May 3, 2021

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

Re: Notice of Substituted Compliance Application Submitted by the United Kingdom Financial Conduct Authority in Connection with Certain Requirements Applicable to Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom; Proposed Order (S7-04-21)

Dear Ms. Countryman:

The Securities and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to comment on the above-captioned notice by the Securities and Exchange Commission ("**SEC**" or "**Commission**") regarding the substituted compliance application submitted by the United Kingdom ("**UK**") Financial Conduct Authority ("**FCA**") in connection with certain requirements applicable to security-based swap ("**SBS**") dealers ("**SBSDs**") and major SBS participants (together with SBSDs, "**SBS Entities**") subject to regulation in the United Kingdom (such SBS Entities, "**Covered Entities**"), and the proposed order (the "**UK Order**") providing for the conditional substituted compliance in connection with the application (together, the "**Proposal**").[2]

With the exception of the proposed conditions to substituted compliance with capital requirements, the Proposal generally reflects a thoughtful, holistic approach to substituted compliance. We appreciate in particular the Commission's efforts to respond to comments on its previous substituted compliance proposals for France and Germany, including by refining which foreign requirements operate as conditions to substituted compliance and clarifying the ability of an SBS Entity to rely on substituted compliance

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry, nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry-coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] Securities Exchange Act of 1934 ("**Exchange Act**") Release No. 34–91476 (Apr. 8, 2021), 86 Fed. Reg. 18378 (Apr. 8, 2021).

for some but not all Exchange Act requirements in certain areas. In this letter (including Appendix A, where we provide comments on the UK laws cited as conditions to substituted compliance) we provide further comments regarding these matters, as well as comments requesting technical clarification or modification of other conditions set forth in the Proposal.

Of particular note, we have recommended changes to the proposed UK Order to refine the scope of UK law provisions that would operate as conditions to substituted compliance. These refinements reflect our effort to make these conditions proportional to the linked Exchange Act requirements. We are concerned that, in the Commission's efforts to take a "holistic" approach to substituted compliance, it has in practice substantially and substantively expanded the scope and nature of obligations Covered Entities must satisfy well beyond the provisions of UK law that are corollaries to the linked Exchange Act requirements. As a result, Covered Entities would be subject to far greater obligations and liability under the Commission's framework than other SBS Entities. For example, in connection with various recordkeeping requirements, the proposed UK Order would not only require Covered Entities to satisfy corollary UK recordkeeping requirements, but also require Covered Entities to satisfy capital, client asset segregation and other non-recordkeeping requirements. We do not consider this to be an appropriate approach because it would effectively amount to an extraordinarily broad revision to the underlying Exchange Act rules. For these reasons, we recommend revisions that reflect a narrower and more proportional approach of conditioning substituted compliance on compliance with related UK law provisions.

The proposed conditions to substituted compliance with capital requirements also present fundamental issues. These conditions would create brand new, far-ranging capital and liquidity requirements touching the entire balance sheet of nonbank[3] Covered Entities—essentially resulting in substituted compliance in name only. Because of the breadth of these conditions and their incorporation of new concepts that still need to be defined more clearly, it simply will not be possible for nonbank Covered Entities (or similarly situated firms in France or Germany) to implement these conditions before the October 6, 2021 compliance date for nonbank SBSD capital requirements. The likely impact of the conditions would therefore be to force the speedy and disruptive exit of these firms from the U.S. SBS market.

This result is neither necessary nor desirable. The affected firms do not, in general, have significant exposures to the types of illiquid assets (*e.g.*, loans or other uncollateralized receivables unrelated to their derivatives business, furniture and fixtures, or real estate) that the proposed conditions are designed to restrict. In addition, beyond the liquidity coverage ratio ("**LCR**") requirements cited by the Proposal, affected firms are subject to other requirements (such as net stable funding ratio ("**NSFR**") and internal liquidity assessment process requirements) that are also designed to promote liquidity,

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[3] As used in this letter, a "nonbank" firm is a firm that does not have a "prudential regulator" as defined in the Exchange Act.

taking into account a longer time horizon and commensurately greater amount of liabilities than the LCR. These additional requirements should be sufficient to ensure comparability of outcomes with the Commission's capital rule.

For these reasons, it is essential that the Commission take more time to analyze the potential impact of the proposed conditions before imposing them. In this regard, it is striking that the Proposal contains no cost-benefit analysis whatsoever, even though the cost-benefit analysis of previous Commission rulemakings assumed a different result.[4] And the Commission is permitting only 25 days for the public to comment on what is effectively an amendment to prior rulemakings for which it afforded a collective 265 days of public comment periods. Providing a 25-day comment period is remarkable given the magnitude of these conditions' anticipated impact on Covered Entities and the technical and operational complexities of the issues raised by them. The brevity of this comment period stands in sharp contrast to the deliberative, multiyear process by which the UK Prudential Regulation Authority ("**PRA**") has developed and applied its post-crisis regulatory standards, many of which were thoughtfully designed to address the same underlying policy objectives of the conditions. Nor is this an issue that can be solved solely by extending the comment period, given the impending registration and compliance deadlines for the Commission's SBS rules.

In light of these considerations, as described in greater detail below, we propose that the Commission take a more incremental approach, through which it would collect additional data regarding foreign nonbank SBSDs and could, after a specified transition period, adopt additional conditions as warranted to promote such firms' liquidity.

I. General Conditions

Substituted compliance under the proposed UK Order would be subject to several general conditions. We request that the Commission modify and clarify those conditions as described below.[5]

A. Conditions 1 through 6 – Activities Required to Be "Carried on by the Covered Entity from an Establishment in the United Kingdom"

Paragraphs (a)(1) through (6) of the proposed UK Order would generally require that, for purposes of certain UK rules, a Covered Entity's SBS activities be "carried on … from an establishment in the United Kingdom." In certain instances this condition does not correctly describe the territorial scope of the relevant UK rule because the relevant UK rule applies to a Covered Entity with respect to activities wherever they are carried on. To address this issue, without requiring the Commission to adopt separate

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[4] See Exchange Act Release No. 86175 (Jun. 21, 2019), 84 Fed. Reg. 43872, 44030 ("By allowing non-U.S. entities to satisfy comparable [capital] requirements in foreign jurisdictions, the rule mitigates the compliance burden on these non-U.S. entities").

[5] Additional comments regarding these general conditions are set forth in Appendix A.

territoriality conditions for each relevant UK rule, the Commission should delete this language from conditions (1) through (6) and replace it with a new general condition confirming that, for each condition of paragraphs (b) through (f) of the UK Order that requires compliance with the UK law provisions referenced in paragraphs (a)(1) through (6), to the extent any of those UK laws are limited in their applicability to activity carried on from an establishment in the UK, a Covered Entity must carry out its relevant SBS activities from an establishment in the UK to the extent it relies on substituted compliance pursuant to those paragraphs with respect to those activities.

In addition, as described in greater detail in Part I.E., in order that these territorial scope limitations under UK law not completely undermine the availability of substituted compliance, the Commission should eliminate, wherever feasible, references to territorially limited UK laws as conditions to substituted compliance. We have made suggestions along these lines in Appendix A. Where this is not feasible, we ask the Commission to confirm that, like with transaction-level Exchange Act requirements, for entity-level Exchange Act requirements a Covered Entity may (a) rely on substituted compliance with the relevant UK rule for its relevant SBS activities carried on from an establishment in the UK and (b) comply with the linked Exchange Act requirement (or other relevant local rules if the Commission has made a substituted compliance determination with respect to those local rules[6]) for SBS activities carried on from establishments in other jurisdictions.

B. Condition 7 – Counterparties as UK MiFID Clients

Paragraph (a)(7) of the proposed UK Order would require, for each further condition requiring compliance with specified provisions of the Client Asset Sourcebook of the FCA Handbook, Conduct of Business Sourcebook of the FCA Handbook ("**FCA COBS**"), Product Intervention and Product Governance Sourcebook of the FCA Handbook, Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook, and UK implementation of certain delegated regulations under the Markets in Financial Instruments Directive ("**UK MiFID**" and such regulations, "**UK MiFID Org Reg**"), the Covered Entities' relevant counterparties (or prospective counterparties) must be "clients" (or potential "clients") as defined in FCA COBS 3.2.1R.

We request that the Commission modify this condition to take into account the FCA's "agent as client" rule (established under FCA COBS 2.4.3R). The agent as client rule provides that, if a UK firm is aware that a person with or for whom it is providing services is acting as the agent for another person, then the agent, and not the agent's principal, is the UK firm's client for purposes of the UK firm's compliance with the provisions of the FCA Handbook or the PRA Rulebook.[7] In the situations where the

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[6] For example, a European Union ("**EU**") jurisdiction for which the Commission has made a substituted compliance determination, such as Germany or France.

[7] This position can be reversed such that the agent's principal is the client of the UK firm either (1) upon the UK firm's agreement with the agent or (2) if the agent is neither a UK firm nor an "overseas financial institution" (essentially a non-UK firm) and the main purpose of the arrangements between the

"agent as client" rule applies, the agent of the client is the entity to whom investment services are considered to be provided, and therefore the UK firm's client for the purpose of meeting various regulatory client-facing conduct of business obligations owed by the UK firm to its clients. This does not affect the fact that the principal on whose behalf the agent acts will be the legal counterparty to any transactions which the UK firm concludes with or for its client.

This rule is most relevant in the context of a fund (as principal) where the fund manager (as the fund's agent) might be treated as the regulatory client by the UK firm and would therefore be the entity to which the UK firm looks for the purpose of discharging the requirement to notify, obtain consent from or enter into an agreement with a client, including in relation to reporting and periodic statements. It may also apply in the context of a corporate group where a group treasury entity acts as agent for other group entities.

This rule is intended to ensure that the UK firm owes its obligations to, and may discharge those obligations by its dealings with, the entity with which it is in fact dealing in practice in providing the relevant investment service, and which will receive the benefit of those obligations for its principal. It is not intended to avoid or reduce any substantive obligations owed by the UK firm to the client, or the underlying principal it represents. Indeed as noted in footnote 7, the rule includes an anti-evasion provision such that the agent as client rule is displaced where the agent (being neither a UK authorized firm nor overseas financial institution) enters into the arrangement with the UK firm to permit the latter to avoid duties it would otherwise owe to the principal.

Modifying paragraph (a)(7) to take into account this rule should not present any issues for the Commission. The key Exchange Act requirements linked to the UK rules mentioned in paragraph (a)(7) are disclosure, suitability and fair and balanced communications requirements.[8] In practice, even a U.S. SBS Entity trading with an agent

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parties is the avoidance of duties that the UK firm would otherwise owe to the agent's principal. We note that it would not be practical for a UK firm, in order to satisfy the Commission's substituted compliance condition, to re-document each of its client relationships to treat each underlying counterparty as its MiFID client instead of the counterparty's agent. Like a U.S. SBS Entity under the Commission's rules (as described further below), when a counterparty is represented by an agent, a UK firm will, as a matter of practical necessity, deliver disclosures via the agent and assess suitability vis-à-vis the agent as the investment decision-maker. In addition, opting out of the agent as client rule would necessitate a full MiFID reclassification of each affected counterparty/client (*e.g.* to determine status as a professional client, etc.).

[8] The proposed UK Order also links the UK rules mentioned in paragraph (a)(7) to Exchange Act requirements in several other areas. In many of these instances, however, the specific UK rules cited by the proposed UK order do not pertain to "clients" and so paragraph (a)(7) does not in reality implicate those Exchange Act requirements; examples include internal risk management, capital and margin requirements. In several other instances, as discussed in more detail in Appendix A, the proposed Order should be modified to remove references to the UK rules mentioned in paragraph (a)(7) because those rules do not pertain to the same matters as the linked Exchange Act requirements.

acting on behalf of an SBS counterparty will look to the agent when satisfying these requirements: the SBS Entity will provide its disclosures to the agent; may satisfy its suitability obligations by reasonably determining that the agent is capable of independently evaluating investment risks and receiving certain representations from the agent;[9] and will communicate with the agent, not the counterparty. Accordingly, treating the counterparty's agent as the SBS Entity's "client" under the FCA's agent as client rule will be consistent with the manner in which the linked Exchange Act requirements apply and the manner in which even U.S. SBS Entities will likely satisfy these requirements.

C. Condition 13 – Counterparties as UK EMIR "Counterparties"

Paragraph (a)(13) of the proposed UK Order would require, for each further condition requiring compliance with the UK implementation of the European Market Infrastructure Regulation ("**UK EMIR**"), UK EMIR Regulatory Technical Standards ("**RTS**"), and/or UK EMIR Margin RTS, the Covered Entity treat each counterparty that is not a "financial counterparty" ("**FC**") or "non-financial counterparty" ("**NFC**") within the meaning of UK EMIR as if it were an FC or NFC consistent with the counterparty's business.

We believe this condition would be appropriate, subject to the following clarifications. Certain public sector counterparties, such as multilateral development banks, are exempt from UK EMIR under Articles 1(4) and 1(5) of UK EMIR. In addition, certain counterparties (*e.g.*, individuals not carrying out an economic activity or offering goods and services in the market) are not considered FCs or NFCs because they are not "undertakings." We request that the Commission clarify that the counterparty-related UK EMIR condition would not require a Covered Entity to treat these types of counterparties as FCs or NFCs. This clarification is consistent with the Commission's overall proposal to rely on UK EMIR's counterparty classifications for substituted compliance purposes, *e.g.*, in relying on UK EMIR's distinction between FCs and NFCs.

D. Condition 14 – SBS Status Under UK EMIR

Paragraph (a)(14) of the proposed UK Order would require, for each further condition requiring compliance with UK EMIR and/or other UK requirements adopted pursuant to those provisions, that each relevant SBS be either an "OTC derivative contract" or "OTC derivative" for purposes of UK EMIR or cleared by a central counterparty ("**CCP**") authorized or recognized to clear derivatives contracts in the UK.

We generally support this condition, subject to the following clarification. We would propose that the Commission expand the condition to include transactions cleared by third-country (*i.e.*, non-UK) CCPs that are not authorized, recognized or deemed recognized by the UK ("**Third-country CCPs**"). Unlike U.S. law, UK law permits, in certain circumstances, a Covered Entity and its counterparty to agree to submit to a

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[9] See 17 C.F.R. § 240.15Fh-3(f)(2)(i) and (ii).

Third-country CCP SBS that are not subject to UK EMIR's mandatory clearing requirement. In such an instance, a Covered Entity is required to maintain substantially greater capital in relation to the SBS than would apply to either an SBS cleared at a recognized or authorized CCP or a non-cleared SBS. This is because a Third-country CCP does not constitute a "qualifying central counterparty" under the UK implementation of the Capital Requirements Regulation ("**UK CRR**"). Covered Entities therefore do not generally agree to clear SBS at Third-country CCPs unless the counterparty specifically requests or local law requires it.

It would be impractical to require a Covered Entity to satisfy rule 18a-3 and other Exchange Act requirements that are principally targeted to non-cleared SBS in relation to these transactions. In addition, any greater risk associated with these transactions is addressed through the higher capital requirements. Therefore, the Commission should adjust the second of its proposed conditions so that it includes SBS cleared by *any* CCP.

If the Commission nonetheless maintains its proposed limitations, the Commission should clarify that a Covered Entity does not lose its ability to rely on substituted compliance in relation to transactions that satisfy the product-related condition simply because the Covered Entity submits an SBS to a Third-country CCP. Rather, such a Covered Entity should be able to rely on substituted compliance for the SBS that satisfy the condition and comply with the linked Exchange Act requirement (or other relevant local rules if the Commission has made a substituted compliance determination with respect to those local rules) for SBS cleared at Third-country CCPs. In addition, the Commission should clarify the condition to (a) define the term "central counterparty" or "CCP" with reference to the relevant UK EMIR definition, in Article 2(1) of UK EMIR and (b) revise the reference to a CCP that has been authorized or recognized to clear derivatives contracts "in" the UK instead to refer to authorization or recognition by a relevant authority in the UK, so as to recognize that certain CCPs not domiciled in the UK may nonetheless be recognized by UK authorities. Lastly, the Commission should revise the condition to expressly include SBS cleared by CCPs that are "taken to be" (*i.e.*, deemed) recognized for purposes of UK EMIR. Due to Brexit, there are, at present, no permanently recognized CCPs under UK EMIR, only those that are deemed recognized under the UK's temporary recognition regime for third-country CCPs or third-country CCPs run-off regime, which is applicable to third-country CCPs that were able to provide CCP services to UK clearing members and trading venues prior to Brexit.[10] Such deemed recognition is tantamount to permanent recognition for all relevant purposes including in respect of the capital charges applicable to exposures to such CCPs under the UK CRR.

E. Condition 16 – Notice to the Commission; Scope of Substituted Compliance

[10] Under The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.

A number of statements in the Proposal and proposed UK Order suggest that, in order to be eligible for substituted compliance with respect to an entity-level Exchange Act requirement, a Covered Entity must be subject to the applicable UK laws on an entity-wide basis. For example, in connection with paragraph (16), which requires notification to the Commission regarding a Covered Entity's intent to rely on substituted compliance and the scope of such reliance, the Proposal indicates that, for the Exchange Act's entity-level requirements, such as supervision or recordkeeping requirements (other than those linked to counterparty protection requirements), "if a Covered Entity elects to apply substituted compliance to these entity-level requirements, it must do so at the entity level."[11] Relatedly, the Proposal states that the UK Order "would not provide substituted compliance when a Covered Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant UK requirements do not apply to the [SBS] activities of a non-UK branch of a MiFID investment firm or to a third country investment firm."[12]

We are concerned that, taken together, these principles would significantly undercut the availability of substituted compliance. In several instances, the UK laws that the UK Order would link to entity-level Exchange Act requirements include some UK laws that do not apply on an entity-wide basis. Rather, some of these laws only apply to the extent the Covered Entity carries on the relevant activities from an establishment in the UK. As a result, if a Covered Entity carries on any business from an establishment outside the UK, it could be precluded from relying on substituted compliance for many of the Exchange Act's entity-level requirements.

To address this issue, the Commission should, wherever feasible, eliminate references to territorially limited UK laws as conditions to substituted compliance. We have made suggestions along these lines in Appendix A. If the Commission accepts these suggestions, it would substantially mitigate this issue (*e.g.*, for the most part, affecting certain Exchange Act recordkeeping requirements).[13]

However, given that the issue cannot be eliminated entirely, we request that the Commission confirm that, in those instances where a relevant UK law only applies to the extent a Covered Entity carries on the relevant activities from an establishment in the UK, the Covered Entity may (a) rely on substituted compliance with the relevant UK rule for its relevant SBS activities carried on from an establishment in the UK and (b) comply with the linked Exchange Act requirement (or other relevant local rules if the Commission has made a substituted compliance determination with respect to those local

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11 Proposal at 18382.

12 *Id.* at 18480.

13 If the Commission does not accept our recommendations as set forth in Appendix A to this letter, this issue would arise in connection with several other Exchange Act requirements because the proposed UK Order cited several extraneous or otherwise unnecessary UK requirements subject to territorial limits.

rules) for SBS activities carried on from establishments in other jurisdictions. If this position were not permitted, a Covered Entity carrying on any SBS activities from an establishment outside of the UK, even to a *de minimis* extent, could never rely on substituted compliance under the UK Order for some of the entity-level Exchange Act requirements. Given the global nature of the SBS markets, any other position could make the availability of substituted compliance for these entity-level requirements illusory for many firms.

II. Risk Control Requirements

The Proposal would generally permit a Covered Entity to substitute compliance with specified UK requirements for compliance with Exchange Act internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation requirements, subject to the condition that a Covered Entity provide the Commission with certain dispute-related reports.

We generally support these aspects of the Proposal, subject to our comments in Appendix A with respect to refining the UK laws cited by the UK Order. In particular, we agree with the Commission that the cited provisions of UK EMIR are comparable to the Exchange Act trade acknowledgment and verification and trading relationship documentation requirements, when viewed in light of relevant guidance from the European Securities and Markets Authority[14] and the Proposal's condition requiring a Covered Entity to treat its SBS counterparties as FCs or NFCs for purposes of UK EMIR and related RTS.

In contrast, it would not be appropriate for the Commission to condition substituted compliance with these Exchange Act requirements on compliance with UK MiFID documentation requirements. The cited UK EMIR requirements are sufficient, standing alone, to reach comparable outcomes to the Exchange Act trade acknowledgment and verification and trading relationship documentation requirements. Moreover, further requiring compliance with UK MiFID documentation requirements would substantially reduce the overall availability of substituted compliance in these areas because those UK MiFID requirements are not necessarily applicable on an entity-wide basis like the UK EMIR requirements are.

III. Capital and Margin Requirements

The Proposal would generally permit a nonbank Covered Entity to rely on substituted compliance with specified UK requirements for compliance with Exchange Act capital and margin requirements, except that it would apply four conditions in the capital area. Specifically, the Proposal would require a nonbank Covered Entity to:

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[14] Following Brexit, such non-legislative EU material is generally considered by the FCA to remain relevant to the FCA and market participants in their compliance with EU law retained by the UK.

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

(2) Make a quarterly record listing such assets, their value and their applicable haircuts as well as the aggregate amount of liabilities coming due in the next 365 days;

(3) Maintain "at least $100 million of equity capital composed of 'highly liquid assets' as defined in the Basel capital standard"; and

(4) Include its most recent statement of financial condition filed with its local supervisor in its notice to the Commission of its intention to rely on substituted compliance.

We support the proposal to grant substituted compliance in connection with capital and margin requirements for nonbank Covered Entities, subject to our comments in Appendix A with respect to refining the UK laws cited by the UK Order. This approach is appropriate given the comprehensiveness of UK capital, liquidity and margin requirements as well as the differences in the regulatory and insolvency framework that applies to such entities relative to nonbank SBSDs in the U.S.

The proposed conditions, however, would largely undermine the grant of substituted compliance by subjecting nonbank Covered Entities to a brand new, ambiguously defined capital and liquidity framework that conflicts with and duplicates existing UK capital and liquidity requirements. As described below, these conditions are unnecessary, unduly rushed, highly likely to be disruptive and inconsistent with the Commission's substituted compliance framework. To give itself more time to analyze the potential impact of these conditions without further delaying the effectiveness of the overall SBS framework, the Commission should instead adopt a more incremental, transitional approach involving enhanced liquidity reporting that would enable it to conduct such analysis without unduly and substantially disrupting the market.

A. The Proposed Conditions Are Unnecessary Because Nonbank Covered Entities Already Transact Predominantly in Securities and Derivatives

The Proposal suggests that, to the extent nonbank Covered Entities are predominantly engaged in securities business, with balance sheets similar to U.S. broker-dealers that deal in securities in terms of predominantly holding liquid assets, then the proposed conditions may not be necessary. We agree with this view, and it is our understanding that nonbank Covered Entities do in fact transact predominantly in securities and derivatives. They do not extensively engage in unsecured lending or other activities more typical of banks.

Our understanding in this regard is based on our analysis of publicly available financial information concerning the six SIFMA member firms that expect to register as nonbank Covered Entities. In Appendix C, we present anonymized balance sheets of these firms that we have prepared by reference to the most recent publicly available financial statements. As these balance sheets demonstrate:

- The vast majority of each firm's total assets consists of cash and cash equivalents, collateralized agreements, trade and other receivables (*e.g.*, receivables from derivatives counterparties) and other trading and financial assets (collectively, "**Liquid Assets**"), with only a *de minimis* amount consisting of loans, long-term investments or fixed or other illiquid assets (collectively, "**Illiquid Assets**"). The amount of Illiquid Assets these firms hold as proportions of their overall balance sheets is comparable to the proportions of Illiquid Assets held by their U.S. broker-dealer affiliates.

