform audit and attestation services.

iv. Additional Conditions Applicable to Exchange Act Rule 18a–8

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 transmits to the principal office of the Commission or to an email address provided on the Commission's website a copy of any notice required to be sent by the French notification laws; 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.[109] 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.

In addition, under the proposed Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a–8 is subject to the conditions that if the firm is not exempt from Exchange Act rule 18a–4, the SBS Entity complies with the notification requirements of Exchange Act rules 18a–8(e) and 18a–8(g) that relate to Exchange Act rule 18a–4.[110] Exchange Act rule 18a–8(e) requires notification if the firm discovers or is notified by an independent public accountant the existence of any material weakness that relates to Exchange Act rule 18a–4. Exchange Act rule 18a–8(g) requires notification if the firm fails to make in its special reserve account for the exclusive benefit of security-based swap customers a deposit, as required by Exchange Act rule 18a–4(c). As discussed above, substituted compliance is not available for Exchange Act rule 18a–4.

3. Examination and Production of Records

Every SBS 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.[111] Covered entities may make, keep, and preserve records, subject to the conditions described above, in a manner prescribed by applicable European and French requirements. The Commission notes that as an element of its substituted compliance application, the French Authorities have 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 registered SBS Entities under the Exchange Act, SBS 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 this order), or any other records of the firm 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.[112]

IX. Additional Considerations Regarding Supervisory and Enforcement Effectiveness in France

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 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.[113]

In connection with these considerations, the French Authorities' Application includes information regarding the French supervisory and enforcement framework applicable to derivatives markets and market participants. This includes information regarding the supervisory and enforcement authority afforded to the AMF and the ACPR to promote compliance with applicable requirements, applicable supervisory and enforcement tools and capabilities, consequences of non-compliance, and the application of the AMF's and ACPR'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.

B. Supervisory Framework in France

Supervision of credit institutions located in France is conducted by the AMF, the ACPR, and the ECB. Supervision of investment firms located in France is conducted by the AMF and

[107] *See* para. (f)(3)(iii)(D) to the proposed Order.

[108] The limited compliance report would not need to address Exchange Act rules 18a–1, 18a–9, or 17a–13.

[109] *See* para. (f)(4)(ii) to the proposed Order.

[110] *See* para. (f)(4)(iii) and (iv) to the proposed Order.

[111] *See* Exchange Act section 15F(f); Exchange Act rule 18a–6(g).

[112] *See* para. (f)(6) to the proposed Order.

[113] *See generally* Business Conduct Adopting Release, 81 FR at 30079.

the ACPR (together, credit institutions and investment firms are referred to as ''firms'').[114] The day-to-day supervision of the firms' security-based swap activities is conducted by the AMF; the ACPR's supervisory powers pertain to licensing matters and prudential requirements. The ACPR is the primary supervisor for margin and AML requirements. The AMF and the ACPR cooperate closely and have frequent communications regarding the supervision of firms to accomplish their respective missions. The ECB, through joint supervisory teams (''JSTs''), supervises firms for compliance with the CRD and CRR, including all capital requirements. The AMF, the ACPR, and the ECB have the ability to request records needed for supervision from firms through the supervisory process. In addition, the AMF, the ACPR, and the ECB set annual priorities and conduct thematic reviews, which are used to enhance supervision in specific regulatory areas. The results of these thematic reviews are made public to provide transparency to the industry.

The AMF uses a risk-based approach to supervision whereby investment firms are categorized within four Tiers. Tier 1 firms receive the most supervisory attention and the staff has been told that all firms that use substituted compliance will be treated as Tier 1 firms. The AMF's supervisory team maintains a constant dialogue with Tier 1 firms, including weekly calls with compliance officers and regular in-person meetings with senior operational management. The AMF assigns two portfolio managers to each firm that provides investment services.[115] One portfolio manager covers market activity and one portfolio manager covers the retail, private banking, depository activities, and marketing activities of the firm.

The AMF's supervision of a Tier 1 firm focuses in part on review and analysis of numerous types of data that is submitted by firms to the AMF or the ACPR. The portfolio manager in charge of monitoring market activity works closely with the data driven supervision (''DDS'') team, a group that analyzes the regulatory reporting data submitted by each firm to understand changes at the firm. The portfolio managers also review the annual compliance report submitted by the firms each year. The report covers numerous topics at the firm including compliance with the recordkeeping requirements, the best execution requirements, the anti-market abuse regulations, and how conflicts of interest are handled and controlled. In addition, the ACPR requires firms to file an internal control report each year, and the parts of the report that are applicable to the AMF's remit are shared with the AMF. The portfolio manager reviews these reports and compares the reports from one year to the next. Where inconsistencies are noted, the portfolio manager will compare them against other internal AMF information about the firm, as well as complaints that have been submitted and significant incidents that are reported to the AMF.

If the AMF identifies an issue at a Tier 1 firm, the AMF will follow up with the firm in a variety of ways. The AMF may schedule a follow-up meeting or request additional information. The AMF may also send the firm a letter from the General Secretary of the AMF or one of the AMF directors describing the violation of law. In addition, the AMF may ask the firm to carry out an internal or external audit on the topic, or request that the firm undertake specific corrective measures and report back with details on corrective action taken. The AMF could also start an onsite inspection of the firm. Inspections are carried out through an inspection division separate and apart from the supervisory team.

