September 10, 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 UBS AG and Credit Suisse AG in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation; Proposed Order (File No. S7-07-21)

Dear Ms. Countryman:

We appreciate 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 UBS AG and Credit Suisse AG in connection with certain requirements applicable to security-based swap ("**SBS**") dealers ("**SBSDs**") subject to regulation under Swiss law as a systematically important bank and supervised by the Swiss Financial Market Supervisory Authority ("**FINMA**") as a "category 1" firm (each, a "**Covered Entity**"), and proposed order providing for conditional substituted compliance in connection with the application (the "**Proposed Order**," and together with the remainder of the notice, the "**Proposal**").[1]

We believe the Proposal reflects a thoughtful, holistic approach to substituted compliance. However, the Proposal could benefit from further refinements, including a more substance- and outcome-oriented approach to the trading relationship documentation requirements as discussed in detail below, and a number of technical corrections to the Swiss law references in the Proposed Order as suggested in the attached Annex.

The Proposal would not allow a Covered Entity to apply substituted compliance with respect to the trading relationship documentation requirements, because the Commission preliminarily believes that the various counterparty documentation requirements under Swiss law are not comparable to Exchange Act requirements in this regard.[2] We disagree with the Commission's preliminary view here because we think the Proposal's approach has placed too much weight on the form of the Exchange Act rule's trading relationship documentation requirements, and did not give sufficient consideration of the substance, that is, what these requirements are actually designed to achieve.

For instance, the Commission noted that Exchange Act rules require that written trading relationship documentation be executed prior to, or contemporaneously with, executing an

[1] Securities Exchange Act of 1934 ("**Exchange Act**") Release No. 34–92632, 86 Fed. Reg. 45770 (Aug. 16, 2021). Capitalized terms not defined herein shall have meanings ascribed to them in the Proposal.

[2] 86 Fed. Reg. at 45775.

SBS with any counterparty, while there is no such explicit requirement under Swiss law.[3] However, this documentation requirement is intended to ensure parties always have legal certainty regarding their contractual obligations to each other, which is addressed under Swiss law by various documentation-related requirements as listed in the Swiss Application. We acknowledge that in very limited instances, key terms may be documented in a confirmation shortly after an oral agreement, but in this regard, we note that the confirmation requirement under Swiss law – which the Commission has found comparable to the Exchange Act trade acknowledgement and verification requirement – achieves the same regulatory objective, ensuring that counterparties are aware of the key terms of their transactions consistent with the goals of Exchange Act rule 15Fi-5.[4]

As a particular example of how various aspects of Swiss law achieve comparable regulatory objective as a Commission trading relationship documentation requirement does even without the same explicit mandate, we highlight Exchange Act rule 15Fi-5(b)(4), which requires written documentation on the process for valuing each SBS for purposes of complying with the margin requirements under Section 15F(e) of the Exchange Act and the risk-management requirements under Section 15F(j) of the Exchange Act. As described in more detail in the Swiss Application,[5] while Swiss law does not specifically require Covered Entities to agree with counterparties on the process for valuing each SBS, it does impose an obligation on a Covered Entity to perform daily internal valuations for risk management purposes according to processes prescribed by Swiss law. The Covered Entity then must communicate these internal valuations to, and reconcile them with, its counterparties as part of the portfolio reconciliation process. Any potential valuation discrepancies can be resolved pursuant to the pre-agreed upon dispute resolution process as mandated under Swiss law. In addition, these internal valuations are used for calculating variation margin, and reported to trade repositories. Thus, while the mechanism for documenting SBS valuation processes under Swiss law is different from the Commission's requirement, the regulatory outcome – that parties will in practice agree on how SBS are valued in connection with their risk management and margin obligations – is similar under both regimes. Further, allowing a Covered Entity to apply substituted compliance with respect to the valuation documentation under Exchange Act rule 15Fi-5(b)(4) would be consistent with the Commission's approach in the proposed or final substituted compliance determinations with respect to entities located in certain EU jurisdictions[6], which are subject to EU law requirements that are almost identical to those under Swiss law.[7]

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[3] Id.