- All of the firms maintain an amount of long-term debt, subordinated debt and equity that exceeds the value of their Illiquid Assets.

- The amount of the firms' long-term debt, subordinated debt and equity as proportions of their total liabilities and equity is comparable to the proportions of long-term debt, subordinated debt and equity maintained by their U.S. broker-dealer affiliates.

Naturally, these observations are based on a high-level review of publicly available financial statements and are not meant to be a comprehensive financial analysis that could form the basis for additional conditions to substituted compliance. As discussed below, nonbank Covered Entities do not generally categorize assets or liabilities using the same categories contained in the Commission's capital rules or its proposed conditions. Rather, firms categorize their assets and liabilities according to the accounting standards to which they are subject. In addition, in many instances, the specific categories that firms use differ from one another. Accordingly, to prepare Appendix C, we have sought to work with each firm to make an educated allocation of each line item on its publicly available financial statements to each line item contained in Appendix C.

Furthermore, in reviewing these firms' financial statements, one would need to consider the accounting standards to which each firm is subject, including such matters as the different conventions for reflecting derivatives-related payables and receivables under certain non-U.S. accounting standards. We have not separately analyzed these differences, which one would need to do for any kind of comprehensive financial analysis. Nonetheless, we believe the data clearly show that nonbank Covered Entities transact predominantly in securities and derivatives and do not engage in material unsecured lending or other typical banking activities.

B. The Proposed Conditions Are Unnecessary Because Nonbank Covered Entities Are Already Subject to Comprehensive Liquidity Requirements

The Proposal states that the proposed conditions are necessary to ensure that nonbank Covered Entities can withstand financial shocks and continue satisfying obligations to customers as they become due, including in insolvency. This assertion fails to recognize that the PRA has established comprehensive liquidity requirements that are designed to achieve the same objective.[15] The PRA has simply chosen different mechanisms, including those adopted by the international regulatory community, to achieve these goals. Notably, the Proposal does not analyze or respond to these comprehensive standards, which have been carefully developed by the PRA over many years.

Specifically, the PRA has adopted a five-prong approach to liquidity. First, a nonbank Covered Entity is required to hold an amount of sufficiently liquid assets to meet its expected payment obligations under gravely stressed conditions for thirty days and maintain a prudent funding profile. This requirement is based on the Basel Committee on Banking Supervision's ("**BCBS**") LCR and requires that a firm at all times maintain cash, central bank exposures, government-backed assets and other "high quality liquid assets" ("**HQLA**") equal to 100% of its total expected net cash outflows for the next thirty days under a stressed scenario. As the BCBS has explained, the purpose of the LCR, like the Commission's net liquid assets test, "is to improve [a firm's] ability to absorb shocks arising from financial and economic stress."[16] However, the LCR's approach to achieving this goal is somewhat different from the Commission's, in that the LCR seeks to measure what net outflows a firm may actually experience in a stress scenario and ensure that the firm has sufficient liquid assets to cover those outflows.

Second, beginning in January 2022, each nonbank Covered Entity will be subject to a stable funding requirement that will require it to hold a diversity of stable funding instruments sufficient to meet long-term obligations under both normal and stressed conditions.[17] This requirement is based on the BCBS's NSFR, which the BCBS has explained is designed to work in tandem with the LCR "to reduce funding risk over a longer time horizon."[18]

The approach of the NSFR is quite similar to that of the Commission's net liquid assets test, in that it aims to ensure that less liquid, longer-term assets are funded with

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[15] Each subsidiary of a SIFMA member firm that expects to register as a nonbank Covered Entity is a PRA-designated investment firm and therefore subject to the PRA's liquidity requirements.

[16] See BCBS, Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools, https://www.bis.org/publ/bcbs238.pdf.

[17] See CP5/21: Implementation of Basel standards, https://www.bankofengland.co.uk/prudential-regulation/publication/2021/february/implementation-of-basel-standards.

[18] See BCBS, Basel III: The Net Stable Funding Ratio, https://www.bis.org/bcbs/publ/d295.pdf.

more stable, longer-term debt instruments and capital. More specifically, the NSFR requires that a firm at all times maintain an amount of available stable funding ("**ASF**") equal to its amount of required stable funding ("**RSF**").[19] To calculate its ASF, a firm must multiply the carrying value of each of its capital instruments and liabilities by a specified percentage. That percentage depends principally on remaining maturity, with capital instruments and liabilities having a remaining maturity of more than one year ascribed a factor of 100%, most liabilities having a remaining maturity of six months to one year ascribed a factor of 50% and most other liabilities ascribed a factor of 0%. However, as the Commission notes, certain deposit liabilities may be a somewhat more stable funding source than other short-term debt. The NSFR recognizes this by ascribing to certain deposits higher percentages than would otherwise be required based on their remaining maturity alone. Similarly, the NSFR recognizes that funding provided by non-financial corporates may likewise be more stable, and so similarly ascribes to such funding a factor of 50% even if the remaining maturity of the relevant instrument is less than a year. Nonbank Covered Entities, however, will generally be unable to take advantage of these more favorable percentages since they cannot accept deposits and do not obtain significant funding from non-financial corporate customers.

As with ASF, a firm's RSF is calculated by multiplying the carrying value of the firm's assets and off-balance sheet exposures by a percentage. As the BCBS has explained, the factors are based on a one-year funding outlook: "The RSF factors assigned to various types of assets are intended to approximate the amount of a particular asset that would have to be funded, either because it will be rolled over, or because it could not be monetised through sale or used as collateral in a secured borrowing transaction over the course of one year without significant expense." The NSFR sets out eight possible factors ranging from 0% to 100%. The particular factor that applies depends on, among other things, the nature of the asset at issue (*e.g.*, marketable security, loan), the credit quality of the asset (*e.g.*, central bank obligations, secured obligations) and remaining maturity. Most unsecured loans that have a remaining maturity of a year or more are ascribed a factor of 100%, meaning that they must be fully funded with ASF.

Thus, much like the Commission's net liquid assets test, the NSFR imposes a quantitative test that compares a firm's stable funding to the liquidity of its assets. Moreover, like the Commission's proposed conditions, the NSFR recognizes that liabilities with a remaining maturity of less than a year should be excluded, either entirely or by 50%, from the calculation of a firm's stable funding. Relative to the proposed conditions, the NSFR just uses more particularity, and takes into account a greater number of considerations, in considering the amount of stable funding a firm must maintain for each of its assets. Even so, the NSFR, like the proposed conditions, provides for most unsecured loans carried by a firm to be funded with 100% stable funding.

The third and fourth prongs of the PRA's approach to liquidity—the Internal Liquidity Adequacy Assessment Process ("**ILAAP**") and the Liquidity Supervisory

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[19] Id. at 2.

Review and Evaluation Process ("**LSREP**")—are designed to ensure that each nonbank Covered Entity monitors, measures and manages those liquidity risks that are not captured or fully captured by the minimum (Pillar 1) requirements under the LCR and NSFR ("**Pillar 2 risks**"). Pillar 2 risks include, among other things, the liquidity risks arising from initial margin on derivatives contracts as well as the risk that a firm has insufficient liquidity from HQLA and other liquidity inflows to cover liquidity outflows on a daily basis.

Under the ILAAP requirement, each nonbank Covered Entity is required to maintain liquidity resources that are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due. In particular, each nonbank Covered Entity is required to maintain robust strategies, policies, processes and systems for the identification of liquidity risk over an appropriate set of time horizons, including 365 days.[20] In connection with these requirements, each firm must conduct regular liquidity stress tests and liquidity contingency plans that take into account stress scenarios. A Covered Entity's stress tests must include a granular modelling of cash flows in order to assess whether the firm has sufficient cash from monetization of HQLA and other inflows to cover outflows on a daily basis, under a stress scenario and during longer lasting and more severe stress events.

With respect to LSREP, the PRA regularly reviews a Covered Entity's exposure, measurement and management of liquidity in order to ensure that the firm has sufficient liquidity to satisfy its obligations as they become due. On the basis of these reviews, the PRA will determine whether a Covered Entity must modify its arrangements, strategies, processes or mechanisms or the overall amount of liquidity the firm maintains so as to ensure that liquidity risks are soundly managed and adequately covered.

Lastly, each nonbank Covered Entity is required to abide by Pillar 3 liquidity disclosure requirements. In particular, each firm is required to disclose on a regular basis key liquidity metrics, including its LCR, the fair value and carrying value of its encumbered and unencumbered HQLA and (beginning in January 2022) its NSFR. These disclosures are publicly available and would allow the Commission to monitor each nonbank Covered Entity's liquidity positions based on multiple metrics.

Accordingly, the PRA seeks to achieve the same regulatory outcome as the Commission's net liquid assets test, namely to ensure that a firm has the resources necessary to withstand stress and satisfy its obligations to customers. The PRA has just chosen to do so in accordance with the BCBS's quantitative LCR and NSFR

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[20] See the Internal Liquidity Adequacy Assessment Part of the PRA rulebook.

requirements, a comprehensive Pillar 2 framework and Pillar 3 disclosures, rather than the Commission's preferred net liquid assets test.

C. The Proposed Conditions Are Inconsistent with the Commission's Substituted Compliance Framework

As the Commission has recognized, the goal of substituted compliance is to "address the effect of conflicting or duplicative regulations on competition and market efficiency and to facilitate a well-functioning global security-based swap market."[21] Substituted compliance also serves to further the principles of international comity by allowing conflicting laws in different nations to work together in harmony.[22]

Consistent with these goals, the Commission has stated that it would "take a holistic approach in making substituted compliance determinations—that is, [the Commission] would ultimately focus on regulatory outcomes as a whole with respect to the requirements within the same category rather than a rule-by-rule comparison."[23] In this respect, the Commission has noted "that other regulatory systems are informed by the business and market practices present in the foreign jurisdictions where those systems apply, and that such practices may differ in certain respects from practices" in the United States. [24] Accordingly, the Commission "may need to take into account such practices and characteristics in understanding the design and application of another regulatory system and whether and how it may achieve regulatory outcomes comparable to the regulatory outcomes of the relevant provisions of the Exchange Act."[25]

In contrast to these principles and goals, the proposed conditions would directly duplicate, and generally contradict, the liquidity requirements established by the PRA. The Proposal suggests that this would be appropriate because the PRA's requirements are not sufficient to address liquidity risks associated with nonbank Covered Entities, due to the nonbank status of such entities.[26] The Commission does not provide much elaboration as to why it thinks the PRA erred in applying these liquidity requirements to nonbank

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21 Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 78 Fed. Reg. 30968, 31086 (May 23, 2013) (the "**Cross-Border Proposal**").

22 See generally Commodity Futures Trading Commission, Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 Fed. Reg. 56924 (Sept. 14, 2020).

23 Cross-Border Proposal, at 31085.

24 Id. at 31086.

25 Id.

26 Proposal, at 18387.

entities, except to note that banks have access to central bank liquidity and can accept deposits.[27]

However, nonbank Covered Entities have a number of similarities to banks that their U.S. counterparts do not. In particular, nonbank Covered Entities are, unlike their U.S. counterparts, eligible for the same liquidity support from the Bank of England that is available to UK banks, on the same terms that such support is available to UK banks.[28] Specifically, nonbank Covered Entities have access to the Bank of England's Sterling Monetary Framework ("**SMF**"). This enables such firms to obtain central bank funding on a secured basis through the Operational Standing Facilities and the Discount Window Facility offered by the Bank of England. Membership in the SMF also permits participation in the Indexed Long Term Repurchase Agreements and the USD / EUR Swap Line Facility, as well as any other facilities offered by the Bank of England that may be implemented in times of market stress.

In addition, nonbank Covered Entities are subject to a resolution regime that is similar to that applicable to U.S. and UK banks. This regime emphasizes continuity of critical services during an orderly wind-down and has mechanisms available to provide liquidity to the failed institution in order to allow it to meet its obligations during the course of the wind-down. This is an important distinction from the insolvency regime applicable to U.S. nonbank SBSDs under the Bankruptcy Code, which focuses on liquidation and a rapid distribution of assets to customers, without a mechanism for liquidity support.

The only significant difference between nonbank Covered Entities and banks is that the latter take deposits. However, as noted in Part III.B. above, the NSFR takes due account of the fact that deposits may provide more stable funding by allowing those institutions that accept certain deposits to count them as a source of stable funding, and disallowing those that do not, including nonbank Covered Entities, from doing so.

Accordingly, conditions of the sort contained in the Proposal are not necessary to bridge some gap between the regulatory objectives of the PRA's liquidity requirements and those of the Commission's net liquid assets test. The PRA's requirements are carefully and thoughtfully designed to promote the same goal as the proposed conditions, to ensure nonbank entities can withstand shocks and continue discharging obligations to customers. Indeed, the NSFR uses the same general framework as a net liquid assets test

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[27] Proposal, at 18387, n. 85.

[28] See Bank of England Market Operations Guide: Information for Applicants, https://www.bankofengland.co.uk/markets/bank-of-england-market-operations-guide/information-for-applicants. The Bank of England may, in its absolute discretion, waive, add to or vary any or all of the criteria in relation to any institution..

in terms of requiring that a firm have sufficient long-term, stable funding to support the liquidity of its assets.

Instead, the imposition of such conditions would amount to nothing other than substituting the Commission's views for the PRA's considered judgment as to the best way to achieve this goal, a considered judgment that is shared by the international regulatory community as well as the U.S. prudential regulators. Such an action would be inconsistent with the principles of comity that underlie the substituted compliance framework and may lead the PRA or other regulatory authorities to reciprocate by similarly refusing to extend deference to the Commission's regulatory determinations (*e.g.*, in relation to initial margin). That, in turn, would force firms to deal with overlapping, duplicative and contradictory requirements that disrupt the efficient functioning of markets that substituted compliance is designed to preserve.

D. The Proposed Conditions Would Be Costly and Disruptive to Market Participants

The Commission notes that implementing its proposed conditions would require nonbank Covered Entities "to supplement their existing capital calculations and practices, as well as to incur additional time and cost burdens to implement the potential conditions and integrate them into existing business operations."[29] The Proposal suggests, however, that the use of concepts from the Basel capital standard may somewhat mitigate these costs.

We disagree. The first condition starts with a distinction between "allowable" versus "non-allowable" assets under Exchange Act rule 18a-1. That rule does not actually define the term "allowable"; rather, we assume the Commission is referencing the distinction it has historically drawn for broker-dealer financial reporting purposes, as reflected in the instructions to Part II of the FOCUS report. There is no analogous concept contained in any of the capital or liquidity frameworks developed by the international regulatory community or any framework that exists in the UK. Nonbank Covered Entities accordingly would need to re-categorize every asset on their balance sheets, which would not be feasible in the near term.

Then, with respect to "allowable" assets, the first condition would require a nonbank Covered Entity to apply "applicable haircuts under the Basel capital standard." But Basel capital standards do not apply "haircuts" to assets. Instead, the BCBS framework provides that a firm must maintain "common equity tier one capital," "tier one capital," and "total capital" equal to certain percentages of the firm's risk-weighted assets.[30] Market and credit risk, in turn, are incorporated into the risk-weighted assets calculation, *i.e.*, the denominator of the equation, rather than the numerator. These risk-

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[29] Proposal, at 18388.

[30] See generally BCBS, Risk-Based Capital Requirement, https://www.bis.org/basel_framework/chapter/RBC/20.htm?inforce=20191215&published=20191215&export=pdf.

weights range from 0% (for certain sovereign exposures) to well above 100% for higher-risk exposures. These risk-weights are not equivalent to haircuts: a 100% risk-weight, for instance, does not require a firm to hold capital equal to 100% of the exposure. Rather, a firm must hold 8% of total capital, 6% tier 1 capital, and 4.5% common equity tier one (plus any applicable buffers) against such an exposure. At a minimum, the Commission would therefore need to clarify what it means by "haircuts" and how these should be applied to each different type of asset.

Third, the first condition requires an assessment of a nonbank Covered Entity's "current liabilities coming due in the next 365 days." The potential impact of this limb of the condition may not be consistent with the Commission's expectations, depending on the treatment of various transactions under applicable international accounting standards. For example, under these accounting standards, short-term liabilities may be significantly greater than under U.S. Generally Accepted Accounting Principles due to the different treatment of derivatives payables and receivables. Also, the treatment of customer payables (*e.g.*, in connection with short sales where the Covered Entity has posted collateral to borrow securities to cover the short) and intercompany lending arrangements will need to be considered.

The third condition, requiring "at least $100 million of equity capital composed of 'highly liquid assets' as defined in the Basel capital standard," also reflects some ambiguous concepts. It appears that, by "highly liquid assets," the Commission is referencing the concept of "high quality liquid assets," which appears in the LCR. However, it is unclear how a firm would calculate the amount of its "equity capital" that is "composed of highly liquid assets." "Equity" generally refers to a firm's paid-in capital, retained earnings and other items on the Liabilities/Shareholders' Equity side of the balance sheet. Assets appear on the other side of the balance sheet.

In light of these considerations, there would need to be significant additional clarification by the Commission, as well as extensive IT and other financial reporting-related changes by nonbank Covered Entities, before any Covered Entities could even assess the potential financial impact of these conditions. Meanwhile, it is only roughly three months until the August 6, 2021 "counting date" when a firm's SBS activity will begin to count towards triggering SBSD registration. Within those three months, firms will not have enough clarity or time to make these assessments. Indeed, depending on when the Commission provides necessary clarifications, many if not all affected firms may not even be able to make the necessary changes to their financial reporting systems to perform the new computations in time for registration by November 1, 2021.

Even assuming that firms can surmount these operational challenges in time, some may also need to make material changes to their funding structures and business activities. For example, the Commission would treat initial margin posted to a third-party custodian as a non-allowable asset unless funded on a non-recourse basis by an affiliate. Heretofore, UK firms have not needed to put in place these initial margin funding arrangements. Doing so now would require a reassessment of group-wide liquidity planning and resolution planning strategies. Other regulators, including not only the PRA

but also potentially the Federal Reserve Board, may need to approve these changes. As another example, some firms may rely on short-term loans from affiliates as a material funding source; restructuring or replacing these funding arrangements can be a material undertaking. None of these changes can take place quickly or without extensive planning and analysis.

The proposed conditions thus put firms in a quandary: exit the U.S. SBS market by August 6th, or hope that the conditions are modified and delayed in a manner that will make it feasible to satisfy them. The Commission should not put firms in this precarious position so near to the implementation of the SBSD framework, especially considering that the Commission has been aware of the differences between its net liquid assets capital standard and Basel capital standards for many years, well before it even finalized its SBSD capital rules.

E. The Commission Should Take a More Incremental, Deliberative Approach

Throughout its process of implementing its SBS rules, the Commission has sought to take a thoughtful, deliberative approach. In connection with capital requirements, the Commission provided an initial 60-day comment period, which it then extended for another 60 days, followed by a 30-day comment re-opening period. And in the cross-border area, the Commission provided a 90-day comment period on its overall cross-border framework and a 25-day comment period on its proposed substituted compliance determination for capital requirements applicable to French nonbank SBSDs, which raised the same issues the Commission is seeking to address with the Proposal. The Commission conducted detailed cost-benefit analyses, which the Exchange Act requires, including quantitative analysis. Where the Commission did not have sufficient data to make a final decision, such as when determining what percentage of a nonbank SBSD's "risk margin amount" to use as a minimum net capital requirement, the Commission took an incremental approach allowing it to conduct additional analysis before making that decision.

The Commission should take a similar approach here by deferring its decision whether to supplement the PRA's LCR, NSFR, Pillar 2 and Pillar 3 requirements with additional, quantitative requirements until it has sufficient experience regulating nonbank Covered Entities and information regarding their balance sheets to conclude that the benefits of those supplemental requirements would outweigh the costs. Specifically, we recommend that the Commission:

(1) Delete the first proposed condition, whereby it proposed to require a nonbank Covered Entity to maintain allowable assets, after applying applicable haircuts, that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days;

(2) Replace the proposed second condition, whereby it proposed to require quarterly records detailing the calculations underlying the first condition, with

a requirement for a nonbank Covered Entity to provide the same reports concerning liquidity metrics that the Covered Entity provides to the PRA, which the Commission could use to assess such Covered Entities' liquidity;

(3) Adopt a modified version of the third condition by requiring a nonbank Covered Entity to maintain at least $100 million of HQLA, as defined by the LCR;

(4) Adopt the proposed fourth condition, requiring a nonbank SBSD to include its most recent statement of financial condition filed with its local supervisor in its notice to the Commission of its intention to rely on substituted compliance; and

(5) On October 6, 2024 (*i.e.*, the third anniversary of the SBSD capital rule compliance date), issue an order determining whether to maintain, delete, modify or supplement these conditions, based on consideration of the liquidity of nonbank Covered Entities, and after publishing a notice of any such changes for at least 90 days of public comment.

IV. Supervision, Chief Compliance Officer and Exchange Act Section 15F(j) Requirements

The Proposal would generally permit a Covered Entity, subject to certain conditions, to substitute compliance with specified UK requirements for Exchange Act supervision, chief compliance officer and Exchange Act Section 15F(j) requirements. We generally support this aspect of the Proposal, subject to the following comments and our comments in Appendix A with respect to refining the UK laws cited by the UK Order.

First, we are concerned that the Proposal would require a Covered Entity to be subject to and comply with the specified UK requirements on an entity-wide basis. As described in greater detail in Part I.E. above, some of these requirements apply on a territorial basis, and thus this aspect of the Proposal would for most firms make the availability of substituted compliance illusory. To address this issue, the Commission should instead permit a Covered Entity to rely on substituted compliance with respect to its relevant activities carried on from an establishment in the UK (or other relevant local rules if the Commission has made a substituted compliance determination with respect to those local rules for SBS activities carried on from establishments in other jurisdictions).

Second, proposed paragraph (d)(2)(ii)(B) of the UK Order would require that a Covered Entity provide to the Commission reports required pursuant to UK MiFID Org Reg Article 22(2)(c) including "a certification that, under penalty of law, the report is accurate and complete." The language is not consistent with the requirement of the linked Exchange Act rule, Exchange Act rule 15Fk-1(c)(2)(ii)(D), which requires a certification of an SBS Entity's annual report that, "*to the best of [the certifier's] knowledge and reasonable belief* and under penalty of law, the information contained in

the compliance report is accurate and complete *in all material respects*" (emphases added). The Commission should conform the language of paragraph (d)(2)(ii)(B) to the language of Exchange Act rule 15Fk-1(c)(2)(ii)(D).

Furthermore, given that certain reports prepared pursuant to UK MiFID Org Reg Article 22(2)(c) may not relate at all to a Covered Entity's business as an SBS Entity, whereas the annual report required by Exchange Act rule 15Fk-1(c) is generally limited to such business, it would be disproportionate and unnecessary to require a Covered Entity to submit *all* reports prepared pursuant to UK MiFID Org Reg Article 22(2)(c) to the Commission, certified, and addressing compliance with conditions to substituted compliance. Rather, these conditions should apply solely to these MiFID reports to the extent they are related to a Covered Entity's business as an SBS Entity.