The ACPR also uses a risk-based approach to supervision, assessing the size, business model, complexity, and risk profile of the supervised entity. Supervisors are assigned based on this risk profile ranging in number from two supervisors for the least complex investment firms to up to twenty supervisors for the most significant banks. At least two supervisors for each Tier 1 firm focus on AML issues. All supervisors interact with the firm on a daily basis through phone calls and meetings, and review the annual report on internal controls, which includes information on capital and liquidity as well as the AML control framework of the firm. The ACPR also uses onsite inspectors to investigate areas of concern, conduct a general review of the firm, or validate a specific risk methodology. The ACPR allocates about a quarter of its onsite inspectors to AML inspections every year.

Where the ACPR detects issues at a firm, it will take corrective measures that its staff believe are proportional to the conduct. For example, the first step may be asking the firm, in writing, to take corrective measures, which is accompanied by enhanced monitoring and communication with the ACPR on the matter. The ACPR may also conduct on onsite inspections. When these corrective measures fail, the ACPR may open an enforcement proceeding.

Supervision of the CRD and CRR, which includes a firm's capital requirements, is conducted through the ECB's single supervisory mechanism and executed by JSTs comprising of ECB staff, ACPR staff, and staff from other countries in the EU where the significant institution has a subsidiary or branch. The ACPR assigns multiple supervisors to the JST for a significant institution headquartered in France. The head of the JST is from the ECB and generally is not from the country where the significant institution is located. As part of its day-to-day supervision, the JST analyzes the supervisory reporting, financial statements, and internal documentation of supervised entities. The JSTs hold regular and ad hoc meetings with the supervised entities at various levels of staff seniority. They conduct ongoing risk analyses of approved risk models, and analyze and assess the recovery plans of supervised entities. The various supervisory activities typically result in supervisory measures addressed to the supervised institution. Supervisory activities and decisions result in a number of routine steps such as the monitoring of compliance by the JST and, if necessary, enforcement measures and sanctions. In addition to ongoing supervision, the JST may conduct in-depth reviews on certain topics by organizing a dedicated onsite mission (*e.g.,* an inspection or an internal model investigation). The onsite inspections are carried out by an independent inspection team, which works in close cooperation with the respective JST.

For each firm, the JST conducts a Supervisory Review and Evaluation Process (''SREP''), which measures the risks for each bank. The SREP shows where a firm stands in terms of capital requirements and the way it handles risks. To develop the SREP, supervisors review the sustainability of each firm's business model, governance and risk management at the firm, capital risks, and liquidity and funding risks. Once the SREP is developed, the firm will receive a letter setting forth specific measures that must be implemented the following year based on the firm's individual profile. For example, the SREP may ask the firm to hold additional capital or set forth qualitative requirements related to the firm's governance structure or management.

C. Enforcement Authority in France

The MFC and SSM Regulations are applicable to the distribution of

[114] Starting in 2021, the ECB will also supervise significant investment firms under the framework described in this section.

[115] The staff was told that all firms applying to be a security-based swap dealer with the SEC provide investment services.

enforcement authority relating to security-based swaps in France. With respect to regulated entities, the AMF is primarily responsible for enforcement of recordkeeping and reporting requirements. ACPR is primarily responsible for the enforcement of prudential recordkeeping and reporting requirements regarding investment firms; and the ECB is primarily responsible for the enforcement of prudential recordkeeping and reporting requirements regarding credit institutions.

i. The AMF

The AMF's investigations may arise from information gathered during market supervision, monitoring of listed companies, alerts raised by the AMF's Market Surveillance Directorate or other AMF divisions, and information sent to the AMF by foreign authorities. AMF's investigative powers include, but are not limited to, obtaining hard copy and electronic documents, interviewing external experts, accessing business premises, and summoning persons likely to provide useful information for interviews.

The Enforcement Committee is the body empowered to determine sanctions in an enforcement matter. Sanctions available to the Enforcement Committee include freezing assets, banning a person from certain professional activity, imposing a monetary penalty, withdrawing the authorization of an asset management company or the status of a market operator, and requiring corrective statements to be published. The AMF also has the power to enter into settlements with respondents and as part of a settlement may require the respondent to cease all ongoing violations. Settlements may also include the payment of compensation to harmed investors. French law imposes a five year statute of limitations for AMF matters.

ii. The ECB and the ACPR

As noted above, the ACPR conducts supervisory inspections relating to prudential recordkeeping and reporting requirements for investment firms. When breaches of the requirements occur, the Supervisory Board of the ACPR is empowered to decide on the appropriate measures whether administrative, enforcement or disciplinary. These measures may include injunctions, ''mesures de police administrative'' (including warnings, formal notices, conservative measures and the appointment of a provisional administrator), and coercive fines. Additionally, the Supervisory Board may decide to introduce disciplinary proceedings for anti-money laundering and counter terrorist financing. The decision-making body in charge of the decision to sanction is a separate body, the Sanctions Committee, to which the Supervisory Board refers the case.