[4] Exchange Act 15Fi-5(b)(2); 85 Fed Reg. at 6372 ("[A]ll trade acknowledgements and verifications of security-based swap transactions required under Rule 15Fi– 2 will be deemed to be security-based swap trading relationship documentation, as they often may contain one or more terms contemplated by the policies and procedures required by Rule 15Fi–5.").

[5] See Swiss Application, Section II.1.c., Question 3.

[6] See, e.g., 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 (the "**German Order**") Exchange Act Release No. 34–90765, 85 Fed. Reg. 85686, 85698 (Dec. 29, 2020);

[7] See Art. 11 Regulation (EU) No 648/2012; Art. 13, 15, 17 and 18 Commission Delegated Regulation (EU) No 149/2013.

The Commission has recognized that a rigid, formalistic approach to trading relationship documentation is inappropriate and that the Commission should consider the benefits of imposing additional documentation requirements as weighed against existing requirements under other regulatory regimes.[8] Accordingly, we would suggest that the Commission recognize that the numerous documentation requirements under Swiss law would significantly diminish any added benefit of applying the Commission's trading relationship documentation requirement, and the minimal benefit of those additional requirements would be disproportionate to the burden that would be incurred on the Covered Entities.

If the Commission nevertheless decides against granting substituted compliance with respect to Exchange Act rule 15Fi-5, we would request that the Commission provide relief to the Covered Entities from having to comply with Exchange Act rule 15Fi-5(b)(5) with respect to Covered Entities' non-U.S. counterparties, because such a relief would be consistent with the rule's goal of "enhancing transparency and legal certainty regarding each party's rights and obligations under the transaction."[9]

Exchange Act rule 15Fi-5(b)(5) imposes requirements regarding disclosure about counterparty status as insured depository institution or financial company under U.S. law and the applicability and effect of U.S. insolvency regimes. The mere fact that Swiss laws do not require the same disclosure does not mean that those laws, which require documentation of the parties' rights and obligations, do not provide adequate transparency and legal certainty. Indeed, for SBS between a Covered Entity and a non-U.S. person, requiring disclosures regarding the status of either of the parties as an insured depository institution or financial company and the potential applicability of U.S. insolvency regimes is more likely to reduce legal certainty because a Covered Entity's non-U.S. counterparties will never be insured depository institutions or financial companies or are improbable to become subject to U.S. insolvency regimes. The receipt of such disclosure is therefore likely to foster confusion (e.g., regarding the territorial scope of those U.S. insolvency regimes). Applying Exchange Act rule 15Fi-5(b)(5) to a Covered Entity with respect to its non-U.S. counterparties will also raise legal and transactional costs to both sides without any meaningful regulatory benefit.

Further, we note that providing relief to the Covered Entities with respect to Exchange Act rule 15Fi-5(b)(5) would be consistent with the Commission's approach in the proposed or final substituted compliance determinations with respect to entities located in certain EU jurisdictions, in which the Commission has explicitly recognized that while the EU rules are not comparable to Exchange Act rule 15Fi-5(b)(5), allowing the relying SBS entities to not apply

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[8] When the Commission finalized Exchange Act rule 15Fi-5(b)(1), it removed a proposed requirement with respect to documentation of terms governing applicable regulatory reporting obligations because "such requirement would introduce additional burdens on SBS Entities, which . . . were not justified in light of the fact that the expected benefits . . . were already addressed by other requirements, namely in certain aspects of Regulation SBSR." Exchange Act Release No. 34–87782, 85 Fed. Reg. 6359, 6372 (Feb. 4, 2020)

[9] 85 Fed. Reg. at 6361.