Also, given that it is common in the UK for firms to prepare multiple reports per year pursuant to UK MiFID Org Reg Article 22(2)(c), the requirement to address compliance with conditions to substituted compliance should only apply once per year, not every time such a report is prepared. Specifically, a Covered Entity should be permitted to either (a) make an annual submission of these multiple reports with a supplement of information regarding compliance with conditions to substituted compliance or (b) create and submit a single, annual report regarding its SBS Entity business, including information regarding compliance with conditions to substituted compliance. Either way, the Covered Entity would prepare the report(s) in accordance with the standards of UK MiFID Org Reg Article 22(2)(c).

V. Counterparty Protection Requirements

The Proposal would generally permit a Covered Entity, subject to certain conditions, to substitute compliance with specified UK requirements for Exchange Act counterparty protection requirements. We generally support this aspect of the Proposal, subject to our comments in Appendix A with respect to refining the UK laws cited by the UK Order.

VI. Recordkeeping, Reporting, Notification, and Securities Count Requirements

The Proposal would generally permit a Covered Entity, subject to certain conditions, to substitute compliance with specified UK requirements for Exchange Act recordkeeping, reporting, notification and securities count requirements.

A. Granular Substituted Compliance

We generally support these aspects of the Proposal, subject to our comments in Appendix A with respect to refining the UK laws cited by the UK Order and the additional comments below. In particular, we think it is appropriate for the Commission to structure its substituted compliance determinations with respect to these rules to provide Covered Entities with flexibility to select which distinct requirements within the broader recordkeeping, reporting, notification and securities count rules for which they

want to apply substituted compliance. This flexibility is helpful for three reasons. First, as the Commission observes, it will permit Covered Entities to leverage existing recordkeeping and reporting systems designed to comply with the broker-dealer recordkeeping and reporting requirements on which the requirements applicable to Covered Entities are based (*e.g.*, where a Covered Entity can utilize systems of an affiliated broker-dealer). Second, in some instances a Covered Entity may not be able to comply with the UK Order's general conditions with respect to a UK recordkeeping requirement linked to a specific Exchange Act recordkeeping requirement; in these instances, the flexibility permitted by the Proposal would permit the Covered Entity still to rely on substituted compliance for other Exchange Act recordkeeping requirements not affected by this issue. Third, this flexible approach would also appropriately address the need for the Commission to distinguish between UK laws that are conditions to substituted compliance for nonbank Covered Entities versus bank Covered Entities.

This flexibility should not hinder in any respect the Commission's ability to obtain a comprehensive understanding of a Covered Entity's SBS activities and financial condition. From the Commission's perspective, the main implication of this flexibility is that Covered Entities may, for certain types of records, comply directly with Exchange Act requirements—an outcome that should clearly be acceptable to the Commission. And for other types of records, for which a Covered Entity relies on substituted compliance, the relevant UK requirements will, together with any relevant conditions, reach a comparable outcome to the linked Exchange Act requirements. Further, each distinct Exchange Act record creation requirement in rule 18a-5 and record preservation requirement in most of the provisions of rule 18a-6 corresponds to a distinct type of record, and so the approach a Covered Entity takes for one requirement should not affect how the Commission supervises for compliance with another (*e.g.*, whether or not a Covered Entity relies on substituted compliance for records of firm ledgers should not affect records of counterparty account documents).

B. Rule 10b-10 Exclusion

Proposed paragraph (f)(1)(G) of the UK Order would subject the availability of substituted compliance with respect to recordkeeping to an exclusion for the confirmation recordkeeping requirements in Exchange Act rules 18a-5(a)(6) and (b)(6) pertaining to securities other than SBS (the "**Rule 10b-10 Exclusion**"). The Proposal suggests that this exclusion is intended to reflect the fact that these recordkeeping requirements are linked to Exchange Act rule 10b-10, for which there is no substituted compliance determination. However, Covered Entities relying on substituted compliance with respect to Exchange rule 18a-5 will not be subject to Exchange Act rule 10b-10. Rule 10b-10 solely applies to a broker-dealer, but by its terms rule 18a-5 solely applies to an

SBSD that is not also a broker-dealer. Accordingly the Commission should remove the Rule 10b-10 Exclusion.

C. Financial Reporting Requirements

Proposed paragraph (f)(3)(i)(B) of the UK Order would condition substituted compliance with respect to financial reporting requirements on a Covered Entity filing periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order. We have previously provided Commission staff with detailed feedback regarding this condition. For reference, we have attached that feedback as Appendix B to this letter.

D. Notifications

Proposed paragraph (f)(4)(ii)(A)(*1*) of the UK Order would condition substituted compliance with respect to the Commission's notification requirements contained in rule 18a-8 on the Covered Entity sending to the Commission a copy of *any* notification required under the provisions of UK law contained in paragraph (f)(4). However, these provisions of UK law require notifications of a far wider array of matters than those described in rule 18a-8. It would be disproportionate and unnecessary for the Commission to require a Covered Entity to submit all such notifications to the Commission. The Commission should therefore clarify that a Covered Entity need only submit notifications required under the specified provisions of UK law if those notices concern the types of matters described in the applicable provisions of rule 18a-8, such as capital or books and records deficiencies.

E. Daily Trading Records Requirements

Proposed paragraph (f)(6) of the UK Order would condition substituted compliance with respect to daily trading records on a Covered Entity applying substituted compliance for the requirements of Exchange Act Section 15F(e) and Exchange Act rules 18a-1 through 18a-1d. The Commission should clarify that this condition only applies to nonbank Covered Entities, as Covered Entities with prudential regulators are not subject to the Commission's capital requirements.

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SIFMA appreciates the opportunity to comment on the Proposal and the Commission's consideration of our views. SIFMA looks forward to continuing dialogue with the Commission regarding substituted compliance. If you have questions or would like additional information, please contact Kyle Brandon, at [redacted].

Very truly yours,

Kyle L. Brandon
Managing Director, Head of Derivatives Policy
SIFMA

cc:

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

Ms. Carol M. McGee, Assistant Director, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission
Ms. Laura Compton, Senior Special Counsel, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission

Enclosures

Appendix A: Recommended Modifications to UK Law Citations

Appendix A

Below are our detailed recommendations for changes to the UK Order to refine the range of UK laws cited as conditions to substituted compliance and otherwise make such changes as necessary to clarify the issues discussed in this letter. The first column reflects our recommended changes in redlined text, and the second column provides explanations for the recommendations.

(a) General Conditions	*Comments concerning recommended changes*
This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (f):	
(1) *Activities as UK "regulated activities*." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9 and/or 10, PRA General Organisational Requirements, PRA Recordkeeping Rules, PRA Remuneration Rules, PRA Risk Control Rules and/or MLR 2017, the Covered Entity's relevant security-based swap activities constitute "regulated activities" as defined for purposes of the relevant UK provisions~~, are carried on by the Covered Entity from an establishment in the United Kingdom~~ and fall within the scope of the Covered Entity's authorization from the ~~FCA and/or the~~ PRA to conduct regulated activities in the United Kingdom.	Please see new subparagraph (12) below, which addresses the relevance of whether a Covered Entity carries on its activities from an establishment in the United Kingdom. For additional explanation, see Part I.A. of the letter. In addition, we only expect that banks and PRA-designated investment firms will register as Covered Entities, and banks and PRA-designated investment firms are authorized by the PRA. Accordingly, we have deleted the reference to FCA authorization.
(2) *Activities as UK MiFID "investment services or activities.*" For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA PROD 3 and/or UK MiFID Org Reg, the Covered Entity's relevant security-based swap activities constitute "investment services or activities," as defined in the FCA Handbook Glossary~~, are carried on by the Covered Entity from an establishment in the United Kingdom~~ and fall within the scope of the Covered Entity's authorization from the ~~FCA and/or~~ PRA to conduct regulated activities in the United Kingdom.	Please see new subparagraph (12) below, which addresses the relevance of whether a Covered Entity carries on its activities from an establishment in the United Kingdom. For additional explanation, see Part I.A. of the letter. In addition, we only expect that banks and PRA-designated investment firms will register as Covered Entities, and banks and PRA-designated investment firms are authorized by the PRA. Accordingly we have deleted the reference to FCA authorization.
(3) *Activities as UK "MiFID or equivalent third country business.*" For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA COBS 2, 4, 6, 8A, 9A, 11, 14 and/or 14A, the Covered Entity's relevant security-based swap activities constitute "MiFID or equivalent third country business," as defined in the FCA Handbook Glossary~~, are carried on by the Covered Entity from an establishment in the United Kingdom~~ and fall within the scope of the Covered Entity's authorization from the ~~FCA and/or~~ PRA to conduct regulated activities in the United Kingdom.	Please see new subparagraph (12) below, which addresses the relevance of whether a Covered Entity carries on its activities from an establishment in the United Kingdom. For additional explanation, see Part I.A. of the letter. We have also added a reference to FCA COBS 11 as a conforming change to our recommendation below to delete proposed subparagraph (4). In addition, we only expect that banks and PRA-designated investment firms will register as Covered Entities, and banks and PRA-designated investment firms are authorized by the PRA. Accordingly, we have deleted the reference to FCA authorization.

(a) General Conditions	*Comments concerning recommended changes*
~~(4) *Activities as UK "designated investment business."* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA COBS 11, the Covered Entity's relevant security-based swap activities constitute "MiFID business" that is also "designated investment business," each as defined in the FCA Handbook Glossary; are carried on by the Covered Entity from an establishment in the United Kingdom; and fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.~~	We recommend deleting this subparagraph because "MiFID business" is a subset of "designated investment business."
~~(5) *Activities as UK "MiFID business."* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, the Covered Entity is not an ICVC as defined in the FCA Handbook Glossary and the Covered Entity's relevant security-based swap activities constitute "regulated activities" as defined for purposes of the relevant UK provisions and "MiFID business" as defined in the FCA Handbook Glossary; are carried on by the Covered Entity from an establishment in the United Kingdom and fall within the scope of the Covered Entity's authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.~~	We recommend deleting this subparagraph referring to CASS in line with our comments in respect of paragraphs (b) to (f) below. As a general comment, the final version of this paragraph will need to be aligned to the final versions of paragraphs (b) to (f)—in particular, to remove redundant rule references.
~~(6)~~(4) *Activities covered by FCA SYSC 10A.* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 10A, the Covered Entity's relevant security-based swap activities constitute activities described in FCA SYSC 10A.1.1(2)(a), (b) and/or (c); ~~are carried on by the Covered Entity from an establishment in the United Kingdom~~ and fall within the scope of the Covered Entity's authorization from the ~~FCA and/or the~~ PRA to conduct regulated activities in the United Kingdom.	Please see new subparagraph (12) below, which addresses the relevance of whether a Covered Entity carries on its activities from an establishment in the United Kingdom. For additional explanation, see Part I.A. of the letter. In addition, we only expect that banks and PRA-designated investment firms will register as Covered Entities, and banks and PRA-designated investment firms are authorized by the PRA. Accordingly, we have deleted the reference to FCA authorization.
~~(7)~~(5) *Counterparties as UK MiFID "clients."* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA ~~CASS 6 and/or 7, FCA~~ COBS 2, 4, 6, 8A, 9A, 11, 14 and/ or 14A, FCA PROD 3, FCA SYSC 10.1.8, FCA SYSC 10A and/or UK MiFID Org Reg, the relevant counterparty (or potential counterparty) to the Covered Entity is a "client" (or potential "client"), as defined in COBS 3.2.1R or is acting through an agent which the Covered Entity treats as its client (or potential client) in accordance with COBS 2.4.3R.	See our comments in part I.B of the letter regarding the agent as client rule, COBS 2.4.3R, which provides that (except in certain circumstances including where the parties have agreed otherwise), if a firm (F) is aware that a person (C1) with or for whom it is providing services is acting as agent for another person (C2) in relation to those services, C1, and not C2, is the client of F in respect of that business. However, this rule does not affect, in particular, the question of who is the firm's counterparty for prudential purposes (COBS 2.4.2G).

(a) General Conditions	*Comments concerning recommended changes*
~~(8)~~(6) *Security-based swaps as UK MiFID "financial instruments."* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA ~~CASS 6 and/or 7, FCA~~ COBS 2, 4, 6, 8A, 9A, 11, 14 and/or 14A, FCA PROD 3, FCA SYSC 10A, UK MAR, UK MAR Investment Recommendations Regulation and/or UK MiFID Org Reg, the relevant security-based swap is a "financial instrument," as defined in Part 1 of Schedule 2 of the UK Regulated Activities Order.	We recommend deleting the references to CASS in line with our comments with respect to paragraphs (b) to (f) below.
~~(9)~~(7) *Covered Entity as UK CRD/CRR "institution."* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK CRR, the Covered Entity is an "institution," as defined in UK CRR article 4(1)(3).	
~~(10)~~(8) *Covered Entity as UK "common platform firm" or "third country firm."* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9 and/or 10, the Covered Entity is either a "common platform firm" (other than a "UCITS investment firm") or a "third country firm," each as defined in the FCA Handbook Glossary.	
~~(11) *Covered Entity as UK "IFPRU investment firm."* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 19A, FCA IFPRU and/or FCA BIPRU, the Covered Entity is an "IFPRU investment firm," as defined in the FCA Handbook Glossary.~~	We only expect that banks and PRA-designated investment firms will register as Covered Entities. Accordingly, references to FCA IPRU and FCA BIPRU should be deleted because they are not applicable to banks and PRA-designated investment firms.
~~(12)~~(9) *Covered Entity as "UK bank" or "UK designated investment firm."* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 19D, PRA Internal Capital Adequacy Assessment Rules, PRA Internal Liquidity Adequacy Assessment Rules, PRA General Organisational Requirements, PRA Remuneration Rules and/or PRA Risk Control Rules, the Covered Entity is a "UK bank" or "UK designated investment firm," each as defined in the FCA Handbook Glossary (in the case of a provision of FCA SYSC 19D) or as defined in the PRA Rulebook Glossary (in the case of a provision of a PRA rule).	

(a) General Conditions	*Comments concerning recommended changes*
~~(13)~~(10) *Covered Entity's counterparties as UK EMIR* "*counterparties.*" For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK EMIR, UK EMIR RTS and/or UK EMIR Margin RTS, if the counterparty to the Covered Entity is not a "financial counterparty" or "non-financial counterparty" as defined in UK EMIR articles 2(8) or 2(9), respectively, solely because the counterparty is not established in the United Kingdom, Covered Entity complies with the applicable condition of this Order: (i) As if the counterparty were a financial counterparty, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the UK and authorized by an appropriate UK authority, or, ~~otherwise,~~ as if the counterparty were a non-financial counterparty, if the Covered Entity reasonably determines that the counterparty would be a non-financial counterparty if it were established in the UK; and (ii) Without regard to the application of UK EMIR article 13.	Our recommended change is intended to clarify that this condition would not require a Covered Entity to treat counterparties which are exempt from UK EMIR under Articles 1(4) and 1(5) of UK EMIR, or which are not "undertakings", as equivalent to financial counterparties and non-financial counterparties. See Part I.C of the letter for a more detailed explanation.
~~(14)~~(11) *Security-based swap status under UK EMIR.* For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK EMIR and/or other UK requirements adopted pursuant to those provisions, either: (i) The relevant security-based swap is an "OTC derivative" or "OTC derivative contract," as defined in UK EMIR article 2(7), that has not been cleared by a CCP and otherwise is subject to the provisions of UK EMIR article 11, UK EMIR RTS articles 11 through 15, and UK EMIR Margin RTS article 2; or (ii) The relevant security-based swap has been cleared by a ~~central counterparty that has been authorized or recognized to clear derivatives contracts in the UK~~ CCP.	Please see part I.D of the letter for a detailed explanation for this change. Note, also, that we recommend including a defined term "CCP" in paragraph (g).

(a) General Conditions	*Comments concerning recommended changes*
(12) *As applicable, activities are carried on from an establishment in the United Kingdom.* For each condition of paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of UK law referenced in paragraphs (1) through (4) above, to the extent any of those UK law provisions are limited in their applicability to activity carried on from an establishment in the United Kingdom, the Covered Entity carries out the relevant security-based swap activities from an establishment in the United Kingdom to the extent it relies on substituted compliance pursuant to those paragraphs with respect to those activities.	Please see part I.A of the letter for a detailed explanation for adding this subparagraph.
~~(15)~~(13) *Memorandum of Understanding with the FCA and the PRA.* The Commission has a supervisory and enforcement memorandum of understanding and/or other arrangement with the FCA and the PRA addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.	
~~(16)~~(14) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must identify each specific substituted compliance determination within paragraphs (b) through (f) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.	

(b) Substituted Compliance in Connection With Risk Control Requirements	***Comments concerning recommended changes***
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:	

(b) Substituted Compliance in Connection With Risk Control Requirements	*Comments concerning recommended changes*
~~(i) Either {FCA IFPRU 2.2.7R(2), 2.2.17R through 2.2.28R, 2.2.30R and 2.2.32R through 2.2.35R; and FCA BIPRU 12.3.4R, 12.3.5R, 12.3.7R, 12.3.8R, 12.3.22AR, 12.3.22BR, 12.3.27R, 12.4. 2R, 12.4. 1R, 12.4.5AR, 12.4.10R and 12.4.11R} or {PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2 and 11.1 through 11.3; and PRA Internal Liquidity Adequacy Assessment Rules 3.1, 3.2, 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4};~~ (i)~~(ii)~~ FCA PRIN 2.1.1R(3);	We only expect that banks and PRA-designated investment firms will register as Covered Entities. Accordingly, we recommend deleting references to prudential rules set by the FCA (IPRU and BIPRU) as they are not applicable to banks and PRA-designated investment firms. We also recommend deleting references to PRA Internal Capital Adequacy Assessment Rules and PRA Internal Liquidity Adequacy Assessment Rules. These rules set out, respectively, requirements on a firm to assess on an ongoing basis the amounts, types and distribution of capital that it considers adequate to cover the level and nature of the risks to which it is or might be exposed and requirements to identify, measure, manage and monitor liquidity and funding risks across different time horizons and stress scenarios. These specific rules relevant to the capital and liquidity coverage frameworks do not correspond to and go beyond the general requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I), which solely require a firm to establish robust and professional risk management systems adequate for managing its day-to-day business (and associated policies and procedures). Considering that the Commission has not indicated that a firm must satisfy detailed requirements of the sort set forth in PRA Internal Capital Adequacy Assessment Rules and PRA Internal Liquidity Adequacy Assessment Rules in order to satisfy this high-level requirement, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements.

(b) Substituted Compliance in Connection With Risk Control Requirements	*Comments concerning recommended changes*
(ii)~~(iii) FCA SYSC 4.1.1R(1), 4.1.2R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R and 7.1.22R and, if the Covered Entity is a UK bank or UK designated investment firm, also~~ PRA General Organisational Requirements Rule 2.1~~ and 2.2 and PRA Risk Control Rules 2.3, 2.7 and 3.1 through 3.5~~;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I): • SYSC 4, which relates to general organizational requirements, and 7, which relates to risk control;[1] • PRA General Organisational Requirements Rule 2.2, which relates to proportionality of general organizational requirements; • PRA Risk Control Rules 2.3 and 2.7, which set forth specific requirements concerning management body responsibility for risk management; and • PRA Risk Control Rules 3.1 to 3.5, which set forth the specific requirements concerning the establishment of a risk committee. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements.
~~(iv) Either {FCA SYSC 19A.2.1R} or {FCA SYSC 19D.2.1R and PRA Remuneration Rule 6.2};~~	We recommend deleting references to the specific UK regulatory rules relating to the remuneration of personnel—SYSC 19D and PRA Remuneration Rule 6.2—as this goes beyond the general requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements. SYSC 19A is to be deleted in any event because it is not applicable to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks and PRA-designated investment firms.

[1] In addition, the relevant matters are subject to the PRA's regulatory responsibilities for banks and PRA-designated investment firms.

(b) Substituted Compliance in Connection With Risk Control Requirements	*Comments concerning recommended changes*
(iii)~~(v) Either {FSMA schedule 6 part 2D and FCA COND 2.4.1A} or {FSMA schedule 6 parts 3C and 5D, FCA COND 2.4.1C and~~ PRA Fundamental Rule 5~~s 3 through 6};~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I): • FSMA schedule 6 and COND, which set out the minimum criteria that authorized persons must satisfy;[2] and • PRA Fundamental Rules 3 (a firm must act in a prudent manner), 4 (a firm must at all times maintain adequate financial resources) and 6 (a firm must organize and control its affairs responsibly and effectively). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements.
~~(vi) UK CRR articles 286 through 288 and 293;~~	We recommend deleting references to UK CRR Articles 286, 287, 288 and 293. As specific requirements relating to the use of internal models for the risk-weighting of exposures under swaps and other types of instruments, they do not correspond to and go beyond the general requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements.
~~(vii) UK EMIR Margin RTS article 2;~~	We recommend deleting the reference to the UK EMIR Margin RTS article 2. As specific rules related to the exchange of margin, they do not correspond to and go beyond the general requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements.

[2] References to FSMA Schedule 6 paragraph 2D and related FCA COND rule 2.4.1A are to be deleted in any event because they are not applicable to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks and PRA-designated investment firms.