With respect to credit institutions, the ACPR conducts supervisory activity through JSTs, under the SSM Regulation. Where it identifies a failure to comply with obligations under applicable regulations, a JST may decide effective, proportionate and dissuasive sanctions. Misconduct detected by the JSTs is addressed primarily by the ECB. Under the SSM Regulations, the ECB is empowered to address issues of noncompliance with applicable European Union law by directly imposing enforcement measures on supervised entities or requiring the ACPR to use its national enforcement powers. It also may choose to impose administrative penalties or request that the ACPR open sanctioning proceedings. In particular, the ECB may impose administrative pecuniary penalties, and may impose fines and periodic penalty payments per day of infringement. Where appropriate, the ECB may exercise its enforcement authority in parallel with supervisory measures.

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 French and EU 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.

Commenters also are invited to address any differences between French regulatory requirements and frameworks and the German requirements and frameworks that formed the basis for the Commission's grant of substituted compliance in connection with Germany.[116] Given the Commission's substituted compliance determination with respect to Germany, should the Commission allow German branches of French Covered Entities to use substituted compliance in circumstances where responsibility for ensuring compliance with any provision of MiFID, MAR or any other EU requirement adopted pursuant to MiFID or MAR listed in paragraphs (b) through (f) of this Order is allocated to the Bundesanstalt für Finanzdienstleistungsaufsicht (''BaFin''), the German financial authority? If so, should such reliance be conditioned on the MOU between the SEC and BaFin addressing substituted compliance under those circumstances? Similarly, should the Commission allow French branches of German Covered Entities to use substituted compliance in circumstances where responsibility for ensuring compliance with any provision of MiFID, MAR or any other EU requirement adopted pursuant to MiFID or MAR listed in paragraphs (b) through (e) of the German Substituted Compliance Order is allocated to the AMF and/or the ACPR? If so, should such reliance be conditioned on the MOU between the SEC and the French Authorities addressing substituted compliance under those circumstances?

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 risk management systems, trade acknowledgement and verification, portfolio reconciliation and dispute reporting, portfolio reconciliation 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.

Commenters further are invited to address any differences between French regulatory requirements and frameworks and the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance in connection with Germany for those risk control requirements.[117]

C. Capital and Margin Requirements

The Commission further requests comment regarding the comparability analysis of French and EU capital requirements with Exchange Act capital

[116] *See* note 1, *supra.*

[117] *See generally* German Notice and Proposed Order, 85 FR at 72730–32.

requirements for non-prudentially regulated security-based swap dealers. Are there any conditions that should be applied to substituted compliance for these capital requirements to promote comparable regulatory outcomes? For example, given the objectives of Rule 18a–1, should the Commission consider including a condition that requires a non-prudentially regulated security-based swap dealer to maintain a minimum amount of liquid assets, such a minimum ratio of liquid assets to illiquid assets? If so, should the ratio of liquid assets to illiquid assets be 80% to 20%, 70% to 30%, 60% to 40% or some other ratio? In terms of defining liquid and illiquid assets, should the Commission consider assets that are allowable as capital under Exchange Act rule 18a–1 as liquid and assets that are not allowable as capital under that rule as illiquid?

In addition, should the Commission consider including a condition that would require non-prudentially regulated security-based swap dealers to be subject to a specific liquidity requirement, such as a requirement to maintain a pool of highly liquid assets to cover cash outflows during a 30-day period of stress?

The Commission further requests comment on whether it should consider including a condition that non-prudentially regulated security-based swap dealers must maintain equity capital equal or Tier 1 capital at least equal to the minimum fixed-dollar capital requirements under Exchange Act rule 18a–1? For example, should there be a condition that that firm maintain equity capital or Tier 1 capital of at least $20 million?

The Commission further requests comment on what specific types of non-prudentially regulated security-based swap dealers in France would be relying on a substituted compliance determination with respect to capital requirements under Exchange Act rule 18a–1. For example, 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 notes that the comparability analysis for capital for France focuses on Covered Entities that are subject to the prudential capital regime under CRR and CRD. The Commission requests comment on how the Commission should consider the effects of subsequent amendments to the capital requirements of the CRR and CRD on Covered Entities in the context of the proposed order, particularly with respect to amendments to the CRD (*e.g.,* CRD V), which would require changes to implementing French laws.

The Commission further requests comment on whether any investment firms that may be relying on the Commission's proposed substituted compliance determination would be covered under the new capital regime under the EU's IFR. 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 EU and France? If so, explain how they are comparable to the capital requirements for non-prudentially regulated security-based swap dealers under the Exchange Act.

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

The Commission further requests comment regarding the Commission's preliminary view that French and EU margin requirements are comparable to the Exchange Act margin requirements for non-prudentially regulated security-based swap dealers and major security-based swap participants. Are there any conditions that should be applied to substituted compliance for the margin requirements to promote comparable regulatory outcomes?

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.

Commenters further are invited to address any differences between French regulatory requirements and frameworks and the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance in connection with Germany for those internal supervision and chief compliance officers requirements, as well as additional Exchange Act section 15F(j) requirements.[118]

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.