Exchange Act rule 15Fi-5(b)(5) with their non-U.S. counterparties would not preclude a comparable regulatory outcome.[10]

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We appreciate the opportunity to comment on the Proposal and the Commission's consideration of our views. We look forward to continuing dialogue with the Commission regarding substituted compliance. If you have questions or would like additional information, please contact [*UBS/CS contact*], at [*phone number*] or [*email address*]
Very truly yours,

/S/ Gordon Kiesling
Managing Director
UBS AG

/S/ Thomas Bischof
Managing Director
UBS AG

/S/ Maria Chiodi
Managing Director
Credit Suisse AG

/S/ Drew Shoemaker
Managing Director
Credit Suisse AG

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

[10] See, e.g., 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 French Republic (the "**French Order**"), Exchange Act Release No. 34–92484, 86 Fed. Reg. 41623, n. 136 (Aug. 2, 2021); German Order , 85 Fed. Reg. at 85690, n. 36; Notice of Substituted Compliance Application Submitted by the Spanish 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 Kingdom of Spain; Proposed Order (the "**Spanish Proposal**"), Exchange Act Release No. 34–92716, 86 Fed. Reg. 47668, 47674, n. 66 (Aug. 26, 2021).

Annex: Suggested Technical Corrections Regarding Swiss Law

We recommend that the Commission makes the following technical corrections to the Proposed Order regarding certain references to the Swiss law:

Proposed Order Provision	Suggested Textual Changes	Explanations
(a)(2)	(2) *"Counterparty" status*. For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of FinMIA and FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of **whether** the Covered Entity's counterparty is a ''counterparty'' for purposes of FinMIA article 93, or otherwise is described by the relevant language of that provision.	N/A
(a)(6)	(6) *Covered Entity as "category 1."* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of FINMA Circular 2017/1, the Covered Entity is supervised as "category 1," as defined in BO articles 2(2) and 2(3) and BO Annex 3, or otherwise ~~are~~ **is** described by the relevant language of those provisions.	N/A
(d)(1)(i)(E)	(E) The requirements of Exchange Act rule 18a–5(b)(5), provided that the Covered Entity is subject to and complies with the requirements of ~~FMIO~~ **FinMIA** article 38; FinIA article 50; FMIO–FINMA article 1; CO article 958f	FinMIA article 38 covers recordkeeping duty of the Covered Firms, while FMIO Article 38 is a provision that applies to organized trading facilities.
(d)(1)(i)(G)	(G) The requirements of Exchange Act rule 18a–5(b)(7), provided that the Covered Entity is subject to and complies with the requirements of ~~FMIO~~ **FinMIA** article 38; FinIA article 50; FMIO–FINMA article 1; FMIO annex 2; FinMIA articles 104 and 106; AMLA article 3; CO article 958f	Same as above.

Proposed Order Provision	Suggested Textual Changes	Explanations
(d)(1)(i)(H)	(H) The requirements of Exchange Act rule 18a–5(b)(8), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12; ~~**CO article 330a;**~~ FINMA Circular 2008/ 21, Annex 3, margins 30–33;	CO article 330a does not directly apply to records, but rather provides for an employee's right to obtain a letter of recommendation. Additionally, this provision only concerns rights arising out of employment relationships under Swiss law and is not applicable outside of Switzerland.
(d)(2)(i)(H)	(H) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12; ~~**CO article 330a;**~~ FINMA Circular 2008/ 21, Annex 3, margins 30–33;	Same as above.
(d)(2)(i)(G)*(1)*	(G) The requirements of Exchange Act rule 18a–6(c), provided that: *(1)* The Covered Entity is subject to and complies with the requirements of BA article 3; BO article 12; CO article~~**s 686 and**~~ 958f; and	CO article 686 (Registration of the shareholders in the share register) applies only to shares of companies incorporated in Switzerland.
(d)(2)(i)(I)	(I) The requirements of Exchange Act rule 18a–6(d)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of BA article 3; BO article 12; CO article 958f; FINMA Circular 2008/21 margins 122, 128, ~~**131**~~**132**, and Appendix 2;	The Swiss Application incorrectly cited FINMA Circular 2008/21 margin 131; the reference should be to margin 132 instead (margin 131 has been repealed).