(b) Substituted Compliance in Connection With Risk Control Requirements	***Comments concerning recommended changes***
(iv)~~(viii)~~ UK MiFID Org Reg article~~s 21 through 24,~~ 23;	We recommend deleting references to UK MiFID Org Reg articles 21, 22 and 24 as the requirements, which relate to certain organizational requirements, compliance and the internal audit function. These matters are more appropriately addressed in respect of paragraph (d).
(2) *Trade acknowledgement and verification.* The requirements of Exchange Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(a) and UK EMIR RTS article 12(1) to 12(3)	We recommend deleting the reference to the UK EMIR RTS article 12(4). As this specific rule relates to the procedures financial counterparties must have in place to report, on a monthly basis, the number of unconfirmed OTC derivative transactions that have been outstanding for more than five business days, they do not correspond to and go beyond the general requirements of Exchange Act rule 15Fi–2. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(3) *Portfolio reconciliation and dispute reporting.* The requirements of Exchange Act rule 15Fi–3, provided that: (i) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b) and UK EMIR RTS articles 13 and 15; (ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to the FCA pursuant to UK EMIR RTS article 15(2).	
(4) *Portfolio compression*. The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR RTS article 14.	
(5) *Trading relationship documentation.* The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(a), UK EMIR RTS article 12(1) to (3) and UK EMIR Margin RTS article 2.	We recommend deleting the reference to the UK EMIR RTS article 12(4). As this specific rule relates to the procedures financial counterparties must have in place to report, on a monthly basis, the number of unconfirmed OTC derivative transactions that have been outstanding for more than five business days, they do not correspond to, and go beyond, the general requirements of Exchange Act rule 15Fi–5. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(c) Substituted Compliance in Connection With Capital and Margin	*Comments concerning recommended changes*
(1) *Capital.* The requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d, provided that:	
(i) The Covered Entity is subject to and complies with the capital requirements of: ~~The UK CRR, including recitals 40, 43 and 87, and articles 26, 28, 50 through 52, 61, 63, 92, 111, 113(1), 114 through 122, 143, 153(8), 177(2), 283, 290, 300 through 311, 312(2), 362 through 377, 382 through 383, 412(1), 413(1), 416(1), 427(1), 413, 429, 430, and 499;~~ The applicable provisions of UK CRR subject to any waivers or permissions granted to the Covered Entity by the PRA or FCA in respect thereof; UK MiFID Org Reg article 23; ~~UK EMIR Margin RTS, recital 31, articles 2, 3(b), 7, and 19(1)(d) and (e), (3) and (8); FCA SYSC 4.1.1R, 7.1.4R and 7.1.18R; Chapters 2,7, 10, 11 of FCA IFPRU; Chapter 12 of FCA BIPRU; FCA PRIN; Client asset protection requirements under the FCA CASS;~~ PRA General Organisational Requirements Rule 2.1; PRA Risk Control Rules 2.3 and 3.1(1); PRA Capital Buffers Rules; PRA Internal Capital Adequacy Assessment Rules; PRA Internal Liquidity Adequacy Assessment Rules; PRA Liquidity Coverage Requirement—UK Designated Investment Firms Rules; PRA Notifications Rules 2 (so far as relevant to the notification of matters related to a Covered Entity's financial resources), 8.2 and 8.3; ~~Banking Act 2009; Capital Requirements Regulations 2013; Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;~~ The Covered Entity's minimum requirement for eligible liabilities and own funds as set by the Bank of England under ~~Part 8 and~~ Part 9 of the Bank Recovery and Resolution (No 2) Order 2014; ~~Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015; and Parts 4A and 12A of FSMA;~~ and	We recommend deleting references to recitals on retained EU regulations in the UK Order because they do not form part of the legally binding regulation. We recommend deleting the references to specific articles of the UK CRR. As UK CRR institutions, the Covered Entities would be covered by the applicable provisions of the whole text subject to any specific waivers and permissions granted by the UK regulator with respect to specific articles. The references quoted in their current form are overall not comprehensive in terms of the application to firms and how they would approach meeting the minimum capital requirements under UK law. We recommend that references to the UK EMIR Margin RTS be deleted for the purposes of this section on capital. Its requirements are more appropriately addressed in relation to margin rules. We recommend deleting the references to SYSC as the cited rules are inapplicable to banks and PRA-designated investment firms in this context. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting references to prudential rules set by the FCA (IPRU and BIPRU) in the Order as they are not applicable to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the reference to FCA PRIN which is not relevant to the capital requirements of banks and PRA-designated investment firms. Furthermore, referring to all of PRIN would go beyond the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d. We recommend deleting references to FCA CASS rules as they relate to client asset protection, not capital requirements. We recommend narrowing the reference to the PRA Notifications Rules to those requirements which may concern a breach by the firm of its financial resources requirement and compliance with which should only be required for the purposes of the Order where such a breach is concerned. General reference to the Banking Act 2009 is not appropriate as the Banking Act sets out the legislative framework for the recovery and resolution of

(c) Substituted Compliance in Connection With Capital and Margin	*Comments concerning recommended changes*
	institutions. Instead, we recommend that reference is made to an institution's MREL requirement as set by the Bank of England under the Banking Act 2009 (specifically, Part 9 of the Bank Recovery and Resolution (No 2) Order 2014). However, we recommend deleting the broad reference to Part 8 and Part 9 of the Bank Recovery and Resolution (No 2) Order 2014 because they do not impose requirements on firms as opposed to the relevant authorities. We recommend deleting reference to the Capital Requirements Regulations 2013 because they do not impose requirements on firms as opposed to the relevant authorities. We recommend deleting the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 because they do not impose requirements on firms as opposed to the relevant authorities. We recommend deleting reference to the Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015 because it does not impose requirements on firms as opposed to the relevant authorities. We recommend deleting reference to Parts 4A and 12A of FSMA because they do not impose requirements on firms as opposed to the relevant authorities.
(ii) The Covered Entity: ~~(A) Maintains an amount of assets that are allowable under Exchange Act rule 18a-1, after applying applicable haircuts under the Basel capital standard, that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days;~~ ~~(B) Makes a quarterly record listing:~~ ~~(*1*) The assets maintained pursuant to paragraph (c)(1)(ii)(A), their value, and the amount of their applicable haircuts;~~ ~~(*2*) The aggregate amount of the liabilities coming due in the next 365 days; and~~ (A) Provides to the Commission the same reports concerning liquidity metrics that the Covered Entity provides to the PRA ~~(C)~~(B) Maintains at least $100 million of ~~equity capital composed of~~ "~~highly~~ high quality liquid assets" as defined in the Basel ~~capital standard~~ liquidity coverage ratio, as implemented in UK CRR and/or applicable PRA rules; and ~~(D)~~(C) Includes its most recent statement of financial condition filed with its local supervisor whether	Part III of the letter provides a detailed explanation for these changes.

(c) Substituted Compliance in Connection With Capital and Margin	*Comments concerning recommended changes*
audited or unaudited with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(16) above.	
(2) *Margin.* The requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3, provided that the Covered Entity is subject to and complies with the requirements of: UK EMIR article 11(3); UK EMIR Margin RTS; ~~UK CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1);~~ UK MiFID Org Reg article 23(1); ~~FCA SYSC 4.1.1R~~; ~~FCA IFPRU 2.2.18R~~; PRA General Organisational Requirements Rule 2.1~~; and PRA Internal Capital Adequacy Assessment Rule 4.2~~.	We recommend referring specifically to paragraph 3 of UK EMIR article 11, which sets out the Level 1 margin requirement. The other paragraphs of UK EMIR article 11 address other requirements. We recommend deleting the references to UK CRR in this section on margin, as the UK EMIR Margin RTS is comprehensive in relation to margin, including related risk monitoring requirements. We recommend deleting the reference to FCA SYSC 4.1.1R, which sets out general organizational requirements, as this is subject to PRA's regulatory responsibilities for banks and PRA-designated investment firms in this context. Further, the UK EMIR Margin RTS is comprehensive in relation to margin, including related risk monitoring requirements. We recommend deleting the reference to FCA IFPRU as it is not applicable to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the reference to the PRA Internal Capital Adequacy Assessment Rule 4.2, which forms part of the requirements on a firm to assess on an ongoing basis the amounts, types and distribution of capital that it considers adequate to cover the level and nature of the risks to which it is or might be exposed, for the purposes of this section on margin. The UK EMIR Margin RTS is comprehensive in relation to margin, including related risk monitoring requirements.

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements: (1) *Internal supervision.* The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that: (i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) to this Order;	

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	***Comments concerning recommended changes***
(ii) The Covered Entity complies with paragraph (d)(4) to this Order; and (iii) This paragraph (d) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.	
(2) *Chief compliance officers*. The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that: (i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) to this Order; (ii) All reports required pursuant to UK MiFID Org Reg article 22(2)(c) must, to the extent they relate to the Covered Entity's business as a security-based swap dealer or major security-based swap participant, also: (A) Be provided to the Commission at least annually and in the English language; (B) Include a certification that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects; 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; provided that the Covered Entity may either (I) make an annual submission of these reports with a supplement addressing this sub-clause (ii)(C); or (II) create and submit a single, annual report concerning its business as a security-based swap dealer or major security-based swap participant, including information addressing this sub-clause (ii)©.	Part IV of the letter contains a detailed explanation for these changes.
(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:	

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
~~(i) FCA CASS 6.2.1R, 7.11.1R and 7.12.1R~~	We recommend deleting the references to FCA CASS rules, which require firms to make adequate arrangements so as to safeguard clients' ownership rights, prohibit title transfer collateral arrangements with retail clients and require firms to hold client money in segregated bank accounts. The Commission's rules have no corresponding provisions. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(i)~~(ii)~~ FCA COBS 11.7A.3R	
~~(iii) Either {FCA IFPRU 2.2.7R(2), 2.2.17R through 2.2.28R, 2.2.30R and 2.2.32R through 2.2.35R; and FCA BIPRU 12.3.4R, 12.3.5R, 12.3.7R, 12.3.8R, 12.3.22AR, 12.3.22BR, 12.3.27R, 12.4. 2R, 12.4. 1R, 12.4.5AR, 12.4.10R and 12.4.11R} or {PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2 and 11.1 through 11.3; and PRA Internal Liquidity Adequacy Assessment Rules 3.1, 3.2, 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4}~~	We recommend deleting the references to IFPRU and BIPRU as they are not applicable to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting references to PRA Internal Capital Adequacy Assessment Rules and PRA Internal Liquidity Adequacy Assessment Rules. These rules set out, respectively, requirements on a firm to assess on an ongoing basis the amounts, types and distribution of capital that it considers adequate to cover the level and nature of the risks to which it is or might be exposed and requirements to identify, measure, manage and monitor liquidity and funding risks across different time horizons and stress scenarios. Accordingly, as specific rules relevant to the capital and liquidity coverage frameworks they do not correspond to and go beyond the requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(ii)~~(iv)~~ FCA PRIN 2.1.1R(3)	

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
(iii)~~(v)~~ FCA SYSC ~~4.1.1R(1), 4.1.2R, 4.3A.1R, 4.3A.3R, 4.3A.4R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R, 7.1.22R, 9.1.1AR,~~ 10.1.3R, 10.1.7R, 10.1.8R, ~~10A.1.6R, 10A.1.8R, 10A.1.11R~~ and 24.2.6R(8) and~~, if the Covered Entity is a UK bank or UK designated investment firm, also~~ PRA Allocation of Responsibilities Rule 4.1(16); PRA General Organisational Requirements Rules 2.1, 2.2 and 5.1 through 5.3~~; PRA Record Keeping Rule 2.1; PRA Risk Control Rules 2.3, 2.7 and 3.1 through 3.5; and PRA Senior Management Functions Rule 8.2;~~ ~~(vi) Either {FCA SYSC 19A.2.1R, 19A.3.1R(1), 19A.3.3R, 19A.3.7R through 19A.3.11R, 19A.3.14R, 19A.3.16R and 19A.3.35AR} or {FCA SYSC 19D.2.1R, 19D.3.1R, 19D.3.3R, 19D.3.7R through 19D.3.11R, 19D.3.15R, 19D.3.17R and 19D.3.37R and PRA Remuneration Rules 3.1, 4.2, 5.1, 6.2, 6.3, 6.4, 7.2, 7.3, 8.1, 8.2 and 15.2};~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1: • SYSC 4, which relates to general organizational requirements, and 7, which relates to risk control;[3] • SYSC 9.1 and 10A, and the PRA Record Keeping Rules, which relate to recordkeeping and recording communications; • PRA Risk Control Rules, which relate to the management body responsibility for risk management and risk committee requirements; and • PRA Senior Management Functions Rule 8.2, which provides that the chief executive officer and chair of governing body cannot be the same person. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting references to the specific UK regulatory rules relating to the remuneration of personnel—SYSC 19D and PRA Remuneration Rules 3.1, 4.2, 5.1, 6.2, 8.2 and 15.2—as this goes beyond the general requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. SYSC 19A is to be deleted in any event because it is not applicable to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks or PRA-designated investment firms.

[3] Note also that the relevant matters are subject to PRA responsibilities (in respect of banks and PRA-designated investment firms).

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
(iv)~~(vii) Either {FSMA schedule 6 part 2D and FCA COND 2.4.1A} or {FSMA schedule 6 parts~~ PRA Remuneration Rules 6.3, 6.4, 7.2, 7.3, 8.1; FSMA schedule 6 paragraphs 3C and 5D, FCA COND 2.4.1C and PRA Fundamental Rules 3 ~~through~~, 4 and 6~~}~~;	We recommend deleting references to FSMA Schedule 6 paragraph 2D and FCA COND rule 2.4.1A because they are not applicable to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the reference to PRA Fundamental Rule 5 (a firm must have effective risk strategies and risk management systems) as this is more appropriately addressed with respect to paragraph (b).
~~(viii) UK CRR articles 286 through 288 and 293;~~	We recommend deleting the references to the UK CRR as this goes beyond the general requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1. These requirements are more appropriately addressed with respect to paragraph (c).
~~(ix) UK EMIR Margin RTS article 2~~	We recommend deleting the references to the UK EMIR Margin RTS as this goes beyond the general requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1. These requirements are more appropriately addressed with respect to paragraph (c).

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
(v)~~(x)~~ UK MiFID Org Reg articles 21~~ through~~, 22, 24, 25, 26, 28, 29, 33, 34, 36(1) and 37 ~~and 72 through 76 and Annex IV.~~	We recommend deleting the reference to the MiFID Org Reg article 23, which relates to risk management, as this is more appropriately addressed with respect to paragraph (b). We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1: • MiFID Org Reg article 27, which relates to remuneration policies and practices; • MiFID Org Reg articles 30 through 32, which relate to outsourcing and delegation of portfolio management activity; • MiFID Org Reg articles 35, 72-76 and Annex IV, which relate to record keeping; and • MiFID Org Reg article 36(2), which relates to marketing communications As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(4) *Additional condition to paragraph (d)(1).* Paragraph (d)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (d)(3) as if those provisions also require compliance with: (i) Applicable requirements under the Exchange Act; and (ii) The other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order.	

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
This Order extends to the following provisions related to counterparty protection:	

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
(1) *Disclosure of information regarding material risks and characteristics.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of:	
(i) FCA COBS 2.2A.2R (1)(a) and (b) and (2), ~~6.1ZA.11R, 6.1ZA.12R, 6.2B.33R, 9A.3.6R~~ and 14.3A.3R	We recommend deleting the reference to paragraph (1)(c) of COBS 2.2A.2R as it only applies to insurance-based investment products. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements in Exchange Act rule 15Fh–3(b): • COBS 2.2A.2R(1)(d), 6.1ZA.11R and 6.1ZA.12R, which relate to the disclosure of costs and charges; • COBS 6.2B.33R, which requires disclosure about whether or not a firm is providing independent advice; and • COBS 9A.3.6R, which requires a specific disclosure to the client as to whether the firm will undertake a periodic suitability assessment. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(ii) Either {UK MiFID Org Reg article~~s~~ 48 ~~through 50} or {FCA COBS 6.1ZA.9UK, 6.1ZA.14UK, and~~} or {FCA COBS 14.3A.5UK}	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements in Exchange Act rule 15Fh–3(b): • UK MiFID Org Reg article 49 and COBS 6.1ZA.9UK, which relate to information concerning safeguarding of client financial instruments or client funds; and • UK MiFID Org Reg article 50 and COBS 6.1ZA.14UK, which relate to cost and charges disclosure. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:	
(i) FCA SYSC 10.1.8R and UK MiFID Org Reg articles 33 to 35;	
(ii) FCA COBS ~~2.3A.5R, 2.3A.6R, 2.3A.7E and~~ 2.3A.10R ~~through 2.3A.14R~~; or	We recommend deleting the references to COBS 2.3A.5R, 2.3A.6R, 2.3A.7E and 2.3A.11R to 2.3A.14R, which relate to third-party payments, as they do not correspond to and go beyond the requirements in Exchange Act rule 15Fh-3(b). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(iii) UK MAR article 20(1) and UK MAR Investment Recommendations Regulation articles 5 and 6.	
(3) "*Know your counterparty.*" The requirements of Exchange Act rule 15Fh–3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of:	
(i) FCA SYSC 6.1.1R;	
~~(ii) UK MiFID Org Reg articles 21, 22, 25, 26 and applicable parts of Annex I;~~	We recommend deleting references to UK MiFID Org Reg, which related to organizational requirements, compliance, responsibility of senior management, complaints handling and associated recordkeeping, and go beyond the specific requirements of Exchange Act rule 15Fh–3(e). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
~~(iii) FCA SYSC 4.1.1R(1);~~	We recommend deleting the references to SYSC 4.1.1R(1), which relates to general organizational requirements, which do not specifically correspond to the specific requirements of Exchange Act rule 15Fh–3(e). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
~~(iv) Either {FCA IFPRU 2.2.7R(2) and 2.2.32R} or {PRA General Organisational Requirement 2.1 and PRA Internal Capital Adequacy Assessment Rule 10.1};~~ (ii)~~(v)~~ MLR 2017 Regulations 27 and 28; and (iii)~~(vi)~~ MLR 2017 Regulations 19(1) through (3), as applied to policies, controls and procedures regarding customer due diligence.	We recommend deleting the references to IFPRU since it does not apply to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 15Fh–3(e): • PRA General Organisation Requirement 2.1, which sets forth certain high-level governance requirements; and • PRA Internal Capital Adequacy Assessment Rule 10.1, which forms part of the requirements on a firm to assess on an ongoing basis the amounts, types and distribution of capital that it considers adequate to cover the level and nature of the risks to which it is or might be exposed. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(4) *Suitability*. The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that: (i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of:	

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
(A) FCA COBS ~~4.2.1R~~, 9A.2.1R ~~and 9A.1.16R;~~	We recommend deleting the reference to COBS 4.2.1R (fair, clear and not misleading communications) because the relevant provisions are more appropriately addressed in respect of paragraph (e)(5) of the Order. We note the reference to COBS 9A.1.16R does not exist.
(B) FCA PROD 3.2.1R and 3.3.1R; and	
~~(C) FCA SYSC 5.1.5AAR and 5.1.5ABR; and~~	We recommend deleting the references to SYSC 5 which relate to the skills, knowledge and expertise of the firm's personnel and do not correspond to and go beyond the requirements in Exchange Act rule 15Fh–3(f). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(C)~~(D)~~ UK MiFID Org Reg ~~21(1)(b) and (d),~~ 54 and 55; and	We recommend deleting the reference to UK MiFID Org Reg article 21(1)(b) (a firm must ensure that relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities) because the relevant provisions are more appropriately address in respect of paragraph (d)(1) of the Order. We recommend deleting the reference to UK MiFID Org Reg article 21(1)(d), which relates to the knowledge and competence of the firm's personnel and does not correspond to and go beyond the requirements in Exchange Act rule 15Fh–3(f). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(ii) The counterparty to which the Covered Entity makes the recommendation is a "professional client" mentioned in FCA COBS 3.5.~~2~~1R and is not a "special entity" as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).	We recommend that the definition of "professional client" in COBS 3.5.1R be referred to instead of COBS 3.5.2R, since the former refers to both *per se* and elective professional clients, consistent with MiFID.
(5) *Fair and balanced communications.* The requirements of Exchange Act rule 15Fh–3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of: (i) Either {FCA COBS 2.1.1R and FCA COBS 4.2.1R} or {FCA COBS 2.1.1AR and FCA COBS 4.2.1R};	

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
(ii) FCA COBS 2.2A.2R(1)(a) and (b), ~~2.2A.3R, 6.1ZA.11R, 6.1ZA.12R, 6.1ZA.13R~~, 6.2B.33R, 6.2B.34R, 9A.3.6R and 14.3A.3R; and	We recommend deleing paragraph (1)(c) of COBS 2.2A.2R as it only applies to insurance-based investment products. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements in Exchange Act rule 15Fh–3(g): • COBS 2.2A.2R(1)(d), 6.1ZA.11R, 6.1ZA.12R, and 6.1ZA.13R, which relate to the disclosure of costs and charges; and • COBS 2.2A.3R, which relates to the format of disclosure. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(iii) Either {UK MiFID Org Reg articles 46 through 48 or {FCA COBS 4.5A.9UK, 4.7.–1AUK, 6.1ZA.5UK, ~~6.1ZA.8UK,~~ 6.1ZA.17UK, 6.1ZA.19UK, 6.1ZA.20UK, 8A.1.5UK to 8A.1.7UK, 14.3A.5UK, 14.3A.7UK and 14.3A.9UK}	We recommend deleting the reference to COBS 6.1ZA.8UK, which relates to portfolio management services, which is not relevant to SBS Entity business.
~~(iv) UK MAR Investment Recommendations Regulation articles 3 and 4; and~~	We recommend deleting the references to UK MAR, which relate to investment recommendations (as defined in UK MAR) and market manipulation, which go beyond the requirements in Exchange Act rule 15Fh–3(g). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
~~(v) UK MAR articles 12(1)(c), 15 and 20(1).~~	
(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to UK EMIR articles 11(1)(b) and ~~11(2) and~~ UK EMIR RTS article 13.	The reference to UK EMIR article 11(2) concerns the daily mark-to-market or mark-to-model of contracts where both parties are financial counterparties or non-financial counterparties above the clearing threshold, and as such it is not related to portfolio reconciliation, which is covered by UK EMIR article 11(1)(b) and UK EMIR RTS article 13.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	***Comments concerning recommended changes***
This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, notification and securities counts:	
(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(1)(i) and with the applicable conditions in paragraph (f)(1)(ii):	
(A) The requirements of Exchange Act rule 18a–5(a)(1) or (b)(1), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of ~~UK MiFID Org Reg articles 74, 75, 76 and Annex IV; UK MiFIR article 25(1); and FCA SYSC 10A.1.6R, 10A.1.8R; and~~ PRA Recordkeeping Rule 2.1 and FCA SYSC 9.1.1AR; and (2) With respect to the requirements of Exchange Act rule 18a–5(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a-5(a)(1) to capital requirements. We recommend deleting the references to UK MiFID Org Reg article 76 and SYSC 10A.1.6R, 10A.1.8R, which relate to the recording of telephone and electronic communications, as they do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(1) or (b)(1). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. This does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(1) or (b)(1). Record preservation is addressed by Exchange rule 18a-6.
(B) The requirements of Exchange Act rule 18a–5(a)(2), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK MiFID Org Reg articles 72(1), 74 and 75; and UK EMIR article 39(4); and~~ PRA Recordkeeping Rule 2.1 and FCA SYSC 9.1.1AR; and (2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms, and we expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(2): • PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • CASS, which relates to a firm's holding of safe custody assets and client money; and • UK EMIR Article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a UK central counterparty from their own positions. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, as this does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(2). Record preservation is addressed by Exchange rule 18a-6. We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a-5(a)(2) to capital requirements.
(C) The requirements of Exchange Act rule 18a–5(a)(3) or (b)(2), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.4R, 6.6.5G, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK MiFID Org Reg articles 72(1), 74 and 75; and UK EMIR article 39(4); and~~ PRA Recordkeeping Rule 2.1 and FCA SYSC 9.1.1AR; and (2) With respect to the requirements of Exchange Act rule 18a–5(a)(3), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to the following provisions, requirements of Exchange Act rule 18a–5(a)(3) or (b)(2): • CASS, which relates to a firm's holding of safe custody assets and client money; and • UK EMIR Article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a UK central counterparty from their own positions. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to UK MiFID Org Reg article 72(1), which relates to the medium to be used for record keeping, which does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(3) or (b)(2). Record preservation is addressed by Exchange rule 18a-6. We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a–5(a)(3) to capital requirements.
(D) The requirements of Exchange Act rule 18a–5(a)(4) or (b)(3), as applicable, provided that:	