Commenters further are invited to address any differences between French regulatory requirements and frameworks and the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance in connection with Germany for certain of those counterparty protection requirements. Would the responses to any of the questions about counterparty protection requirements that the Commission asked in connection with the German substituted compliance request differ if those questions applied to French 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 additional Exchange Act section 15F(f) requirements. 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. Do French and EU law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15(f) and Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and 18a–9 thereunder?

Commenters further are invited to address any differences between French regulatory requirements and frameworks and the German requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance in connection with Germany for recordkeeping, reporting, notification, and securities

[118] *See* generally German Notice and Proposed Order, 85 FR at 72732–34.

count requirements, as well as additional Exchange Act section 15F(f) requirements

Commenters particularly are invited to address the proposed condition with respect to Exchange Act rule 18a–5 that the SBS Entity: (a) 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 (b) upon request furnish promptly to representatives of the Commission the records required by those rules. Do the relevant French and EU 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 French and EU 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 France produce this information to the French Authorities or other European 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)?

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 SBS 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 the French Authorities and/or other European authorities. Should the Commission require SBS 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 French Authorities and/or other European authorities? 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 French Authorities and/or other European authorities; 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 four conditions. For example, comment is sought on the element of the third and fourth conditions that would permit the reports of the independent public accountant to be prepared in accordance with GAAS in France or the EU. How do those standards compare to U.S. GAAS? In addition, should the Commission include a condition in the final order that the independent public accountant must meet the Commission's independence standards for public accountants? Further, the third condition would require SBS Entities that are not required under French or EU laws 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 French or EU laws only require certain investment firms (depending on their size) to have their financial statements audited. Do the firms in France 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?

Further, if the Commission makes a positive substituted compliance determination with respect to a substantive requirement, should the Commission make a positive substituted compliance determination with respect to the linked record making and record preservation requirement? In particular, in this circumstance, should a positive substituted compliance determination be made with respect to the recordkeeping, reporting, and notification rules that are linked to other Exchange Act rules which include provisions that address: (1) Unverified security-based swap transactions (Exchange Act rules 18a–5(a)(15) and (b)(11), and 18a–6(b)(1)(i) and (b)(2)(i)); (2) compliance with business conduct requirements (Exchange Act rules 18a–5(a)(16) and (17), and (b)(12) and (13), 18a–6(b)(1)(i), (b)(1)(xii), (b)(2)(i), and 18a–6(b)(2)(vii)); (3) preservation of records relating to certain risk mitigation requirements (Exchange Act rules 18a–6(d)(4) and (5); (4) segregation requirements (Exchange Act rules 18a–5(a)(13) and (14), and (b)(9) and (10), 18a–6(b)(1)(viii)(L) and (b)(2)(v), 18a–7(c)(3) and (4), and 18a–8(g)); (5) capital requirements (Exchange Act rules 18a–5(a)(9) and (b)(1)(v), 18a–7(a)(3), and 18a–8(b); and (6) margin requirements (Exchange Act rules 18a–5(a)(12) and (b)(1)(viii))? If so, explain why.

Finally, commenters are invited to address whether the French substituted compliance order should be conditioned on the SBS Entity furnishing 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 French substituted compliance order. Should this condition be included in any substituted compliance order addressing a jurisdiction where SBS Entities' records, reports, or notifications are not required to use the English language? Should the German substituted compliance order be amended to include such a condition?

Are there any French SBS Entities that are not expected to be exempt from Exchange Act rule 18a–4? If so, should the final Order include a condition

requiring SBS Entities to file with the Commission the supporting schedules required by Exchange Act rule 18a–7(c)(2)(ii) that relate to Exchange Act rule 18a–4 (*i.e.,* Computation for Determination of Security-Based Swap Customer Reserve Requirements and Information Relating to the Possession or Control Requirements for Security-Based Swap Customers) if the SBS Entity is not exempt from Exchange Act rule 18a–4?

G. Supervisory and Enforcement Issues

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

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

By the Commission.

Dated: December 22, 2020.

Vanessa A. Countryman,

Secretary.

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 French Republic and the European Union 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 ''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 MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute ''investment services'' or ''investment activities,'' as defined in MiFID article 4(1)(2) and in MFC L.321–1, and fall within the scope of the Covered Entity's authorization from the AMF or from the ACPR after approval by the AMF of the Covered Firm's program of operations to provide investment services and/or perform investment activities in the French Republic.

(2) *Counterparties as ''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 MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a ''client'' (or potential ''client''), as defined in MiFID article 4(1)(9) and as used in the relevant provision of MFC.

(3) *Security-based swaps as ''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 MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the relevant security-based swap is a ''financial instrument,'' as defined in MiFID article 4(1)(15) and in MFC L.211–1 and D.211–1A.

(4) *Covered Entity as ''institution.''* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of CRD, provisions of MFC that implement CRD, CRR and/or other EU and French requirements adopted pursuant to those provisions, the Covered Entity is an ''institution,'' as defined in CRD article 3(1)(3) and CRR article 4(1)(3), and is either a credit institution or finance company, each as defined in MFC L.511–1.

(5) *Memorandum of Understanding with the French Authorities.* The Commission and the AMF and the ACPR have a supervisory and enforcement memorandum of understanding and/or other arrangement 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.

(6) *Memorandum of Understanding Regarding ECB-Owned Information.* The Commission and the ECB and/or the AMF and/or the ACPR have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB 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.

(7) *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 an email address provided 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.

(8) *European Union Cross-Border Matters.* If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or any other EU or French requirement adopted pursuant to MiFID listed in paragraphs (b) through (f) of this Order is allocated to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, the AMF or the ACPR must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service. If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (f) of this Order is allocated to one or more authorities of a Member State of the European Union, one of such authorities must be the AMF or the ACPR.

(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: MiFID articles 16(4) and 16(5); MFC L. 533–10.II (4) and (5); MiFID Org Reg articles 21–24; CRD articles 74, 76 and 79–87; MFC L. 511–41–1–B and L. 511–41–1–C, L. 511–55 through L. 511–57, L. 511–60 through L.

511–66, L. 511–89 through L. 511–97; Internal Control Order articles 106, 111, 114–15, 121–22, 130–34, 146–86, 211–12, 214–15; Prudential Supervision and Risk Assessment Order article 7; CRR articles 286–88 and 293; and EMIR Margin RTS article 2.

(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 MiFID article 25(6), MFC article L. 533–15, MiFID Org Reg articles 59–61, EMIR article 11(1)(a) and 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 EMIR article 11(1)(b) and EMIR RTS article 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 competent authorities pursuant to 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 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:

(i) The Covered Entity is subject to and complies with the requirements of MiFID article 25(5), MFC article L. 533–15, MiFID Org Reg articles 24, 58, 73 and applicable parts of Annex I, and EMIR Margin RTS article 2; and

(ii) The Covered Entity does not treat the applicable counterparty as an ''eligible counterparty'' for purposes of MiFID article 30 and MFC article L. 533–14, in relation to the MiFID and MFC provisions specified in paragraph (b)(5)(i).

(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 through 18a–1d, provided that the Covered Entity is subject to and complies with the capital requirements of the CRR, including recitals 40, 43 and 87, and articles 26, 28, 50–52, 61–63, 92, 111, 113(1), 114–122, 143, 153(8), 177(2), 283, 290, 300–311, 312(2), 362–377, 382–383, 412(1), 413(1), 416(1), 427(1), 413, 429, 430, and 499; MiFid Org. Reg., article 23(1); BRRD, articles 27(1), 31(2), 31(1)(a) and (5), 32(5), 45(6) and 81(1); CRD, articles 73, 79, 86, 97, 98(1)(e), 98(6), 99, 100(1), 102(1), 104, 104(1), 105, 129, 129(1), 130, 130(1), 130(5), 131, 133, 133(1), 133(4), 141, 142, 142(2), and 142(4); MFC articles L. 511–13, L. 511–15, 511–41–1 A, 511–41–1 A(XIV), L. 511–41–1 B, L. 511–41–1 C, L. 511–41–3, L. 511–41–3.II, L. 511–41–3.III, L. 511–41–3.IV, L. 511–41–4, L. 511–41–5, L. 511–42, L. 532–6, L. 533–2–1, L. 533–2–2, L. 533–2–3, L. 612–24, R. 612–30, L. 612–32, R. 612–32, L. 612–33.I, L. 612–33.II, L. 612–40, L. 613–44, L. 613–49. L. 613–49.II, L. 613–50.I, L. 631–2–1; Decree of 3 November 2014 on internal control, articles 10, 94–197, and 211–230; Ministerial Order on the Supervisory Review and Evaluation Process, articles 6–10; Decree of 3 November 2014 relating to capital buffers, articles 2, 16, 23, 37, 38, 56–64; and EMIR Margin RTS, recital 31, articles 2, 3(b), 7, and 19(1)(d)–(e), (3) and (8).

(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: EMIR article 11; EMIR Margin RTS; 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); MiFID Org Reg. article 23(1); CRD articles 74 and 79(b); MFC articles L.511–41–1–B, L.533–2–2, L.533–29, I al. 1, and L. 511–55 al. 1; and Decree of 3 November 2014 on internal control, article 114.

(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);

(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 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: MiFID articles 16 and 23; MFC articles L. 533–2, L.533–10.II and III, L. 533–24 and L. 533–24–1; MiFID Org Reg articles 21–37, 72–76 and Annex IV; CRD articles 74, 76, 79–87, 88(1), 91(1)–(2), 91(7)–(9) and 92–95; and MFC L. 511–41–1–B and L. 511–41–1–C, L. 511–51, L. 511–52.I, L. 511.53, L. 511–55 through L. 511–69, L. 511–71 through 86, L. 511–89 through L. 511–97, L. 511–102, R. 511–16–2 and R. 511–16–3; Internal Control Order articles 106, 111, 114, 115, 121–22, 130–34, 146–86, 211–12, 214–15; Prudential Supervision and Risk Assessment Order article 7.

(4) *Additional condition to paragraph (d)(1).* Paragraph (d)(1) further is conditioned on the requirement that Covered Entities comply 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 a security-based swap, provided that the Covered Entity is subject to and complies with the requirements of MiFID article 24(4);

MFC L. 533–12.II and D. 533–15; and MiFID Org Reg articles 48–50, in each case in relation to that security-based swap.