(1) The Covered Entity is subject to and complies with the requirements of ~~UK CRR articles 103 and 103(b)(ii); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ PRA Recordkeeping Rule 2.1; ~~UK MiFID Org Reg articles 59, 74, 75 and 76 and Annex IV; UK MiFIR article 25(1);~~ FCA SYSC 9.1.1AR, ~~10A.1.6R and 10A.1.8R; FCA COBS 8A.1.9R, 9A.2.1R, 9.1.1AR, 16A.2.1 R and 16A.3.1UK~~; UK EMIR article~~s~~ 9(2) ~~and 11(1)(a); MLR 2017 Regulations 28(10) and (18) and 28 through 30; and FCA FCG 3.1.7;~~ and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(4) or (b)(3): • UK CRR article 103, which relates to the firm's management of trading book exposures; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 76 and SYSC 10A, which relate to the recording of telephone and electronic communications; • COBS, which relates to client agreements for services, assessing suitability and client reporting; • UK EMIR article 11(1)(a), which relates to the timely confirmation of transactions; and • the MLR 2017, which relates to AML customer due diligence measures. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1, which does not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a–5(a)(4) to capital requirements. We recommend deleting the reference to UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. This does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(4) or (b)(3). Record preservation is addressed by Exchange rule 18a–6. We recommend deleting the references to the FCG in this Order as this sourcebook only contains nonbinding guidance.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(2) With respect to the requirements of Exchange Act rule 18a–5(a)(4), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(E) The requirements of Exchange Act rule 18a–5(b)(4) provided that the Covered Entity is subject to and complies with the requirements of ~~FCA COBS 8A.1.9R, 16A.2.1 R, 16A.3.1UK; UK MiFID Org Reg article 59;~~ FCA SYSC 9.1.1AR; and UK EMIR article~~s~~ 9(2) ~~and 11(1)(a)~~;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(b)(4): • COBS, which relate to client agreements for services and client reporting; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; and • UK EMIR article 11(1)(a), which relates to the timely confirmation of transactions. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(F) The requirements of Exchange Act rule 18a–5(a)(5) or (b)(5), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~UK MiFID Org Reg articles 74, 75, 76 and Annex IV; UK MiFIR article 25(1); FCA SYSC 10A.1.6R, 10A.1.8R; and UK MiFID Org Reg article 76; and PRA Recordkeeping Rule 2.1 and FCA SYSC 9.1.1AR; and~~ PRA Recordkeeping Rule 2.1 and FCA SYSC 9.1.1AR; and (2) With respect to the requirements of Exchange Act rule 18a–5(a)(5), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to SYSC 10A.1.6R, 10A.1.8R and UK MiFID Org Reg article 76, which relate to the recording of telephone and electronic communications. These provisions do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(5) or (b)(5). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. This does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(5) or (b)(5). Record preservation is addressed by Exchange Act rule 18a–6. We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a–5(a)(5) to capital requirements.
(G) The requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ PRA Recordkeeping Rule 2.1; ~~UK MiFID Org Reg articles 59, 74, 75 76 and Annex IV; UK MiFIR article 25(1);~~ FCA SYSC 9.1.1AR, ~~10A.1.6R~~ and ~~10A.1.8R; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1R and 16A.3.1UK;~~ UK EMIR article~~s~~ 9(2) ~~and 11(1)(a); MLR 2017 Regulations 28(10) and (18) and 28–30; and FCA FCG 3.1.7~~; and (2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi–2 pursuant to this Order; ~~and~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11): • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 76 and SYSC 10A.1.6R, 10A.1.8R, which relate to the recording of telephone and electronic communications; • COBS, which relates to client agreements for services, assessing suitability and client reporting; • UK EMIR article 11(1)(a), which relates to the timely confirmation of transactions; and • The MLR 2017, which relates to AML customer due diligence measures. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1, which does not raise these issues. We recommend deleting the reference to UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. This does not correspond to, and goes beyond, the requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11). Record preservation is addressed by Exchange Act rule 18a–6.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
~~(3) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(6) and (b)(6) to make and keep current books and records of confirmations of purchases and sales of securities other than security-based swaps;~~	Part VI.B of the letter provides the explanation for this change.
(H) The requirements of Exchange Act rule 18a–5(a)(7) or (b)(7), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of ~~UK MiFIR article 25(1); MLR 2017 Regulations 28 through 30; FCA FCG 3.1.7; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK;~~ FCA SYSC 9.1.1AR, ~~10A.1.6R and 10A.1.8R; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ PRA Recordkeeping Rule 2.1; ~~UK MiFID Org Reg articles 59, 74, 75 and 76 and Annex IV;~~ and UK EMIR article~~s~~ 9(2) ~~and 11(1)(a); and~~	We recommend deleting the reference to UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. This does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(7) or (b)(7). Record preservation is addressed by Exchange Act rule 18a–6. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(7) or (b)(7): • the MLR 2017, which relates to AML customer due diligence measures; • COBS, which relates to client agreements for services, assessing suitability and client reporting; • SYSC 10A.1.6R, 10A.1.8R and UK MiFID Org Reg article 76, which relate to the recording of telephone and electronic communications; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • PRA Fundamental Rules and PRIN, which set out certain high level principles for businesses; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; and • UK EMIR article 11(1)(a), which relates to the timely confirmation of transactions. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to the FCG in this Order as this sourcebook only contains nonbinding guidance.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(2) With respect to the requirements of Exchange Act rule 18a–5(a)(7), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1, which does not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a–5(a)(7) to capital requirements.
(I) The requirements of Exchange Act rule 18a–5(a)(8), provided that: (1) The Covered Entity is subject to and complies with the requirements of ~~FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ PRA Recordkeeping Rule 2.1; ~~UK MiFID Org Reg articles 59, 72(1), 74, 75, 76 and Annex IV; UK MiFIR article 25(1);~~ FCA SYSC 9.1.1AR, ~~10A.1.6R and 10A.1.8R; FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK;~~ UK EMIR article~~s~~ 9(2) ~~and 11(1)(a); MLR 2017 Regulations 28(10) and (18) and 28 through 30; and FCA FCG 3.1.7~~; and	We recommend deleting the references to the following provisions, do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(8): • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 76 and SYSC 10A.1.6R and 10A.1.8R, which relate to the recording of telephone and electronic communications; • COBS, which relates to client agreements for services, assessing suitability and client reporting; • UK EMIR article 11(1)(a), which relates to the timely confirmation of transactions; and • MLR 2017, which relates to AML customer due diligence measures. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the reference to UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. These provisions does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(8). Record preservation is addressed by Exchange Act rule 18a-6. We recommend deleting the references to UK MiFID Org Reg articles 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We further note that referencing PRA Recordkeeping Rule 2.1 would be consistent with the Commission's linkage of Exchange rule 18a–5(a)(8) to capital requirements.
(J) The requirements of Exchange Act rule 18a–5(a)(9), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK EMIR article 39(4); and~~ UK MiFID Org Reg article~~s~~ 21(1)(f) ~~72(1), 74, and 75~~; (2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and (3) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(9) relating to Exchange Act rule 18a–2;	We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(9): • the PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • CASS, which relates to a firm's holding of safe custody assets and client money; • UK EMIR Article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a UK central counterparty from their own positions; • UK MiFID Org Reg article 74 and 75, which relate to record keeping of client orders and decision to deal and record keeping of transactions and order processing. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements We recommend deleting the reference to the UK MiFID Org Reg article 72(1), which relates to the medium of retention of records. This does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(9). Record preservation is addressed by Exchange Act rule 18a–6. We recommend replacing the above references with references to the UK MiFID Org Reg article 21(1)(f), which require firms to maintain adequate and orderly records of their business.

(K) The requirements of Exchange Act rule 18a–5(a)(10) and (b)(8), provided that the Covered Entity is subject to and complies with the requirements of FSMA sections 63F(2), ~~63F(5), 63(2A),~~ 60A(2) ~~and (5)~~; PRA Fitness and Propriety Rules 2.6 and 2.9; SMR Applications and Notifications Rules 2.1, 2.2 and 2.6; ~~PRA Certification Rules; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rule 2.1; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA General Organisational Requirements Rules 5.1 and 5.2;~~ FCA SUP ~~3.10.4R through 3.10.7R,~~ 10C.10.8D, 10C.10.8AD, 10C.15, 10C.10.14G, 10C.10.16R, 10C.10.21G and 10C Annex 3D; ~~FCA SYSC 4.3A.1R., 4.3A.3R, 4.3A.3R, 10.1.7R, 27 and 27.2.5G; FCA FIT 2.1, 2.2 and 2.3;~~ UK MiFID Org Reg articles 21(1)(d)~~(a), 35;~~	We recommend deleting the references. They do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(10) and (b)(8). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements We recommend deleting the references to the following, which are general requirements that do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(10) and (b)(8): • FSMA sections 63F(5), which relates to the validity of a certificate issued to a firm's "certification staff" and 63(2A), which relates to the annual fit and proper reassessment requirement; • PRA Certification Rules (general PRA regime for certified employees); • PRA Fundamental Rules 2 and 6 (certain high level principles for businesses); • PRA Recordkeeping Rule 2.1(general record keeping requirement); • PRA Internal Capital Adequacy Assessment Rule 3.1 (relating to a firm's distribution of financial resources, own funds and internal capital and related risk management processes); • PRA General Organisational Requirements Rules 5.1 and 5.2 (management body requirements); • FCA SYSC 4.3A.1R., 4.3A.3R, 4.3A.3R (management body), 10.1.7R (managing conflicts), 27 and 27.2.5G (certification regime); and • UK MiFID Org Reg, which relates to the general requirement to maintain a clear and documented organizational structure and to a requirement to maintain a record of services or activities giving rise to detrimental conflict of interest. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend that a more appropriate reference would be to UK MiFID Org Reg article 21(1)(d), which requires a firm to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
	We also recommend deleting the references to FCA FIT because they contain only non-binding guidance.
(L) The requirements of Exchange Act rule 18a–5(a)(12), provided that: (*1*) The Covered Entity is subject to and complies with the requirements of UK CRR articles 103, 105(3) and 105(10); ~~FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK EMIR article 39(4); and MiFID Org Reg. articles 72(1), 74 and 75;~~ (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3 pursuant to this Order;	We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect that all Covered Entities will be banks or PRA-designated investment firms. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(12): • the PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • CASS, which relates to a firm's holding of safe custody assets and client money; • UK EMIR Article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a UK central counterparty from their own positions; and • UK MiFID Org Reg, which relates to record keeping of client orders and decision to deal, record keeping of transactions and order processing and the medium of retention of records. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(M) The requirements of Exchange Act rule 18a–5(a)(17) and (b)(13), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR~~and 10A.1.6R; UK MiFID Org Reg articles 72, 73, 76(8)(b) and Annex I; and UK EMIR article 39(5), in each case with respect to the relevant security-based swap or activity;~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(17) and (b)(13): • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • SYSC 10A.1.6R and UK MiFID Org Reg article 76, which relate to the recording of telephone and electronic communications; • UK MiFID Org Reg article 73, which relates to keeping records of client agreements for service; and • UK EMIR article 39(5), which sets out the requirement for a clearing member to offer clients the choice of individual and omnibus segregation of the CCP-cleared positions. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to UK MiFID Org Reg article 72, which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, as this does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–5(a)(17) and (b)(13). Record preservation is addressed by Exchange Act rule 18a–6.
(*2*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fh–3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and (*3*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(N) The requirements of Exchange Act rule 18a–5(a)(18)(i) and (ii) or (b)(14)(i) and (ii), as applicable, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of ~~UK EMIR article 11(1)(b); and~~ UK EMIR RTS article 15(1)(b); and (*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–3 pursuant to this Order; and	We recommend deleting the reference to UK EMIR article 11(1)(b), relating to portfolio reconciliation and dispute resolution, which does not contain a separate recordkeeping requirement except as specified by UK EMIR RTS article 15(1)(a): "when concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to: (a) the identification, recording and monitoring of disputes…."
(O) The requirements of Exchange Act rule 18a–5(a)(18)(iii) or (b)(14)(iii), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of ~~UK EMIR article 11(1)(b); and~~ UK EMIR RTS article 15(1)(b), ~~in each case~~ with respect to such security-based swap portfolio(s); and (*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–4 pursuant to this Order.	We recommend deleting the reference to UK EMIR article 11(1)(b), relating to portfolio reconciliation and dispute resolution, which does not contain a separate recordkeeping requirement except as specified by UK EMIR RTS article 15(1)(a): "when concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to: (a) the identification, recording and monitoring of disputes…."
(ii) Paragraph (f)(1)(i) is subject to the following further conditions: (A) Paragraphs (f)(1)(i)(A) through (D) and (H) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(B) A Covered Entity may apply the substituted compliance determination in paragraph (f)(1)(i)(M) to records of compliance with Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and (C) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(13), (a)(14), (a)(16), (b)(9), (b)(10) or (b)(12).	
(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a–6, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(2)(i) and with the applicable conditions in paragraph (f)(2)(ii):	
(A) The requirements of Exchange Act rule 18a–6(a)(1) or (a)(2), as applicable, provided that the Covered Entity is subject to and complies with the requirements of ~~UK MiFID Org Reg articles 59, 72(1), 74, 75, 76 and Annex IV;~~ FCA SYSC 9.1.1AR, 9.1.2R, ~~10A.1.6R and 10A.1.8R; FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6;~~ PRA Recordkeeping Rules 2.1 and 2.2; ~~FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA PRIN 2.1.1.R(2) and (3); FCA FCG 3.1.7; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK CRR articles 103 and 103(b)(ii); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; MLR 2017 Regulations 28 through 30; UK MiFID Org Reg article 72(1), 74 and 75; UK MiFIR article 25(1);~~ and UK EMIR article 9(2), ~~39(4) and 11(1)(a);~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(a)(1) or (a)(2): • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 76 and FCA SYSC 10A, which relate to the recording of telephone and electronic communications; • UK MiFID article 25(1), which relates to the recording of data regarding all transactions, including client information; • PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • COBS, which relate to client agreements for services, assessing suitability and client reporting; • UK CRR article 103, which relates to the firm's management of trading book exposures; • CASS, which relates to a firm's holding of safe custody assets and client money; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • the MLR 2017, which relates to AML customer due diligence measures; and

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
	• UK EMIR articles 11(1)(a) (relating to the timely confirmation of transactions) and 39(4) (relating to the requirement for a clearing member to maintain separate accounts at UK CCPs, and on its books and records, for proprietary and client positions). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to UK MiFID Org Reg articles 72(1), 74 and 75, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the references to the FCG in this Order as this sourcebook only contains nonbinding guidance.
(B) The requirements of Exchange Act rule 18a–6(b)(1)(i) or (b)(2)(i), as applicable, provided that the Covered Entity is subject to and complies with the requirements of ~~UK MiFID Org Reg articles 59, 72(1), 74, 75, 76 and Annex IV;~~ FCA SYSC 9.1.1AR, 9.1.2R, ~~10A.1.6R and 10A.1.8R; FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6;~~ PRA Recordkeeping Rules 2.1 and 2.2; ~~FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA PRIN 2.1.1.R(2) and (3); FCA FCG 3.1.7; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK CRR articles 103 and 103(b)(ii); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; MLR 2017 Regulations 28(10) and (18) and 28 through 30; UK MiFID Org Reg articles 72(1), 74 and 75; UK MiFIR article 25(1);~~ and UK EMIR article~~s~~ 9(2)~~, 39(4) and 11(1)(a);~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(i) or (b)(2)(i): • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 76 and FCA SYSC 10A, which relate to the recording of telephone and electronic communications; • PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • COBS, which relates to client agreements for services, assessing suitability and client reporting; • CASS, which relates to a firm's holding of safe custody assets and client money;

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
	• UK CRR article 103, which relates to the firm's management of trading book exposures; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • the MLR 2017, which relates to AML customer due diligence measures; and • UK EMIR articles 11(1)(a) (relating to the timely confirmation of transactions) and 39(4) (relating to the requirement for a clearing member to maintain separate accounts at UK CCPs, and on its books and records, for proprietary and client positions). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to UK MiFID Org Reg articles 72(1), 74 and 75 and UK MiFIR article 25(1), as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1, which does not raise these issues. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the references to the FCG in this Order as this sourcebook only contains nonbinding guidance.
(C) The requirements of Exchange Act rule 18a–6(b)(1)(ii) and (iii), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA IFPRU 2.2.7R(1); PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK MiFID Org Reg articles 72(1), 74 and 75;~~ PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK EMIR article~~s~~ 9(2);~~ 25(1) and 39(4); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; and PRA Fundamental Rules 2 and 6;~~ and *(2)* The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ii) and (iii): • PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • CASS, which relates to a firm's holding of safe custody assets and client money; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • UK EMIR article 25(1), which relates to the recognition of non-UK CCPs as eligible to provide clearing services to UK firms; • UK EMIR article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a UK central counterparty from their own positions; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; and • PRA Fundamental Rules, which set out certain high-level principles for businesses. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend that the references to UK MiFID Org Reg articles 74 and 75 should be deleted, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(D) The requirements of Exchange Act rule 18a–6(b)(1)(iv) or (b)(2)(ii), as applicable, provided that the Covered Entity is subject to and complies with the requirements of FCA SYSC 9.1.1AR, ~~10A.1.6R and 10A.1.8R; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; MLR 2017 Regulations 28(18), 28(10) and 28 through 30; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6;~~ PRA Recordkeeping Rules 2.1 and 2.2;~~ FCA CASS 6.2.1R, 6.2.2R, 6.3.2AR, 6.3.4A 1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.3R, 7.15.4G, 7.15.5R, 7.15.8R, 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E; UK CRR articles 103 and 103(b)(ii); FCA PRIN 2.1.1.R(2) and (3); FCA FCG 3.1.7; FCA IFPRU 2.2.7R(1); FCA COBS 8A.1.9R, 9.1.1AR, 9A.2.1R, 16A.2.1 R and 16A.3.1UK; FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R and 10A.1.8R; UK MiFID Org Reg articles 59, 72, 72(1), 73, 74, 75, 76, 76(8)(b), Annex I and Annex IV; UK MiFIR article 25(1);~~ and UK EMIR article~~s~~ 9(2),~~ 11(1)(a), 39(4) and 39(5);~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(iv) or (b)(2)(ii): • FCA SYSC 10A.1.6R, 10A.8R and UK MiFID Org Reg article 76, which relate to the recording or telephone and electronic communications as this; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; • the MLR 2017, which relates to AML customer due diligence measures; • PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses; • CASS, which relates to a firm's holding of safe custody assets and client money; • UK CRR article 103, which relates to the firm's management of trading book exposures; • COBS, which relates to client agreements for services, assessing suitability and client reporting; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 72, which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • UK MiFID Org Reg article 73 which relates to records of client agreements for services; • UK MiFID Org Reg articles 74 and 75, which relate to record keeping of transactions and order processing and the medium of retention of records; • UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments; and • UK EMIR articles 11(1)(a) (relating to the timely confirmation of transactions), 39(4) (relating to the requirement for a clearing member to maintain separate accounts at UK

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
	CCPs, and on its books and records, for proprietary and client positions) and 39(5) (requirement for clearing members to offer clients the choice between omnibus and individual segregation). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to the FCG in this Order as this sourcebook only contains nonbinding guidance. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms.
(E) The requirements of Exchange Act rule 18a–6(b)(1)(v), provided that: *(1)* The Covered Entity is subject to and complies with the requirements of ~~UK CRR articles 99, 104(1)(j), 294, 394, 415, 430 and Part Six: Title II & Title III; UK CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII, XIII and article 14;~~ PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg article 72(1); UK MiFIR article 25(1);~~ and UK EMIR article 9(2); *(2)* With respect to the requirements of Exchange Act rule 18a–6(b)(1)(v), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a– 1d pursuant this Order; and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(v): • UK CRR and UK CRR Reporting ITS, which relate to supervisory reports to be made; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; and • UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*3*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(v) relating to Exchange Act rule 18a–2;	
(F) The requirements of Exchange Act rule 18a–6(b)(1)(vi) or (b)(2)(iii), as applicable, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of ~~FCA COBS 8A.1.9R~~; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R;~~ UK MiFID Org Reg articles 72(1) and 73; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; and FCA PRIN 2.1.1.R(2) and (3); UK MiFIR article 25(1);~~ and UK EMIR article 9(2); and (*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vi), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to COBS 8A and UK MiFID Org Reg article 73, as this provision could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(vi) or (b)(2)(iii): • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; and • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements We recommend deleting the reference to UK MiFIR article 25(1), as this provision could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues.
(G) The requirements of Exchange Act rule 18a–6(b)(1)(vii) or (b)(2)(iv), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of ~~FCA COBS 8A.1.9R, 16A.2.1 R, and 16A.3.1;~~ PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R;~~ UK MiFID Org Reg articles 59, 72(1) and 73; UK MiFIR article 25(1);~~ UK EMIR article~~s~~ 9(2)~~ and 11(1)(a); FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; and FCA PRIN 2.1.1.R(2) and (3)~~; and *(2)* With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(vii) or (b)(2)(iv): • COBS 8A.1.9R, which relates to client agreements for services and client reporting, and 16A, which relates to client reporting; • UK MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • UK MiFIR article 25(1), which sets a duration of 5 years for firms to keep relevant data relating to orders and transactions in financial instruments; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; and • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to UK MiFID Org Reg article 73, as this provision could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues.
(H) The requirements of Exchange Act rule 18a–6(b)(1)(viii) or (b)(2)(v), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*1*) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, ~~104(1)(j),~~ 294, 394, 415, 430 and Part Six: Title II & Title III; UK CRR Reporting ITS article 14 and annexes I, II, III, IV, V, VIII, IX, X, XI, XII, XIII, as applicable; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg article 72(1); UK MiFIR article 25(1);~~ and UK EMIR article 9(2); (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–7 pursuant to this Order; (*3*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(viii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; (*4*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(L); and (*5*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(M) relating to Exchange Act rule 18a–2.	We note that UK CRR article 105(1)(j) does not exist. We recommend deleting the reference to UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, as this does not correspond to, and goes beyond, the requirements of Exchange Act rule 18–6(b)(1)(viii) or (b)(2)(v). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements We recommend deleting the reference to UK MiFIR article 25(1), as this provision could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We recommend adding the qualifier "as applicable" because not all firms submit all of the UK CRR Reporting ITS annexes.
(I) The requirements of Exchange Act rule 18a–6(b)(1)(ix), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	***Comments concerning recommended changes***
(*1*) The Covered Entity is subject to and complies with the requirements of FCA SYSC ~~4.1.1(1)R, 4.1.1R(1), 6.1.1R, 7.1.4R,~~ 9.1.1AR, 9.1.2R ~~and 10.1.7R; FCA COBS 2.3A.32R; UK MiFID Org Reg articles 22(3)(c), 23, 23(1)(b), 24, 25(2), 26, 29(2)(c), 35 and 72(1); PRA Risk Control Rule 2.3; PRA Internal Capital Adequacy Assessment Rules 3 through 11; FCA IFPRU 2.2.7R, 2.2.17R through 2.2.35R and 2.2.44R; UK CRR articles 286 and 293(1)(d); UK EMIR RTS;~~ PRA Recordkeeping Rule 2.1 and 2.2; ~~UK MiFIR article 25(1);~~ UK EMIR article~~s~~ 9(2) ~~and 11; UK EMIR RTS; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; and FCA PRIN 2.1.1.R(2) and (3);~~ and	We recommend deleting the references to SYSC other than the references to SYSC 9.1.1AR, 9.1.2R. Whilst SYSC 9.1.1AR and 9.1.2R set out record keeping requirements, the others are substantive business organization requirements. They therefore do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ix). We also recommend deleting the references to the following other provisions, which likewise do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ix): • COBS 2.3A.32R, which sets out a requirement to keep evidence that any fees, commission or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • Other UK MiFID Org Reg articles, which are substantive business organization requirements; • PRA Risk Control Rule 2.3, which sets a requirement that the management body approves and periodically reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks; • PRA Internal Capital Adequacy Assessment Rules 3 to 11, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • UK CRR, which relates to the use of internal models for credit risk; • UK EMIR RTS (which does not refer to a specific provision); • UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments; • UK EMIR article 11, which sets out risk mitigation requirements for uncleared OTC derivatives; COND, which set out certain minimum requirements for obtaining and maintaining PRA authorization; and