(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 a security-based swap, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

(i) MiFID article 23(2)–(3); MFC L. 533–10.II(3); and MiFID Org Reg articles 33–35;

(ii) MiFID article 24(9); MFC L. 533–12–4; MiFID Delegated Directive article 11(5); and AMF General Regulation article 314–17; or

(iii) MAR article 20(1).

(3) ''*Know your counterparty.*'' The requirements of Exchange Act rule 15Fh–3(e), provided that the Covered Entity is subject to and complies with the requirements of MiFID article 16(2); MFC L 533–10.II(2); MiFID Org Reg articles 21–22, 25–26 and applicable parts of Annex I; CRD articles 74(1) and 85(1); MFC L. 511–55 and L. 511–41–1–B; MLD articles 11 and 13; MFC L. 561–5, L. 561–5–1, L. 561–6, L. 561–10, L. 561–4–1, R. 561–5, R. 561–5–1, R. 561–5–2, R. 561–5–4, R. 561–7, R. 561–10–3, R. 561–11–1 and R. 561–12; MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and MFC L. 561–4–1 as applied to vigilance measures regarding recordkeeping of customer due diligence activities, in each case in relation to that security-based swap.

(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), provided that:

(i) The Covered Entity is subject to and complies with the requirements of MiFID articles 24(2)–(3) and 25(1)–(2); MFC L. 533–24, L. 533–24–1, L. 533–12(I), L. 533–12–6 and L. 533–13(I); and 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 that is provided by or on behalf of the Covered Entity; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a ''professional client'' mentioned in MiFID Annex II section I and MFC D. 533–11 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), provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either MiFID articles 24(1), (3) and MFC L. 533–11 and L. 533–12.I or MiFID article 30(1) and MFC L. 533–20; and

(ii) MiFID articles 24(4)–(5); MFC L. 533–12(II)–(III) and D. 533–15; MiFID Org Reg articles 46–48; MAR articles 12(1)(c) and 15; and MAR Investment Recommendations Regulation article 5.

(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), 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 EMIR articles 11(1)(b) and 11(2) and EMIR RTS article 13.

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

This Order extends to the following provisions related to Commission requirements to:

(1) *Make and keep current certain records.* The requirements to make and keep current records of Exchange Act rule 18a–5 applicable to security-based swap dealers and major security-based swap participants; provided that:

(i) The Covered Entity is subject to and complies with the following requirements: CRR articles 103 and 105; EMIR articles 9(2), 11(1), and 39(4)–(5); EMIR RTS 148/2013; MiFID articles 9(1), 16(3), 16(6)–16(9), 25(1), 25(2), 25(5), and 25(6); MiFID Delegated Directive articles 2 and 8; MiFID Org Reg. articles 16(7), 21(1)(a), 35, 59, 72, 73, 74, 75, 76, Annex I, and Annex IV; MiFIR article 25; MLD4 articles 11 and 13; EBA/ESMA Guidelines on Management Suitability guidelines 74, 75, and 172, and Annex III; CRD articles 73, 88, 91(1), and 91(8); MFC articles L. 511–41–1–B, L. 511–51 through L. 511–103, L. 533–2–2, L. 533–10 II and III, L. 533–13, L. 533–14, L. 533–15, L. 533–25, L. 561–4–1, L. 561–5, L. 561–5–1, L. 561–6, R. 561–5, R. 561–5–1, R. 561–5–2, R. 561–5–3, R. 561–7, R. 561–10 II, R. 561–10–3, R. 561–11–1, R. 561–12, R. 561–15, R. 561–16, R. 561–18, R. 561–19; Internal Control Order; Decree of 6 September 2017 articles 3 and 10; Ministerial Order on the Supervisory Review and Evaluation Process; and AMF General Regulation article 312–6;

(ii)(A) The Covered Entity 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

(B) The Covered Entity upon request furnishes promptly to representatives of the Commission the records required by those rules;

(iii) The Covered Entity makes and keeps current the records required by Exchange Act rules 18a–5(a)(13) and (14) (if not prudentially regulated) or Exchange Act rules 18a–5(b)(9) and (10) (if prudentially regulated) if the Covered Entity is not exempt from the requirements of Exchange Act rule 18a–4;

(iv) The Covered Entity makes and keeps current the records required by Exchange Act rule 18a–5(a)(16) (if not prudentially regulated) or Exchange Act rule 18a–5(b)(12) (if prudentially regulated); and

(v) Except with respect to requirements of Exchange Act rules 15Fh–3 and 15Fk–1 to which this Order extends pursuant paragraphs (d)(2) and (e), the Covered Entity makes and keeps current the records required by Exchange Act rule 18a–5(a)(17) (if not prudentially regulated) or Exchange Act rule 18a–5(b)(13) (if prudentially regulated).

(2) *Preserve records.* The record preservation requirements of Exchange Act rule 18a–6 applicable to security-based swap dealers and major security-based swap participants; provided that:

(i) The Covered Entity is subject to and complies with the following requirements: CRD articles 73, 75–88, 91(1), and 91(8); CRR articles 99, 104(1)(j), 176, 286, 293(1)(d), 294, 394, 415–428, and 430; CRR Reporting ITS article 14 and Annexes I–V, VIII–XIII; EMIR articles 9(1), 9(2), and 11; MiFID articles 9(1), 16(2), 16(3), 16(5), 16(6) 24(9), 25(5), 25(6), and 69(2); MiFID Org Reg. articles 21(1)(a), 21(2), 22(3)(c), 23, 24, 25(2), 26, 29(2)(c), 31(1), 35, 58, 59, 72(1), 72(3), 73, and 76; MiFIR articles 16(2), 16(5), 16(6), 16(7), 25(1), 25(5), 31(1) and 72; MLD4 articles 11 and 13; EMIR RTS; EBA/ESMA Guidelines on Management Suitability guidelines 74, 75, and 172, and Annex III; EBA/GL/2016/10 on ICAAP/ILAAP; EBA Guidelines on Outsourcing section 13.3; MiFID Delegated Directive article 11; MFC articles L. 321–8–4, L. 511–41–1–B, L. 511–51 through L. 511–88, L. 533–2, L. 533–10, L. 533–14, L. 533–15, L. 561–4–1, L. 561–5, L. 561–5–1, L. 561–6, L. 621–8–4, L. 621–9, L. 621–10, R. 561–5, R. 561–5–1, R. 561–5–2, R. 561–5–3, R. 561–7, R. 561–10 II, R. 561–10–3, R. 561–11–1, R. 561–12, R. 561–15, R. 561–16, R. 561–18, R. 561–19; AMF General Regulation articles 314–16 and

314–17; Internal Control Order article 258; Ministerial Order on the Supervisory Review and Evaluation Process; and ACPR Instruction no. 2017–I–24, as amended or superseded from time to time;

(ii) The Covered Entity preserves the records required by Exchange Act rule 18a–6(b)(1)(viii)(L) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(v) (if prudentially regulated) if the Covered Entity is not exempt from the requirements of Exchange Act rule 18a–4;

(iii) Except with respect to requirements of Exchange Act rules 15Fh–3 and 15Fk–1 to which this Order extends pursuant to paragraphs (d)(2) and (e), the Covered Entity preserves the records required by Exchange Act rule 18a–6(b)(1)(xii) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(vii) (if prudentially regulated); and

(iv) The Covered Entity preserves the records required by Exchange Act rule 18a–6(b)(1)(xi) and (b)(1)(xiii) (if not prudentially regulated) or Exchange Act rule 18a–6(b)(2)(vi) and (b)(2)(viii) (if prudentially regulated).

(3) *File Reports.* The reporting requirements of Exchange Act rule 18a–7 applicable to security-based swap dealers and major security-based swap participants; provided that:

(i) The Covered Entity is subject to and complies with the following requirements: CRR articles 26(2), 99, 104(1)(j), 132(5), 154, 191, 321, 325bi, 350, 353, 368, 394, 415–428, 430, and 431–455; CRR Reporting ITS chapter 2 and Annexes I–V and VII–XIII; CRD article 89; MiFID article 16(8)–(10); MiFID Delegated Directive articles 2, 8, 72(2), Annex I; Commission Delegated Regulation (EU) 2017/1443, as amended or superseded from time to time; MFC articles L. 511–45 and L. 533–10; Accounting Directive article 34; Decree of 6 September 2017 articles 3 and 10; French Commerce Code articles L. 232–1, R. 232–1 through R. 232–8, and L. 823–1 through L. 823–8–1; and AMF General Regulation articles 312–6 and 312–7;

(ii) 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 France;

(iii) With respect to financial statements the Covered Entity is required to file annually with French and/or European authorities, including a report of an independent public accountant covering the financial statements, the Covered Entity (if not prudentially regulated):

(A) Simultaneously transmits to the principal office of the Commission or to an email address provided on the Commission's website a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements;

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

(C) 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 French or EU 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 France or the EU that the independent public accountant uses to perform audit and attestation services; and

(D) 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 France or the EU that the independent public accountant uses to perform audit and attestation services.

(4) *Provide Notification.* The notification requirements of Exchange Act rule 18a–8 applicable to security-based swap dealers and major security-based swap participants; provided that:

(i) The Covered Entity is subject to and complies with the following requirements: CRD IV article 71; MiFID article 73; MFC articles L. 511–33 II, L. 634–1, and L. 634–2;

(ii) The Covered Entity:

(A) Simultaneously transmits to the principal office of the Commission or to an email address provided on the Commission's website a copy of any notice required to be sent by the French and EU laws referenced in paragraph (f)(3)(i) of this order; and

(B) 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;

(iii) The Covered Entity complies with notification requirements of Exchange Act rule 18a–8(e) that relate to Exchange Act rule 18a–4 if the Covered Entity is not exempt from Exchange Act rule 18a–4; and

(iv) The Covered Entity complies with notification requirements of Exchange Act rule 18a–8(g) if the Covered Entity is not exempt from Exchange Act rule 18a–4.

(5) *Perform Securities Count.* The securities count requirements of Exchange Act rule 18a–9 applicable to non-prudentially regulated security-based swap dealers and major security-based swap participants; provided that:

(i) The Covered Entity is subject to and complies with the following requirements: MiFID Delegated Directive articles 2 and 8; MiFID Org Reg. articles 74 and 75; EMIR article 11(1)(b); Decree of 6 September 2017 articles 3 and 10; AMF General Regulation articles 312–6 and 312–7.