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	• PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms.
(J) The requirements of Exchange Act rule 18a–6(b)(1)(x), provided that: (*1*) The Covered Entity is subject to and complies with the requirements of ~~FCA IFPRU 2.2.7R; PRA Internal Capital Adequacy Assessment Rule 3.1;~~ PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg article 72(1); UK MiFIR article 25(1);~~ UK EMIR article 9(2);~~FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; and FCA SYSC 9.1.1AR;~~ and	We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(x): • PRA Internal Capital Adequacy Assessment Rule 3.1, which relates to a firm's distribution of financial resources, own funds and internal capital and related risk management processes; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments; • COND, which sets out certain minimum requirements for obtaining and maintaining PRA authorization; and • PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(K) The requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that: (*1*) The Covered Entity is subject to and complies with the requirements of ~~MLD4 articles 11 and 14; MLR 2017 Regulations 27 through 30;~~ PRA Recordkeeping Rule 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg article 72(1); UK MiFIR article 25(1);~~ and UK EMIR article 9(2), in each case with respect to the relevant security-based swap or activity; (*2*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii) that relates to Exchange Act rule 15Fh–3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and	We recommend deleting references in the Order to MLD4 since this does not form part of UK law. We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii): • The MLR 2017 Regulations 27-30, which set out rules related to customer due diligence; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; and • UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*3*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;	
(L) The requirements of Exchange Act rule 18a–6(c), provided that the Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg article 72(1); UK MiFIR article 25(1);~~ and UK EMIR article 9(2);	We recommend deleting the reference to UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. These requirements do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(c). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(M) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of ~~PRA General Organisational Requirements Rule 5.2; FSMA sections 60A(2), 63(2A), 63F(2) and (5); PRA Fitness and Propriety Rules 2.6 and 2.9; FCA SUP 10C.10.8D, 10C.10.8AD 10C.15, 10C Annex 3D, 10C.10.14G, 10C.10.16R, and 10C.10.21G; SMR Applications and Notifications Rules 2.1, 2.2 and 2.6; PRA Certification Rule 2.1;~~ FCA SYSC ~~4.3A.1R, 4.3A.3R,~~ 9.1.1AR, 9.1.2R, ~~10.1.7R, 27 and 27.2.5G; FCA FIT 2.1, 2.2 and 2.3; PRA General Organisational Requirements Rules 5.1 and 5.2; UK MiFID Org Reg articles 21(1)(a), 35 and 72(1);~~ and PRA Recordkeeping Rules 2.1 and 2.2;	We recommend deleting all references which do not relate to a record keeping requirement. We recommend deleting the reference to UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, as this does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–6(d)(1). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(N) The requirements of Exchange Act rule 18a–6(d)(2), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg articles 72(1) and 72(3); UK MiFIR article 25(1);~~ and UK EMIR article 9(2); and (*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(2)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the reference to UK MiFID Org Reg article 72, which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. These requirements do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(c). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(O) The requirements of Exchange Act rule 18a–6(d)(3), provided that: (*1*) The Covered Entity is subject to and complies with the requirements of ~~FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ FCA SYSC ~~6.1.1R,~~ 9.1.1AR, 9.1.2R ~~and 10A.1.6R;~~ PRA Recordkeeping Rules 2.1 and 2.2; ~~UK MiFID Org Reg articles 72, 72(1), 73, 76(8)(b) and Annex I; UK MiFIR article 25(1); and UK EMIR article 9(2) and 39(5);~~ and (*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(3)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to COND, which set out certain minimum requirements for obtaining and maintaining PRA authorization, and PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses. These do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(3). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements We recommend deleting all references to the UK MiFID Org Reg, as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues.
(P) The requirements of Exchange Act rule 18a–6(d)(4) and (d)(5), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC ~~4.1.1R(1),~~ 9.1.1AR and 9.1.2R; ~~UK MiFID Org Reg articles 24, 25(2), 72(1) and 73; UK MiFIR article 25(1);~~ and UK EMIR article 9(2); and (*2*) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi–3, 15Fi–4, and 15Fi–5 pursuant to this Order;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(4) and (d)(5): • SYSC 4.1.1R(1) which is a general requirement concerning a firm's governance; • UK MiFID Org Reg articles 24 relating to the internal audit function and 25 relating to management reports; • UK MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • UK MiFID Org Reg article 73, which relates to keeping records of client agreements for services; and • UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(Q) The requirements of Exchange Act rule 18a–6(e), provided that the Covered Entity is subject to and complies with the requirements of ~~FCA COBS 8A.1.9R;~~ PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC ~~4.1.1R,~~ 9.1.1AR and 9.1.2R; and UK MiFID Org Reg article~~s~~ 21(2)~~, 58, 72(1) and 72(3); UK MiFIR article 25(1); and UK EMIR article 9(2);~~ and	We recommend deleting references to FCA COBS 8A.1.9R, UK MiFID Org Reg articles 58, 72(1) and 72(e) and UK MiFIR article 25(1), as these provisions could raise the issues described in part I.E of the letter. The Commission can instead rely on PRA Recordkeeping Rule 2.1 and SYSC 9.1.1AR, which do not raise these issues. We recommend deleting the reference to UK EMIR article 9(2), which relates to the retention of records of derivatives transactions, which does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–6(e). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(R) The requirements of Exchange Act rule 18a–6(f), provided that the Covered Entity is subject to and complies with the requirements of PRA Outsourcing Rule 2.1; ~~EBA Guidelines on Outsourcing section 13.3; PRA Recordkeeping Rules 2.1 and 2.2;~~ FCA SYSC 8.1.1R, ~~9.1.1AR and 9.1.2R;~~ UK MiFID Org Reg article~~s~~ 31(1) ~~and 72(1); UK MiFIR article 25(1); and UK EMIR article 9(2).~~	We recommend deleting the reference to the EBA Guidelines because they are non-binding guidance. We recommend deleting the references to PRA Recordkeeping Rules 2.1 and 2.2, SYSC 9, UK MiFID Org Reg article 72(1), UK MiFIR 25(1), and UK Emir Article 9(2), which set out record keeping requirements which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(f). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(ii) Paragraph (f)(2)(i) is subject to the following further conditions: (A) A Covered Entity may apply the substituted compliance determination in paragraph (f)(2)(i)(K) to records related to Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and (B) This Order does not extend to the requirements of Exchange Act rule (b)(1)(xi), (b)(1)(xiii), (b)(2)(vi), or (b)(2)(viii).	
(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a–7, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(3):	
(i) The requirements of Exchange Act rule 18a–7(a)(1) or (a)(2), as applicable, and the requirements of Exchange Act rule 18a–7(j) as applied to such requirements, provided that: (A) The Covered Entity is subject to and complies with the requirements of ~~FSMA sections 137A, 137G and 137T; CRD article 104(1)(j);~~ PRA Definition of Capital Rule 4.5; UK CRR articles 99, 394, 430 and Part Six: Title II & Title III; and UK CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII, as applicable;	We recommend deleting references to sections 137A, 137G and 137T of FSMA since these relate to the FCA's and PRA's powers to make rules and do not impose requirements on firms. We recommend deleting references in the Order to provisions of CRD since they do not form part of UK law. We recommend adding the qualifier "as applicable" because not all firms submit all of the UK CRR Reporting ITS annexes.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in the UK; and (C) With respect to the requirements of Exchange Act rule 18a–7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(ii) The requirements of Exchange Act rule 18a–7(a)(3) and the requirements of Exchange Act rule 18a–7(j) as applied to such requirements, provided that: (A) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, 394, ~~431 to 455, 432, 433, 434, 437 to 440, 442, 443, 445 to 449, 451 to 455, 452 and 455;~~ UK CRR Reporting ITS annexes I, II, VIII and IX, as applicable; ~~FSMA sections 137A, 137G and 137T;~~ PRA Definition of Capital Rule 4.5; and Companies Act sections 394, 415, 442 and 475; and (B) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting references to UK CRR rules that are set out in Part 8 of UK CRR relating to public disclosure, since these do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–7(a)(3) and Exchange Act rule 18a–7(j). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements We recommend adding the qualifier "as applicable" because not all firms submit all of the UK CRR Reporting ITS annexes.
(iii) The requirements of Exchange Act rule 18a–7(b), provided that the Covered Entity is subject to and complies with the requirements of UK CRR articles 434, 437 through 440, 442, 443, 445 through 449, 451 through 455; and Companies Act sections 394, 415, 442 and 475;	
(iv) The requirements of Exchange Act rule 18a–7(c), (d), (e), (f), (g) and (h) and the requirements of Exchange Act rule 18a–7(j) as applied to such requirements, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(A) The Covered Entity is subject to and complies with the requirements of ~~FCA CASS 6.2.2R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R and 7.15.21R;~~ FCA SUP 3.8.5R, ~~3.10.4R through 3.10.7R; UK CRR articles 26(2), 132(5), 154, 191, 321, 325bi, 350, 353, 368, 418, 431 to 455, 434, 437 to 440, 442, 443, 445 to 449 and 451 to 455;~~ Companies Act sections 394, 415, 442 and 475; ~~and Capital Requirements Regulations 2013 Regulation 2(4);~~	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–7(c), (d), (e), (f), (g) and (h) and Exchange Act rule 18a–7(j): • CASS, which relates to a firm's holding of safe custody assets and client money; • SUP 3.10, which relates to the auditing of a firm's holding of safe custody assets and client money; and • UK CRR, which sets out a number of specific capital treatments. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to the Capital Requirements 2013 in the Order as the regulations do not impose requirements directly on firms.
(B) With respect to financial statements the Covered Entity is required to file annually with the UK PRA or FCA, including a report of an independent public accountant covering the financial statements, the Covered Entity: (*1*) Simultaneously sends a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements to the Commission in the manner specified on the Commission's website; (*2*) Includes with the transmission the contact information of an individual who can provide further information about the financial statements and report; (*3*) Includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) covering the annual financial statements if UK laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements; provided, however, that such report of the independent public accountant may be prepared in accordance with generally accepted auditing standards in UK that the independent public accountant uses to perform audit and attestation services and the accountant complies with UK independence requirements;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(*4*) Includes with the transmission the reports required by Exchange Act rule 18a–7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a–7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a–4; provided, however, that the report of the independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) may be prepared in accordance with generally accepted auditing standards in the UK that the independent public accountant uses to perform audit and attestation services and the accountant complies with UK independence requirements; and (*5*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rule 18a–2; and (*6*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rules 18a–4 and 18a–4a; and (C) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(v) The requirements of Exchange Act rule 18a–7(i), provided that: (A) The Covered Entity is subject to and complies with the requirements of FCA SUP 16.3.17R and PRA Regulatory Reporting Rule 18; and (B) The Covered Entity: (*1*) Simultaneously sends a copy of any notice required to be sent by UK law cited in paragraph (f)(3)(v)(A) of the Order to the Commission in the manner specified on the Commission's website; and (*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice.	
(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(4)(i) and with the applicable conditions in paragraph (f)(4)(ii):	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(A) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 and the requirements of Exchange Act rule 18a– 8(h) as applied to such requirements, provided that:	
(1) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R(11) ~~and 11;~~ PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, ~~15.3.12G, 15.3.14G, 15.3.15R, 15.3.17R and 15.3.21R;~~ ~~FCA CASS 6.6.57R, 7.15.33R and Schedule 2;~~ PRA Notifications Rules 2.1, 2.4 and 2.5, ~~2.6, 2.8 and 2.9;~~ ~~FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 to 2A.6;~~ and	We note that PRIN 11 does not exist. The reference should be to PRIN 2.1.1R(11), which refers to principle 11 of the FCA's principles for businesses (relations with regulators). We recommend deleting the references to guidance (SUP 15.3.12G and 15.3.14G). We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2) and (b)(4) of Exchange Act rule 18a–8 and Exchange Act rule 18a–8(h): • SUP 15.3.15R, 15.3.17R and SUP 15.3.21R and PRA Notifications Rule 2.6, 2.8 and 2.9, which concern the notification of matters relating to civil, criminal or disciplinary proceedings against a firm, fraud, errors and other irregularities and insolvency, bankruptcy and winding up; • CASS, which relates to a firm's holding of safe custody assets and client money; and • SYSC 18 and PRA General Organisational Requirements 2A, which relate to whistleblowing. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms.
(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(B) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to such requirements, provided that the Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R(11) ~~and 11~~; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, ~~15.3.12G, 15.3.14G, 15.3.15R, 15.3.17R and 15.3.21R; FCA CASS 6.6.57R, 7.15.33R and Schedule 2;~~ PRA Notifications Rules 2.1, 2.4, 2.5, ~~2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 to 2A.6;~~	We note that PRIN 11 does not exist. The reference should be to PRIN 2.1.1R(11), which refers to principle 11 of the FCA's principles for businesses (relations with regulators). We recommend deleting the references to guidance (SUP 15.3.12G and 15.3.14G). We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2) and (b)(4) of Exchange Act rule 18a–8 and Exchange Act rule 18a–8(h): • SUP 15.3.15R, 15.3.17R and SUP 15.3.21R and PRA Notifications Rule 2.6, 2.8 and 2.9, which concern the notification of matters relating to civil, criminal or disciplinary proceedings against a firm, fraud, errors and other irregularities and insolvency, bankruptcy and winding up; • CASS, which relates to a firm's holding of safe custody assets and client money; and • SYSC 18 and PRA General Organisational Requirements 2A, which relate to whistleblowing. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms.
(C) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to such requirements, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R(11) ~~and 11~~; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, ~~15.3.12G, 15.3.14G, 15.3.15R,~~ 15.3.17R ~~and 15.3.21R~~; ~~FCA CASS 6.6.57R, 7.15.33R and Schedule 2;~~ PRA Notifications Rules 2.1, 2.4 and 2.5, ~~2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 through 2A.6;~~ and *(2)* This Order does not extend to the requirements of Exchange Act rule 18a–8(d) to give notice with respect to books and records required by Exchange Act rule 18a–5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;	We note that PRIN 11 does not exist. The reference should be to PRIN 2.1.1R(11), which refers to principle 11 of the FCA's principles for businesses (relations with regulators). We recommend deleting the references to guidance (SUP 15.3.12G and 15.3.14G). We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2) and (b)(4) of Exchange Act rule 18a–8 and Exchange Act rule 18a–8(h): • SUP 15.3.15R, 15.3.17R and SUP 15.3.21R and PRA Notifications Rule 2.6, 2.8 and 2.9, which concern the notification of matters relating to civil, criminal or disciplinary proceedings against a firm, fraud, errors and other irregularities and insolvency, bankruptcy and winding up; • CASS, which relates to a firm's holding of safe custody assets and client money; and • SYSC 18 and PRA General Organisational Requirements 2A, which relate to whistleblowing. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms.
(D) The requirements of Exchange Act rule 18a–8(e) and the requirements of Exchange Act rule 18a–8(h) as applied to such requirements, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(1) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R(11) ~~and 11~~; PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, ~~15.3.12G, 15.3.14G, 15.3.15R,~~ 15.3.17R ~~and 15.3.21R~~; ~~FCA CASS 6.6.57R, 7.15.33R and Schedule 2;~~ PRA Notifications Rules 2.1, 2.4 and 2.5, ~~2.6, 2.8 and 2.9; FCA SYSC 18.6.1R and 18.6.4G; FCA IFPRU 2.4.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 through 2A.6;~~	We note that PRIN 11 does not exist. The reference should be to PRIN 2.1.1R(11), which refers to principle 11 of the FCA's principles for businesses (relations with regulators). We recommend deleting the references to guidance (SUP 15.3.12G and 15.3.14G). We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2) and (b)(4) of Exchange Act rule 18a–8 and Exchange Act rule 18a–8(h): • SUP 15.3.15R, 15.3.17R and SUP 15.3.21R and PRA Notifications Rule 2.6, 2.8 and 2.9, which concern the notification of matters relating to civil, criminal or disciplinary proceedings against a firm, fraud, errors and other irregularities and insolvency, bankruptcy and winding up; • CASS, which relates to a firm's holding of safe custody assets and client money; and • SYSC 18 and PRA General Organisational Requirements 2A, which relate to whistleblowing. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting references to IFPRU in this Order as IFPRU does not apply to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or PRA-designated investment firms.
(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; *(3)* This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements; and *(4)* This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–4 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
(ii) Paragraph (f)(4)(i) is subject to the following further conditions:	
(A) The Covered Entity: (*1*) Simultaneously sends a copy of any notice required to be sent by UK law cited in ~~this~~ paragraph (f)(4)(i)(C) of the Order, to the Commission in the manner specified on the Commission's website, provided that, to fall within the scope of this condition, such notice must relate to a (I) breach of the UK laws cited in the relevant portions of paragraphs (f)(1) or (2) of the Order, which, in the case of a Covered Entity that is prudentially regulated, also relates to the Covered Entity's business as a security-based swap dealer or major security-based swap participant or (II) deficiency relating to capital requirements.; and (*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice; (B) This Order does not extend to the requirements of paragraphs (a)(2) and (b)(3), and of Exchange Act rule 18a–8 relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements; (C) This Order does not extend to the requirements of paragraph (g) of rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements.	Part VI.D of the letter contains a detailed explanation for this change.
(5) *Securities Counts.* The requirements of Exchange Act rule 18a– 9, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of ~~FCA CASS 6.2.1R, 6.2.2R, 6.3.4A–1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 6.6.4R, 6.6.47G, 6.6.5G, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.5R, 7.15.9R, 7.15.3R, 7.15.8R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7 and 10.1.9E;~~ FCA SUP 3.10.4R–3.10.7R; ~~UK MiFID Org Reg articles 74 and 75;~~ UK EMIR article 11(1)(b); ~~and~~ UK EMIR RTS article~~s 12 and~~ 13; and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–9: • CASS, which relates to a firm's holding of safe custody assets and client money; • UK MiFID Org Reg articles 74 and 75, which relate to record keeping of transactions and order processing and the medium of retention of records; and • UK EMIR RTS article 12, which relates to the timely confirmation of transactions for uncleared OTC derivatives. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	***Comments concerning recommended changes***
	substituted compliance on compliance with these additional requirements.
(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.	
(6) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that: *(1)* The Covered Entity is subject to and complies with the requirements of ~~FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3);~~ PRA Recordkeeping Rule 2.1; and FCA SYSC 9.1.1AR; and (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order if the Covered Entity is not prudentially regulated.	We recommend deleting the references to COND, which set out certain minimum requirements for obtaining and maintaining PRA authorization, and PRA Fundamental Rules and PRIN, which set out certain high-level principles for businesses. These do not correspond to, and go beyond, the requirements of Exchange Act section 15F(g). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. Part VI.E. of the letter contains a detailed explanation for this change.
(7) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.	
(8) *English Translations.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made,	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements	*Comments concerning recommended changes*
preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.	

(g) Definitions	*Comments concerning recommended changes*
(1) "CCP" has the meaning given in UK EMIR article 2(1).	Further to our comment at (a)(11)(ii), we recommend the inclusion of "CCP" as a defined term.
(2)~~(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 a "MiFID investment firm" or "third country investment firm," as such terms are defined in the FCA Handbook Glossary, that has permission from the ~~FCA or~~ PRA under Part 4A of FSMA to carry on regulated activities relating to investment services and activities in the United Kingdom~~; and~~	
~~(iv) Is supervised by the FCA under the fixed supervision model and, if the firm is a PRA-authorized person, also supervised by the PRA as a Category 1 firm.~~	We recommend deleting this limb (referring to a firm's FCA and PRA's supervisory classification) because a firm's supervisory classification does not affect any of the UK rules referred to in the Conditions (as opposed to relevant authorities).
~~(2) "Capital Requirements Regulations 2013" means the UK Capital Requirements Regulations 2013, as amended from time to time.~~	We recommend that references to the Capital Requirements Regulations 2013 in the Order be deleted as they do not impose obligations on firms.
(3) "Companies Act" means the UK Companies Act 2006, as amended from time to time.	
(4) "EUWA" means the European Union (Withdrawal) Act 2018.	We recommend the inclusion of "EUWA" as a defined term to facilitate descriptions of retained EU legislation.
~~(4)~~(5) "FCA" means the UK's Financial Conduct Authority.	
~~(5) "FCA BIPPRU" means the Prudential Sourcebook for Banks, Building Societies and Investment Firms of the FCA Handbook, as amended from time to time.~~	We recommend that references in the Order to BIPRU be deleted as it is not applicable to banks and PRA-designated investment firms. We expect all Covered Entities to be banks or investment firms.
~~(6) "FCA CASS" means the Client Asset Sourcebook of the FCA Handbook, as amended from time to time.~~	We recommend deleting this definition in line with our comments in respect of paragraphs (b) to (f). As a general comment, the final version of this paragraph will need to be aligned to the final versions of paragraphs (b) to (f)—in particular to remove redundant rule references.

(g) Definitions	*Comments concerning recommended changes*
~~(7)~~(6) "FCA COBS" means the Conduct of Business Sourcebook of the FCA Handbook, as amended from time to time.	
~~(8)~~(7) "FCA COND" means the Threshold Conditions of the FCA Handbook, as amended from time to time.	
~~(9) "FCA Enforcement Guide" means the Enforcement Guide of the FCA Handbook, as amended from time to time.~~	We recommend that this definition be removed, as it is not used in the Order.
~~(10) "FCA FCG" means the Financial Crime Guide of the FCA Handbook, as amended from time to time.~~	We recommend that references to the FCG be deleted in the Order as the FCG contains only non-binding guidance.
~~(11) "FCA FIT" means the Fit and Proper test for Employees and Senior Personnel Sourcebook of the FCA Handbook, as amended from time to time.~~	We recommend that references to the FIT be deleted in the Order as FIT contains only non-binding guidance.
~~(12)~~(8) "FCA Handbook" means the FCA's Handbook of rules and guidance, as amended from time to time.	
~~(13)~~(9) "FCA Handbook Glossary" means the Glossary part of the FCA's Handbook of rules and guidance, as amended from time to time.	
~~(14) "FCA IFPRU" means the Prudential Sourcebook for Investment Firms of the FCA Handbook, as amended from time to time~~.	We recommend deleting references in the Order to IFPRU because it is not relevant to banks and PRA-designated investment firms.
~~(15)~~(10) "FCA PRIN" means the Principles for Businesses Sourcebook of the FCA Handbook, as amended from time to time.	
~~(16)~~(11) "FCA PROD" means the Product Intervention and Product Governance Sourcebook of the FCA Handbook, as amended from time to time.	
~~(17)~~(12) "FCA SUP" means the Supervision Sourcebook of the FCA Handbook, as amended from time to time.	
~~(18)~~(13) "FCA SYSC" means the Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook, as amended from time to time.	
~~(19)~~(14) "FSMA" means the UK's Financial Services and Markets Act 2000, as amended from time to time.	
~~(20)~~(15) "ICVC" means investment company with variable capital as defined in the FCA Handbook Glossary.	
~~(21)~~(16) "MLR 2017" means the UK's Money Laundering, Terrorist Financing and Transfer of Funds	

(g) Definitions	*Comments concerning recommended changes*
(Information on the Payer) Regulations 2017, as amended from time to time.	
~~(22)~~(17) "PRA" means the UK's Prudential Regulation Authority.	
~~(23)~~(18) "PRA Capital Buffer Rules" means the Capital Buffer Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(24)~~(19) "PRA Certification Rules" means the Certification Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(25)~~(20) "PRA Definition of Capital Rules" means the Definition of Capital Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(26)~~(21) "PRA Fitness and Proprietary Rules" means the Fitness and Propriety Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(27)~~(22) "PRA Fundamental Rules" means the Fundamental Rules Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(28)~~(23) "PRA General Organisational Requirements" means the General Organisational Requirements Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(29)~~(24) "PRA Internal Capital Adequacy Assessment Rules" means the Internal Capital Adequacy Assessment Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(30)~~(25) "PRA Internal Liquidity Adequacy Assessment Rules" means the Internal Liquidity Adequacy Assessment Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(31)~~(26) "PRA Liquidity Coverage Requirement—UK Designated Investment Firms Rules" means the PRA Liquidity Coverage Requirement—UK Designated Investment Firms Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(32)~~(27) "PRA Notifications Rules" means the Notifications Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(33)~~(28) "PRA Outsourcing Rules" means the Outsourcing Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(34)~~(29) "PRA Recordkeeping Rules" means the Recordkeeping Part of the PRA Rulebook for CRR Firms, as amended from time to time.	

(g) Definitions	*Comments concerning recommended changes*
~~(35)~~(30) "PRA Regulatory Reporting Rules" means the Regulatory Reporting Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(36)~~(31) "PRA Remuneration Rules" means the Remuneration Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(37)~~(32) "PRA Risk Control Rules" means the Risk Control Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(38)~~(33) "PRA Rulebook" or "PRA Rulebook for CRR Firms" means the PRA's Rulebook for Capital Requirement Regulation Firms, as amended from time to time.	
~~(39)~~(34) "PRA Rulebook Glossary" means the Glossary part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(40)~~(35) "PRA Senior Management Functions Rules" means the Senior Management Functions Part of the PRA Rulebook for CRR Firms, as amended from time to time.	
~~(41)~~(36) "Prudentially regulated" means a Covered Entity that has a "prudential regulator" as that term is defined in Exchange Act section 3(a)(74).	
~~(42)~~(37) "SMR" means the Senior Managers Regime that forms part of the Senior Managers and Certification Regime, as amended from time to time.	
~~(43)~~(38) "UK" means the United Kingdom.	
~~(44)~~(39) "UK CRR" means ~~the UK version of~~ Regulation (EU) No 575/2013 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
(~~45)~~(40) "UK CRR Reporting ITS" means the ~~UK version of~~ Commission Implementing Regulation (EU) 680/ 2014 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(46)~~(41) "UK EMIR" means ~~the UK version of the "European Market Infrastructure Regulation,"~~ Regulation (EU) No 648/2012 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(47)~~(42) "UK EMIR Margin RTS" means the ~~UK version of~~ Commission Delegated Regulation (EU) 2016/2251 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(48)~~(43) "UK EMIR RTS" means ~~UK version of~~ Commission Delegated Regulation (EU) No 149/2013	

(g) Definitions	*Comments concerning recommended changes*
as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(49)~~(44) "UK MAR" means ~~the UK version of Market Abuse~~ Regulation (EU) 596/2014 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(50)~~(45) "UK MAR Investment Recommendations Regulation" means ~~the UK version of~~ Commission Delegated Regulation (EU) 2016/958 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(51)~~(46) "UK MiFID Org Reg" means ~~the UK version of~~ Commission Delegated Regulation (EU) 2017/565 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(52)~~(47) "UK MiFIR" means ~~the UK version of the "Markets in Financial Instruments Regulation,"~~ Regulation (EU) 600/2014 as it has effect in UK domestic law by virtue of the EUWA, as amended from time to time.	
~~(53)~~(48) "UK Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), as amended from time to time.	

Appendix B: Financial Reporting Recommendations

FOR DISCUSSION PURPOSES ONLY
March 26, 2021

Financial Reporting for Non-US Security-based Swap Dealers

We have prepared this discussion document based on recent work with non-US firms anticipating registration as security-based swap dealers (SBSDs). The discussion covers both non-bank entities, which are subject to the Commission's capital as well as financial reporting requirements, and bank entities, which are prudentially regulated and subject to SEC financial reporting requirements only.[1] The summary observations and recommendations below are based on extensive work by many, but not all, such firms located in many, but not all, jurisdictions of non-US firms that anticipate registering as SBSDs.

With that in mind and based on the Commission's approach to a two-year transition (as discussed in the final order on substituted compliance for Germany and proposed order on substituted compliance for France)[2], our shared goal is that non-US registrants be able to rely on data already produced to address local financial and regulatory capital reporting requirements to the greatest extent possible, while making sure the SEC receives the information it needs in a useable format. With that goal in mind, please find below a summary of: (1) findings and recommendations that apply to all non-US SBSDs and (2) a more granular review of suggested modifications to the FOCUS Part IIC and Part II templates. Although we provide these observations and recommendations in response to the Commission's request for feedback on a transitional approach, we would request that the Commission consider making these recommendations permanent, as they reflect differences between US and non-US financial reporting regimes that are unlikely to change.

We understand that the Commission has requested feedback on these matters in the context of substituted compliance for certain non-US jurisdictions, in particular, in connection with the condition requiring a non-US SBSD relying on substituted compliance to file periodic unaudited financial or operational information with the Commission or its designee in the manner and format required by Commission rule or order. We are also mindful, however, that all relevant orders granting substituted compliance may not be concluded in time for SBSD registration, and some non-US firms may register as SBSDs on a conditional basis pending the Commission granting relevant substituted compliance. It is also possible that some non-US firms may register as SBSDs without seeking substituted compliance at all. Nonetheless, the observations and recommendations set out below will still be relevant for each of these non-US firms. Accordingly, we request that the Commission afford the same financial reporting relief to a non-US firm registering as an SBSD regardless of whether such firm is eligible for and relying on substituted compliance, so long as such firm is a prudential regulated SBSD and therefore not subject to the Commission's capital requirements.

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[1] *See* Recordkeeping and reporting Requirements for Security-Based Swap Dealers, Major Security Based-Participants, and Broker-Dealers (17 CFR Parts 200, 240, and 249) ("SBSD Recordkeeping Rule").

[2] *See* Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the Federal Republic of Germany (Release No. 34–90765; File No. S7–16–20) and Notice of 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 (Release No. 34-90766; File No. S7-22-20).

1. Issues Common to all Non-US SBSDs

- **Timing**
  - *Frequency*: Non-US SBSDs should be permitted to provide the Commission with financial reports (financial statements and regulatory capital) at the same frequency as mandated by local statutory requirements. For most jurisdictions, this frequency is quarterly. We are aware of at least one jurisdiction (Australia), although there may be more, that require financial statements on a semiannual basis.
  - *Timing*: The end of each quarter for which non-US SBSDs are permitted to provide financial reports to the Commission – whether for calendar or non-calendar fiscal years – should be consistent with local requirements. We are aware of one jurisdiction (Canada), although there may be more, that requires Jan/April/July/Oct rather than March/June/Sept/Dec reporting periods. Interim reporting would not only be burdensome but would also conflict with local restrictions on the treatment of confidential supervisory information.
  - *Deadlines*: Non-US SBSDs should be permitted to provide periodic reports to the Commission two weeks after the local deadline (for period-ends that do not coincide with the year-end) or 30 days after the local deadline (for year-end reports).
- **Basis of reporting**: We understand, based on the Commission's substituted compliance proposal for France, that the Commission will permit non-US SBSDs to present their financial reports in accordance with IFRS or local GAAP. We also request that the Commission permit non-US SBSDs to present these reports in their relevant local currencies.
- **Consolidation**: We request confirmation that a non-US SBSD may provide its financial reports (required financial statements and regulatory capital data) at the level of the SBSD registrant either on a consolidated basis (including its direct and indirect subsidiaries) or on a standalone basis. Certain firms may also need relief permitting reporting at the level of SBSD's immediate holding company.
- **Regulatory Capital**: Most, if not all, non-US SBSDs calculate regulatory capital under Basel III standards (as locally transposed), and therefore, with one exception, the Part IIC regulatory capital line items (as opposed to the Part II net capital items) are appropriate for non-US SBSDs that are banks or nonbanks, alike. Although the SEC intended to align Part IIC with FFIEC Call Report line items (to standardize reporting across firms), it relied on an outdated version of that report, which includes a line that is no longer required (and is not included in Basel III Capital calculations and reporting). This line item, "Tier 3 capital allocated for market risk," should be removed from the Part IIC template (and not included in the Part II template).[3]
- **Schedules**: Firms are still working through questions regarding Schedule 1 for both Part IIC and Schedules 1-4 for Part II. We will follow up with questions and/or recommendations as soon as possible.

[3] SIFMA is working on a separate request that will address corrections needed to the Part IIC template more generally so that the requirements are, and remain, aligned with the FFIEC Call Report, as was the goal stated in the SBSD Recordkeeping Rule, at 68581.

2. Suggested Modifications to FOCUS Part IIC and Part II Templates

We have proposed modified FOCUS Part IIC and Part II templates to aid our discussions.

FOCUS Part IIC:
Our recommended approach is to modify Part IIC to omit certain line items (generally sub-line items that are not reported under IFRS/local GAAP) either permanently or during the two-year transition, as noted below. Such items may not be applicable in the non-US context, or not reported to the same degree of granularity, but are included in the total line item, combined with other items, or included in "other" line items. The color coding is described below:

- Each line item without any color coding should generally be available from local GAAP or IFRS reporting, although there may be further questions to be addressed at the industry or individual registrant level.
- Each line items highlighted in red is proposed to be omitted as a separate line item. Although there is variation among jurisdictions, reasons for modifying the form by eliminating a specific line items include:
    - A line item's sub line-item breakout may not exist under the local GAAP or IFRS (*e.g.,* Part II C Balance Sheet Assets: Line 2A Held-to-maturity securities and 2B Available-for-sale securities, all securities will be included in Line 2). As such sub-categories do not exist under local GAAP or IFRS, we recommend they be eliminated permanently for non-US SBSDs.
    - A line item may not exist in a non-US context (*e.g.,* Part II C Balance Sheet Assets: Line items 3 and 3A, Federal Funds are not reported in a Non-US jurisdiction, but Line item 3 can include all securities purchased under agreements to resell). As the category Federal Funds does not exist under local GAAP or IFRS, we recommend it be eliminated permanently for non-US SBSDs.
    - A line item's sub line items may not be available at the level of granularity in all jurisdictions, but may be available on a combined basis (*e.g.*, Part IIC Balance Sheet Equity Capital, Line Items 26B and 26C may not be split out under local GAAP, but can be reported as a combined line item 26 B/C.)
- Line items highlighted in amber vary by jurisdictions:
    - A line item's sub items may or may not be broken out, or be broken out only on an annual basis, depending on jurisdiction (*e.g.*, Line 9 sub items A – E are reportable under EU and UK requirements quarterly, similar information is provided in Switzerland only annually, but this information is not required in Canada); we would recommend not requiring these breakouts during the transition.
- Line items highlighted in yellow are still under review and are set aside for future discussions (Schedule 1, as described above).

Line #	FOCUS Report Part IIC Line Item	Notes & Issues	
	Balance Sheet		
	Assets		
1	**Cash and balances due from depository institutions (from FFIEC Form 031's Schedule RC-A)**	Includes Lines 1A and 1B, which are not split out under IFRS/Local GAAP reporting	
1A	Noninterest-bearing balances and currency and coin	Combined into Line 1 as not split out under IFRS/local GAAP reporting	Permanent
1B	Interest-bearing balances	Combined into Line 1 as not split out under IFRS/local GAAP reporting	Permanent
2	**Securities**	**Includes Lines 2A and 2B, which are no longer accounting concepts under IFRS/local GAAP**	
2A	Held-to-maturity securities	Combined into Line 2 as these concepts no longer exist under IFRS /do not exist under local GAAP	Permanent
2B	Available-for-sale securities	Combined into Line 2 as these concepts no longer exist under IFRS /do not exist under local GAAP	Permanent
3	Federal funds sold and securities purchased under agreements to resell	N/A for foreign registrants; Line item not split out under IFRS/local GAAP reporting	Permanent
3A	Federal funds sold in domestic offices	N/A for foreign registrants; Line item not split out under IFRS/local GAAP reporting	Permanent
3B	**Securities purchased under agreements to resell**	**Includes all securities purchased under agreements to resell**	
4	**Loans and lease financing receivables (from FFIEC Form 031's Schedule RC-C)**	**Includes 4A**	
4A	Loans and leases held for sale	Line item not split out under IFRS/local GAAP reporting	Permanent
4B	**Loans and leases, net of unearned income**		
4C	**LESS: Allowance for loan and lease losses**		
4D	**Loans and leases, net of unearned income and allowance**		
5	**Trading assets (from FFIEC Form 031's Schedule RC-D)**		
6	**Premises and fixed assets**		
7	Other real estate owned (from FFIEC Form 031's Schedule RC-M)	Line item not split out under IFRS/local GAAP reporting (may be included in Line 11)	Permanent
8	**Investments in unconsolidated subsidiaries and associated companies**		
9	Direct and indirect investments in real estate ventures	Line item not split out under IFRS/local GAAP reporting (may be included in Line 11)	Permanent
10	**Intangible Assets**		
10A	**Goodwill**		
10B	**Other intangible assets**		
11	**Other assets (from FFIEC Form 031's Schedule RC-F)**	includes line items 7 and 9, as needed	
12	**Total assets (sum of 1 to 11)**		

Line #	FOCUS Report Part IIC Line Item	Notes & Issues	
	Liabilities		
13	**Deposits**	Includes Lines 13A-13B	
13A	In domestic offices (sum of totals of Columns A and C from FFIEC Form 031's Schedule RC-E, part I)	Combined into Line 13 Deposits as this level of granularity is not produced for IFRS/local GAAP reporting	Permanent
13A-1	Noninterest-bearing	Same as above	Permanent
13A-2	Interest-bearing	Same as above	Permanent
13B	Deposits in Foreign offices, Edge and Agreement subsidiaries, and IBFs	Same as above	Permanent
13B-1	Noninterest-bearing	Same as above	Permanent
13B-2	Interest-bearing	Same as above	Permanent
14	Federal funds purchased and securities sold under agreements to repurchase	N/A for foreign registrants; Line item not split out under IFRS/local GAAP reporting	Permanent
14A	Federal funds purchased in domestic offices	N/A for foreign registrants; Line item not split out under IFRS/local GAAP reporting	Permanent
14B	**Securities sold under agreements to resell**	**Includes all Securities sold under agreements to resell**	
15	**Trading liabilities**		
16	Other borrowed money (includes mortgage indebtness and obligations under capitalized leases) (from FFIEC Form 031's Schedule RC-M)	Combined into "Other Liabilities" Line 20; line item not split out under IFRS/local GAAP	Transition
17	Not applicable		
18	Not applicable		
19	Subordinated notes and debentures	Combined into "Other Liabilities" Line 20; line item not split out under IFRS/local GAAP	Transition
20	**Other liabilities (from FFIEC Form 031's Schedule RC-G)**	Includes Lines 16 and 19	
21	**Total liabilities (sum of 13 to 20)**		
22	Not applicable		
	Equity Capital		
23	**Perpetual preferred stock and related surplus**		
24	**Common stock**		
25	**Surplus (exclude all surplus related to preferred stock)**		
26A	**Retained earnings**		
26B/C	**Other equity capital components (including accumulated other comprehensive income and other reserves, if any)**	Line 26B (Accumulated other comprehensive income) and 26C (Other equity capital components) combined into one balance	
26B	Accumulated other comprehensive income	Combined with Line 26C; Line item not split out under local GAAP reporting	Permanent
26C	Other equity capital components	Combined with Line 26B; Line item not split out under local GAAP reporting	Permanent
27A	**Total bank equity capital (sum of 23 to 26C)**		
27B	**Non-controlling (minority) interests in consolidated subsidiaries**		
28	**Total equity capital (sum of 27A and 27B)**		
29	**Total liabilities and equity capital (sum of 21 and 28)**		

Line #	FOCUS Report Part IIC Line Item	Notes & Issues	
	Regulatory Capital		
	Capital		
1	**Total bank equity capital (from FFIEC Form 031's Schedule RC, Line 27A)**		
2	**Tier 1 capital**		
3	**Tier 2 capital**		
4	Tier 3 capital allocated for market risk	This should be omitted as no longer required under Basel	Permanent
5	**Total risk-based capital**		
6	**Total risk-weighted assets**		
7	**Total assets for the leverage ratio**		
	Capital Ratios		
8	**Tier 1 leverage ratio**		
9	**Tier 1 risk-based capital ratio**		
10	**Total risk-based capital ratio**		
	Income Statement		
1	**Total interest income**		
2	**Total interest expense**		
3	**Total noninterest income**		
4	**Total noninterest expense**		
5	Realized gains (losses) on held-to-maturity securities	N/A as these concepts no longer exist under IFRS/do not exist under local GAAP	Permanent
6	Realized gains (losses) on available-for-sale securities	N/A as these concepts no longer exist under IFRS/do not exist under local GAAP	Permanent
7	**Income (loss) before income taxes and extraordinary items and other adjustments**		
8	**Net income (loss) attributable to bank**		
9	**Trading revenue (from cash instruments and derivative instruments)**		
9A	Interest rate exposures	Availability varies by jurisdiction	Transition
9B	Foreign exchange exposures	Availability varies by jurisdiction	Transition
9C	Equity security and index exposures	Availability varies by jurisdiction	Transition
9D	Commodity and other exposures	Availability varies by jurisdiction	Transition
9E	Credit exposures	Availability varies by jurisdiction	Transition
9F	Impact on trading revenue of changes in the creditworthiness of the bank's derivative counterparties on the bank's derivative assets	Line item not split out under IFRS/local GAAP reporting	Permanent
9G	Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities	Line item not split out under IFRS/local GAAP reporting	Permanent
10	Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account	Line item not split out under IFRS/local GAAP reporting	Permanent
10A	Net gains (losses) on credit derivatives held for trading	Line item not split out under IFRS/local GAAP reporting	Permanent
10B	Net gains (losses) on credit derivatives held for purposes other than trading	Line item not split out under IFRS/local GAAP reporting	Permanent
11	Credit losses on derivatives	Line item not split out under IFRS/local GAAP reporting	Permanent

Line #	FOCUS Report Part IIC Line Item	Notes & Issues	
Computation for Determination of SBS Customer Reserve Requirements		**N/A due to Rule 18a-4 Exemption.**	
Credit Balances			
1 - 10	N/A due to Rule 18a-4 Exemption.	N/A due to Rule 18a-4 Exemption.	Permanent
Debit Balances			
11 - 19	N/A due to Rule 18a-4 Exemption.	N/A due to Rule 18a-4 Exemption.	Permanent
Reserve Computation			
20 - 25	N/A due to Rule 18a-4 Exemption.	N/A due to Rule 18a-4 Exemption.	Permanent
Possession or Control for SBS Customers			
1 - 3	N/A due to Rule 18a-4 Exemption.	N/A due to Rule 18a-4 Exemption.	Permanent
Claiming an Exemption from Rule 18a-4			
	If an exemption from Rule 18a-4 is clamed, check the box	**Exemption claimed**	
Schedule 1 - Aggregate Security-Based Swap and Swap Positions		**Still Under Review**	
1	Security-based Swaps		
1A	Cleared		
1B	Non-cleared		
2	Mixed Swaps		
2A	Cleared		
2B	Non-Cleared		
3	Swaps		
3A	Cleared		
3B	Non-cleared		
4	Other derivatives		
5	Total (sum of 1 to 4)		

FOCUS Part II:

Our generally recommended approach to modifying Part II is to omit certain sections and line items related to Commission Rule 18a-1 net capital calculations (including the related "allowable" vs "non-allowable" distinction) or Rule 18a-4 segregation calculations, which should not be required for firms relying on substituted compliance with Rule 18a-1 or exempt from Rule 18a-4, as applicable. In addition, there are line items that are not reported under IFRS/local GAAP. Certain of those line items (generally sub-line items are not reported under IFRS/local GAAP) may be not applicable in the non-US context, or not reported to the same degree of granularity, but are included in the total line item, combined with other items, or included in "other" line items. Our recommendations are to omit such items either permanently or during the two-year transition, as noted. The color coding is described below:

- Each line item without any color coding should generally be available from local GAAP or IFRS reporting, although there may be further questions to be addressed at the industry or individual registrant level.
- Each line item highlighted in red is proposed to be omitted as a separate line item. Although there is variation among jurisdictions, reasons for modifying the form by eliminating a specific line item include:
    - A line item is only relevant to a firm reporting under US GAAP (*E.g.*, Balance Sheet Assets line 15E "Collateral accepted under ASC 860"). As such sub-categories do not exist under local GAAP, we recommend they be eliminated permanently for non-US SBSDs.
    - A line item is only relevant to firms subject to segregation requirements under 18a-4 (*E.g.*, Balance Sheet Liabilities line 17A and 19A1) and therefore should be eliminated permanently for SBSDs exempt from Rule 18a-4.
    - A line item is only relevant to firms subject to net capital calculations under Rule 18a-1 (*E.g.*, Balance Sheet Liabilities line 27A2 or 27C2) and therefore should be eliminated permanently for firms relying on substituted compliance with Rule 18a-1.
    - Sub line items are relevant to a US broker-dealer, but a breakdown based on CSE reporting requirements would make more sense (similar to Part IIC) (*E.g.*, Income Statement Revenue line item 2 "Gains or losses on securities trading" – instead of sub items 2A-E use the breakout in the CSE requirements (also in Part IIC) Interest Rate/Fixed Income Products; Currency; Equity Product; Commodity Products; and Other). Such line-item amendments should be made for the transition and considered for being made permanent.
- Line items highlighted in yellow are still subject to review and are set aside for future discussions (Schedules 1-4, as described above)

Line #	FOCUS Report Part II Line Item	Notes & Issues	
Statement of Financial Condition			
Reported by Stand-Alone BD, Stand-Alone SBSD, BD SBSD, Stand-Alone MSBSP, BD MSBSP			
Assets			
1	Cash		
2	Cash segregated in compliance with federal and other regulations		
3	Receivable from brokers or dealers and clearing organizations:		
3A	Failed to deliver	N/A for local GAAP that uses Settlement Day Accounting	Permanent, where relevant
3B	Securities borrowed		
3C	Omnibus accounts		
3D	Clearing Organizations		
3E	Other		
4	Receivables from customers:		
4A	Securities accounts		
4A1	Cash and fully secured accounts	Breakdown not currently provided	Transition
4A2	Partly secured accounts	Breakdown not currently provided	Transition
4A3	Unsecured accounts		
4B	Commodity accounts		
4C	Allowance for doubtful accounts		
5	Receivables from non-customers:		
5A	Cash and fully secured accounts	Breakdown not currently provided	Transition
5B	Partly secured and unsecured accounts	Breakdown not currently provided	Transition
6	Excess cash collateral pledged on derivative transactions	N/A for local GAAP; all collateral reported/no netting	Permanent, where relevant
7	Securities purchased under agreements to resell		
8	Trade date receivable		
9	Total net securities, commodities, and swaps positions		
10	Securities borrowed under subordination agreements and partners' individual and capital securities accounts, at market value		
10A	Exempted Securities		
10B	Other		
11	Securities demand notes- market value of collateral		
10A	Exempted Securities		
10B	Other		
12	Memberships in exchanges		
12A	Owned, at market value		
12B	Owned, at cost		
12C	Contributed for use of company, at market value		
13	Investment in and receivables from affiliates, subsidiaries, and associated partnerships		