(6) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, security-based swap dealers and major security-based swap participants 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 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.

(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; and

(iii) Is an investment firm authorized by the AMF to provide investment services or perform investment activities in the French Republic or a credit institution authorized by the ACPR after approval by the AMF of the credit institution's program of operations to provide investment services or perform investment activities in the French Republic.

(2) ''MiFID'' means the ''Markets in Financial Instruments Directive,'' Directive 2014/65/EU, as amended or superseded from time to time.

(3) ''MFC'' means France's ''Code monétaire et financier,'' as amended or superseded from time to time.

(4) ''Internal Control Order'' means the French AMF's Arrêté of 3 November 2014 on Internal Control of Companies in the Banking, Payment Services and Investment Services Sector Subject to the Supervision of the Authorité de Contrôle Prudentiel et de Résolution, as amended or superseded from time to time.

(5) ''Prudential Supervision and Risk Assessment Order'' means the French ministerial order on prudential supervision and risk assessment, as amended or superseded from time to time.

(6) ''MiFID Org Reg'' means Commission Delegated Regulation (EU) 2017/565, as amended or superseded from time to time.

(5) ''MiFID Delegated Directive'' means Commission Delegated Directive (EU) 2017/593, as amended or superseded from time to time.

(6) ''MLD'' means Directive (EU) 2015/849, as amended or superseded from time to time.

(7) ''MiFIR'' means Regulation (EU) 600/2014, as amended or superseded from time to time.

(8) ''EMIR'' means the ''European Market Infrastructure Regulation,'' Regulation (EU) 648/2012, as amended or superseded from time to time.

(9) ''EMIR RTS'' means Commission Delegated Regulation (EU) 149/2013, as amended or superseded from time to time.

(10) ''EMIR Margin RTS'' means Commission Delegated Regulation (EU) 2016/2251, as amended or superseded from time to time.

(11) ''CRR Reporting ITS'' means Commission Implementing Regulation (EU) 680/2014, as amended or superseded from time to time.

(12) ''CRD'' means Directive 2013/36/EU, as amended or superseded from time to time.

(13) ''CRR'' means Regulation (EU) 575/2013, as amended or superseded from time to time.

(14) ''MAR'' means the ''Market Abuse Regulation,'' Regulation (EU) 596/2014, as amended or superseded from time to time.

(15) ''MAR Investment Recommendations Regulation'' means Commission Delegated Regulation (EU) 2016/958, as amended or superseded from time to time.

(16) ''AMF'' means the French Autorité des Marchés Financiers.

(17) ''ACPR'' means the French Authorité de Contrôle Prudentiel et de Résolution.

(18) ''ECB'' means the European Central Bank.

(19) ''Accounting Directive'' means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, as amended or superseded from time to time.

(20) ''Decree of 6 September 2017'' means France's Decree number 2017–1324 of 6 September 2017, as amended or superseded from time to time.

(21) ''AMF General Regulation'' means France's ''Règlement Général de L'Autorité des Marchés Financiers,'' as amended or superseded from time to time.

(22) ''Ministerial Order on the Supervisory Review and Evaluation Process'' means France's Arrêté of 3 November 2014 on the Process for Prudential Supervision and Risk Assessment of Banking Service Providers and Investment Firms Other than Portfolio Management Companies, as amended or superseded from time to time.

(23) ''French Commerce Code'' means the French Commercial Code, as amended or superseded from time to time.

(24) ''Prudentially regulated'' means a Covered Entity that has a ''prudential regulator'' as that term is defined in Exchange Act section 3(a)(74).

(25) ''Decree of 3 November 2014 on internal control'' means Arrêté of 3 November 2014 on internal control of companies in the banking, payment services and investment services sector subject to the supervision of the ACPR.

(26) ''Decree of 3 November 2014 relating to capital buffers'' means *Arrêté* of 3 November 2014 relating to the capital buffers of banking service providers and investment firms other than portfolio management companies.

(27) ''BRRD'' means Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended or superseded from time to time.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90736; File No. SR–FICC–2020–803]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice To Include Same-Day Settling Trades in the Risk Management, Novation, Guarantee, and Settlement Services of the Government Securities Division's Delivery-Versus-Payment Service, and Make Other Changes

December 21, 2020.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on November 19, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice consists of amendments to the FICC Government Securities Division (''GSD'') Rulebook (the ''Rules'') [4] in order to (i) include Same-Day Settling Trades (as defined below) in the risk management, Novation, guarantee, and settlement services of GSD's delivery-versus-payment service (''DVP Service''), (ii) provide that FICC would attempt to settle, on a reasonable efforts basis, any Same-Day Settling Trades that are compared in the timeframe specified by FICC in notices made available to Members from time to time [5] to the

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On November 19, 2020, FICC filed this advance notice as a proposed rule change (SR–FICC–2020–015) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[5] The initial timeframe would be after 3:01 p.m. If the FRB announces an extension of the Fedwire Securities Service, FICC would match the duration of the extension. All times herein are ET.