Line #	FOCUS Report Part II Line Item	Notes & Issues	
14	Property, furniture, equipment, leasehold improvements and rights under lease agreements At cost (net of accumulated depreciation and amortization)		
15	Other Assets:		
15A	Dividends and interest receivable		
15B	Free shipments	Breakdown not a category or concept under local regulation/reporting	Permanent
15C	Loans and advances		
15D	Miscellaneous		
15E	Collateral accepted under ASC 860	Breakdown not a category or concept under local GAAP	Permanent, where relevant
15F	SPE Assets	Breakdown not a category or concept under local regulation/reporting	Permanent, where relevant
16	TOTAL ASSETS		
	Liabilities		
17	Bank loans payable		
17A	Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices of 17 CFR 240.18a-4 and 18a-4a, or the CEA	Breakdown not relevant to firms not subject to Rule 18a-4	Permanent
17B	Other		
18	Securities sold under repurchase agreements		
19	Payable to broker/dealers and clearing organizations		
19A	Failed to receive		
19A1	Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a	Breakdown not relevant to firms not subject to Rule 18a-4	Permanent
19A2	Other		
19B	Securities loaned		
19B1	Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a	Breakdown not relevant to firms not subject to Rule 18a-4	Permanent
19B2	Other		
19C	Omnibus accounts		
19C1	Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a	Breakdown not relevant to firms not subject to Rule 18a-4	Permanent
19C2	Other		
19D	Clearing Organizations		
19D1	Includible in segregation requirement under 17 CFR 240.15c3-3 and its appendices or 17 CFR 240.18a-4 and 18a-4a, or the CEA	Breakdown not relevant to firms not subject to Rule 18a-4	Permanent
19D2	Other		Permanent
19E	Other		
20	Payable to customers		
20A	Securities accounts - including free credits of		

Line #	FOCUS Report Part II Line Item	Notes & Issues	
20B	Commodities accounts		
21	Payable to non-customers		
21A	Securities accounts		
21B	Commodities accounts		
22	Excess cash collateral received on derivative transactions	N/A for local GAAP; all collateral reported/no netting	Permanent, where relevant
23	Trade date payable		
24	Total net securities, commodities, and swaps positions		
25	Accounts payable and accrued liabilities and expenses		
25A	Drafts payable		
25B	Accounts payable		
25C	Income taxes payable		
25D	Deferred income taxes		
25E	Accrued expenses and other liabilities		
25F	Other		
25G	Obligation to return securities	N/A for local GAAP	Permanent, where relevant
25H	SPE liabilities	Breakdown not a category or concept under local regulation/reporting	Permanent, where relevant
26	Notes and mortgages payable		
26A	Unsecured		
26B	Secured		
27	Liabilities subordinated to claims of creditors		
27A	Cash borrowings		
27A1	From outsiders		
27A2	Includes equity subordination (Rule 15c3-1(d) or Rule 18a-1(g) of	Breakdown not relevant to firms relying on substituted compliance with Rule 18a-1	Permanent
27B	Securities borrowings, at market value		
27B1	From outsiders		
27C	Pursuant to secured demand note collateral agreements		
27C1	From outsiders		
27C2	Includes equity subordination (Rule 15c3-1(d) or Rule 18a-1(g) of	Breakdown not relevant to firms relying on substituted compliance with Rule 18a-1	Permanent
27D	Exchange memberships contributed for use of company, at market value		
27E	Accounts and other borrowings not qualified for net capital purposes		
28	TOTAL LIABILITIES		
	Ownership Equity		
29	Sole proprietorship		
30	Partnership and limited liability company - including limited partners/members		
31	Corporation		
31A	Preferred stock		

Line #	FOCUS Report Part II Line Item	Notes & Issues	
31B	Common stock		
31C	Additional paid-in capital		
31D	Retained earnings		
31E	Accumulated other comprehensive income		
31F	Total		
31G	Less capital stock in treasury		
32	Total ownership equity (sum of Line Items 1770, 1780, 1795, 1796) (Sum of Line Items 29, 30, 31F, 31G)		
33	Total liabilities and ownership equity (sum of Line Items 1760 and 1800) (sum of lines 28 and 32)		
Use Part IIC Regulatory Capital line items instead of "Net Capital Calc" to be consistent with sub comp for capital calculation			
Regulatory Capital			
Capital			
1	Total bank equity capital (from FFIEC Form 031's Schedule RC, Line 27A)		
2	Tier 1 capital		
3	Tier 2 capital		
4	Tier 3 capital allocated for market risk	This should be omitted as no longer required under Basel	Permanent
5	Total risk-based capital		
6	Total risk-weighted assets		
7	Total assets for the leverage ratio		
Capital Ratios			
8	Tier 1 leverage ratio		
9	Tier 1 risk-based capital ratio		
10	Total risk-based capital ratio		

Line #	FOCUS Report Part II Line Item	Notes & Issues	
	Statement of Income (Loss) or Statement of Comprehensive Income, As Applicable		
	Reported by: Stand-Alone BD, Stand-Alone SBSD, BD SBSD, Stand-Alone MSBSP, BD MSBSP		
	Revenue		
1	Commissions		
1A	Commission on transactions in listed equity securities executed on an exchange		
1B	Commissions on transactions in exchange listed equity securities executed over-the-counter		
1C	Commission on listed option transactions		
1D	All other securities commissions		
1E	Total securities commissions		
2	**Gains or losses on firm securities trading securities**	**Alternative breakout: Interest Rate/Fixed Income Products; Currency, Equity Products, Commodity Products and Other**	
2A	From market making in over-the-counter equity securities	use alternative breakout above	Permanent
2A1	Includes gains or losses on OTC market making in exchange-listed equity securities	use alternative breakout above	Permanent
2B	From trading in debt securities	use alternative breakout above	Permanent
2C	From market making in options on a national securities exchange	use alternative breakout above	Permanent
2D	From all other trading	use alternative breakout above	Permanent
2E	Total gains or losses	use alternative breakout above	Permanent
3	Gains or losses on firm derivatives trading securities	use alternative breakout above	Permanent
4	**Gains or losses on firm securities investment accounts**		
4A	Includes realized gains or losses	Not produced and not a category or concept under local regulation/reporting	Permanent
4B	Includes unrealized gains or losses	Not produced and not a category or concept under local regulation/reporting	Permanent
4C	Total realized and unrealized gains or losses		
5	Gains or losses from underwriting and selling groups		
5A	Includes underwriting income from corporate equity securities		
6	Margin Interest		
7	Revenue from sale of investment company shares		
8	fees for account supervision, investment advisory and administrative services		
9	Revenue from research services		
10	Gains or losses on commodities		
11	Other revenue related to securities business		
12	Other revenue		
13	Total revenue		
	Expenses		
14	Registered representatives' compensation		
15	Clerical and administrative employees' expenses		
16	Salaries and other employment costs for general partners, and voting stockholder officers		
16A	Includes interest credited to general and limited partners' capital accounts	N/A	Permanent

Line #	FOCUS Report Part II Line Item	Notes & Issues	
17	Floor brokerage paid to certain brokers (see definition)		
18	Commissions and clearance paid to all other brokers (see definition)		
19	Clearance paid to non-brokers (see definition)		
20	Communications		
21	Occupancy and equipment costs		
22	Promotional costs		
23	Interest expense		
23A	Includes interest on accounts subject to subordination agreements		
24	Losses in error account and bad debts		
25	Data processing costs (including service bureau service charges)		
26	Non-Recurring charges		
27	Regulatory fees and expenses		
28	Other expenses		
29	Total expense		
	Net Income/Comprehensive Income		
30	Income or loss before federal income taxes and items below (Line 13 less Line 29)	Change to local tax authorities	Permanent
31	Provision for federal income taxes (for parent only)	Change to local tax authorities	Permanent
32	equity in earnings or losses of unconsolidated subsidiaries not included above	Change to local tax authorities	Permanent
32A	After federal income taxes of	Change to local tax authorities	Permanent
33	Net income or loss after federal income taxes	Change to local tax authorities	Permanent
34	Other comprehensive income (loss)	Change to local tax authorities	Permanent
34A	After federal income taxes of	Change to local tax authorities	Permanent
35	Comprehensive income (loss)	Change to local tax authorities	Permanent
	Monthly Income		
36	Net income (current month only) before comprehensive income and provision for federal income taxes	N/A	Permanent
	Capital Withdrawals		
	Reported by: Stand-Alone BD, Stand-Alone SBSD, BD SBSD, BD MSBSP		
	Ownership Equity and Subordinated Liabilities Maturing or Proposed to be Withdrawn Within the Next Six Months and Accruals, Which Have Not Been Deducted in the Computation of Net Capital		
	Total Proposed Withdrawal of Accrual		

Line #	FOCUS Report Part II Line Item	Notes & Issues	
	Capital Withdrawals Recap		
	Reported by: Stand-Alone BD, Stand-Alone SBSD, BD SBSD, BD MSBSP		
	Ownership Equity and Subordinated Liabilities Maturing or Proposed to be Withdrawn Within the Next Six Months and Accruals, Which Have Not Been Deducted in the Computation of Net Capital		
1	Equity Capital		
1A	Partnership and limited liability company capital		
1A1	General partners		
1A2	Limited partners and limited liability company members		
1A3	Undistributed profits		
1A4	Other (describe below)		
1A5	Sole proprietorship		
1B	Corporation capital		
1B1	Common stock		
1B2	Preferred stock		
1B3	Retained earnings (dividends and other)		
1B4	Other (describe below)		
2	Subordinated liabilities		
2A	Secured demand notes		
2B	Cash subordinates		
2C	Debentures		
2D	Other (describe below)		
3	Other accrued withdrawals		
3A	Bonuses		
3B	Voluntary contributions to pension or profit sharing plans		
3C	Other (describe below)		
	Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership, LLC or Corporation)		
1	Balance, beginning of period		
1A	Net income (loss) or comprehensive income (loss), as applicable		
1B	Additions (includes non-conforming capital of		
1C	Deductions (includes non-confirming capital of		
2	Balance, end of period (from Line Item 1800) (Line 32 from Statement of Financial Condition)		
	Statement of Change in Liabilities Subordinated to Claims of Creditors		
3	Balance, beginning of period		
3A	Increases		
3B	Decreases		
4	Balance, end of period (from Line Item 1800) (Line 32 from Statement of Financial Condition)		

Line #	FOCUS Report Part II Line Item	Notes & Issues	
Financial and Operational Data			
Reported by: Stand-Alone BD, Stand-Alone SBSD, BD SBSD, BD MSBSP			
1-14	Not relevant to firms relying on substituted compliance with Rule 18a-1	N/A	Permanent
Financial and Operational Data			
Reported by: Stand-Alone BD, Stand-Alone SBSD, BD SBSD, BD MSBSP			
Operational Deductions from Capital - Note A			
1-10	Not relevant to firms relying on substituted compliance with Rule 18a-1	N/A	Permanent
Note A	This section must be completed as follows:		
1-4	Not relevant to firms relying on substituted compliance with Rule 18a-1	N/A	Permanent
Other operational Data (Items 1, 2, and 3 below require an answer)			
Items 1-3	Not relevant to firms relying on substituted compliance with Rule 18a-1	N/A	Permanent
Potential Operational Charges Not Deducted from Capital - Note B			
1-8	Not relevant to firms relying on substituted compliance with Rule 18a-1	N/A	Permanent
Note B	This section must be completed as follows:		
1-6	Not relevant to firms relying on substituted compliance with Rule 18a-1	N/A	Permanent
Computation for Determination of Customer Reserve Requirements			
Reported by: Stand-Alone BD, BD SBSD, BD MSBSP			
Credit Balances			
1-11	Not Applicable to standalone SBSDs	N/A	
Debit Balances			
12-20	Not Applicable to standalone SBSDs	N/A	
Reserve Computation			
21-27	Not Applicable to standalone SBSDs	N/A	
Frequency of Computation			
28	Not Applicable to standalone SBSDs	N/A	
Possession or Control for Customers			
Reported by: Stand-Alone BD, BD SBSD, BD MSBSP			
State of the market valuation and number of items:			
1-3/Notes A-D	Not Applicable to standalone SBSDs	N/A	

Line #	FOCUS Report Part II Line Item	Notes & Issues	
Computation for Determination of Customer PAB Requirements			
Reported by: Stand-Alone BD, BD SBSD, BD MSBSP			
Credit Balances			
1-11	Not Applicable to standalone SBSDs	N/A	
Debit Balances			
12-18	Not Applicable to standalone SBSDs	N/A	
Reserve Computation			
19-26	Not Applicable to standalone SBSDs	N/A	
Frequency of Computation			
27	Not Applicable to standalone SBSDs	N/A	
Claiming an Exemption From Rule 15c3-3			
Reported by: Stand-Alone BD, BD SBSD, BD MSBSP			
Exemptive Provision Under Rule 15c3-3			
	If an exemption from Rule 15c3-3 is claimed, identify below the section upon which such exemption is based (check all that apply):		
A - D	Not Applicable to standalone SBSDs	N/A	
Computation for Determination of Security-Based Swap Customer Reserve Requirements			
Reported by: Stand-Alone BD, BD SBSD, BD MSBSP			
Credit Balances			
1-11	N/A due to Rule 18a-4(f) Exemption	N/A due to Rule 18a-4(f) Exemption	
Debit Balances			
12-20	N/A due to Rule 18a-4(f) Exemption	N/A due to Rule 18a-4(f) Exemption	
Reserve Computation			
21-27	N/A due to Rule 18a-4(f) Exemption	N/A due to Rule 18a-4(f) Exemption	
Possession or Control for Security-Based Swap Customers			
Reported by: Stand-Alone BD, BD SBSD, BD MSBSP			
State of the market valuation and number of items:			
1-3/Notes A-B	N/A due to Rule 18a-4(f) Exemption	N/A due to Rule 18a-4(f) Exemption	

Line #	FOCUS Report Part II Line Item	Notes & Issues	
Claiming an Exemption from Rule 18a-4			
Reported by: Stand-Alone SBSD, SBSD registered as an OTC Derivatives Dealer			
Exemption From Rule 18a-4			
	If an exemption from Rule 18a-4 is claimed, check the box	Exemption Claimed	
Computation of CFTC Minimum Capital Requirements			
Reported by: FCM			
Net Capital Required			
A-D	Not Applicable to standalone SBSDs	N/A	
Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges			
Reported by: FCM			
Segregation Requirements			
1-6	Not Applicable to standalone SBSDs	N/A	
Funds in Segregated Accounts			
7-16	Not Applicable to standalone SBSDs	N/A	
Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4D(F) of the Commodity Exchange Act			
Reported by: FCM			
Cleared Swaps Customer Requirements			
1-6	Not Applicable to standalone SBSDs	N/A	
Funds in Cleared Swaps Customer Segregated Accounts			
7-16	Not Applicable to standalone SBSDs	N/A	
Statement for Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts			
Reported by: FCM			
1-3	Not Applicable to standalone SBSDs	N/A	
Statement of Secured Amounts of Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7			
Reported by: FCM			
Foreign Futures and Foreign Options Secured Amounts			
1-7	Not Applicable to standalone SBSDs	N/A	
Funds Deposited in Separate 17 CFR 30.7 Accounts			
1-11	Not Applicable to standalone SBSDs	N/A	

Line #	FOCUS Report Part II Line Item	Notes & Issues	
Schedule 1 - Aggregate Securities, Commodities, and Swaps Positions		**Still Under Review**	
Reported by: Stand-Alone SBSD, BD SBSD, Stand-Alone MSBSP, BD MSBSP			
Aggregate Securities, Commodities, and Swaps Positions			
1	U.S. treasury securities		
2	U.S. government agency and U.S. government-sponsored enterprises		
2A	Mortgage-backed securities issued by U.S. government agency and U.S. government-sponsored enterprises		
2B	Debt securities issued by U.S. government agency and U.S. government-sponsored enterprises		
3	Securities issued by states and political subdivisions in the U.S.		
4	Foreign Securities		
4A	Debt securities		
4B	Equity securities		
5	Money market instruments		
6	Private label mortgage backed securities		
7	Other asset-backed securities		
8	Corporate obligations		
9	Stocks and warrants (other than arbitrage positions)		
10	Arbitrage		
11	Spot commodities		
12	Other securities and commodities		
13	Securities with no ready market		
13A	Equity		
13B	Debt		
13C	Other		
13D	Total securities with no ready market		
14	Total net securities, and spot commodities (Sum of Lines 1-12 and 13D)		
15	Security-based swaps		
15A	Cleared		
15B	Non-cleared		
16	Mixed swaps		
16A	Cleared		
16B	Non-cleared		
17	Swaps		
17A	Cleared		
17B	Non-cleared		
18	Other derivatives and options		
19	Counterparty netting		
20	Cash collateral netting		
21	Total derivative receivables and payables (sum of Lines 15-20)		

22	Total net securities, commodities, and swaps positions (sum of Lines 14 and 21)		
Schedule 2 - Credit Concentration Report for Fifteen Largest Exposures in Derivatives			
Reported by: Stand-Alone SBSD, Stand-Alone SBSD, BD SBSD, Stand-Alone MSBSP, BD MSBSP			
By Current Net Exposure			
1-15			
By Current Net and Potential Exposure			
1-15			
Schedule 3 - Portfolio Summary of Derivatives Exposures by Internal Credit Rating			
Reported by: Stand-Alone SBSD, Stand-Alone SBSD, BD SBSD, Stand-Alone MSBSP, BD MSBSP			
1-36			
Schedule 4 - Geographic Distribution of Derivatives Exposures for Ten Largest Countries			
Reported by: Stand-Alone SBSD, Stand-Alone SBSD, BD SBSD, Stand-Alone MSBSP, BD MSBSP			
By Current Net Exposure			
1-10			
By Current Net and Potential Exposure			
1-10			

April 7, 2021

Position Reporting for Security-Based Swap Dealers and Swap Dealers

This summary has been prepared to identify and confirm with the SEC and CFTC certain key concepts and recommendations relating to position reporting on SEC FOCUS Part IIC and Part II Schedule 1 and Appendices B and C to Subpart E of Part 23 of the CFTC's Regulations.

Longs vs Shorts. We request confirmation that:

- "Long/bought" refers to positions with positive NPV (receivables)
- "Short/sold" refers to positions with negative NPV (payables)

Product Breakdowns. We request confirmation that references to "Other derivatives" or "Other derivatives and options" refer to all derivatives reflecting as such in the registrant's local financial reporting requirements and accounting standards but not categorized as "security-based swaps," "mixed swaps" or "swaps" in accordance with applicable SEC and CFTC rules and guidance.

Gross Replacement Value.

The position reporting forms require gross replacement value of positions broken out by product, cleared vs uncleared, long vs short (no netting by counterparty, portfolio or collateral). Many firms, however, make portfolio-level adjustments to arrive at "replacement value" and cannot allocate these adjustments down to the product level.

- Recommendation: Registrants could therefore use mark-to-market values (e.g., mid-market) without these adjustments to report gross replacement value at the individual product level (line items 1-4 in SEC FOCUS Part IIC / CFTC Appendix C and line items 15-18 in SEC FOCUS Part II / CFTC Appendix B).
- Recommendation: For nonbank firms required to use SEC FOCUS Part II / CFTC Appendix B, which includes further line items intended to tie the product level reporting to balance sheet totals (which are calculated at a portfolio, not individual product level), we propose that firms be able to include portfolio-level adjustments within line item 18 ("Other derivatives and options").

Securities with No Ready Market.

For non-US, nonbank firms eligible for substituted compliance, there will be no need to classify securities based on whether they have a ready market.

- Recommendation: For purposes of lines 13A-13D of SEC FOCUS Part II / CFTC Appendix B, we propose that these firms include securities in these lines depending on whether they classify them as "Level 3" assets under local accounting standards.

Appendix C: Balance Sheets of Nonbank Covered Entities

Balance Sheets from most recent public reporting of UK dealers, in millions						
	Firm A	**Firm B**	**Firm C**	**Firm D**	**Firm E**	**Firm F**
Assets						
Cash/Cash Equivalents	43,833	24,934	3,610	6,484	2,692	152
Collateralised Agreements	140,682	113,797	54,766	89,186	87,203	37,499
Trade/Other Receivables; cash collateral pledged	90,380	83,143	45,720	68,250	22,084	-
Trading/Financial Assets	982,919	375,009	320,748	240,982	176,749	32,402
Investments	888	151	71	6,066	277	1,333
Loans	567	116	-	-	-	-
Other Assets	8,589	639	2,363	361	112	1,105
Total Assets	**1,267,858**	**597,789**	**427,278**	**411,329**	**289,117**	**72,491**
Liabilities						
Collateralised Financings	113,127	88,350	51,267	67,124	71,389	29,589
Trade/Other Payables	100,519	92,443	39,950	88,046	38,594	-
Trading Liabilities	932,414	340,392	296,806	218,639	171,021	39,246
Unsecured borrowings (incl. subordinated loans)	80,351	54,929	18,694	763	2,383	876
Other Liabilities/Provisions	4,869	654	2,590	-	240	717
Total Liabilities	**1,231,280**	**576,768**	**409,307**	**374,572**	**283,627**	**70,428**
Shareholder's equity						
Share capital	598	12,465	1,500	7,933	11,241	1,747
Share premium account	5,568	513	-	4,499	27	-
Other equity instruments	8,300	3,500	2,300	-	-	-
Retained earnings	22,437	3,341	3,172	15,133	(7,131)	315
Accumulated other comprehensive income; Reserves	(325)	1,202	10,999	9,192	1,352	1
Total shareholder's equity	**36,578**	**21,021**	**17,971**	**36,757**	**5,489**	**2,063**
Total liabilities and shareholder's equity	**1,267,858**	**597,789**	**427,278**	**411,329**	**289,117**	**72,491**
Maturity of Financial Liabilities from most recent public reporting of UK dealers, in millions						
	Firm A	**Firm B**	**Firm C**	**Firm D**	**Firm E**	**Firm F**
On-demand or less than one year	1,166,483	538,463	393,598	363,782	276,227	74,568
Great than one year	67,136	38,355	15,061	11,111	11,329	2,704
Total	1,233,619	576,818	408,659	374,893	287,556	77,272

Notes: The above summary data were prepared by reference to the most recent publicly available financial statements of nonbank Covered Entities. The financial statements do not generally categorize assets or liabilities using the same categories contained in the Commission's capital rules or its proposed conditions, but rather the categories of the accounting standards to which they are subject. In addition, in many instances, the specific categories that firms use differ from one another and not all firms report in the same currency. We have sought to work with each firm to make an educated allocation of each line item on its publicly available financial statements to each line item.

Furthermore, in reviewing these firms' financial statements, one would need to consider the accounting standards to which each firm is subject, including such matters as the different conventions for reflecting derivatives-related payables and receivables under certain non-U.S. accounting standards.

Also, the Maturity of Liabilities table balances are not calculated identically to those in the Balance Sheet and therefore vary to some degree.