R É P U B L I Q U E F R A N Ç A I S E

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

ACPR
BANQUE DE FRANCE

The Chairman

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
United States of America

December 9, 2020

Subject: Application for Substituted Compliance for French Security-Based Swap Dealers and Major Security-Based Swap Participants

Dear Ms Countryman,

We, as Chairmen of, respectively, the French *Autorité des Marchés Financiers* ("AMF") and the French *Autorité de Contrôle Prudentiel et de Résolution* ("ACPR") hereby formally file this application to request that the Securities and Exchange Commission ("SEC") make a determination (a "substituted compliance determination") pursuant to Rule 3a71-6(a) under the Securities Exchange Act of 1934 ("Exchange Act") that compliance with French law requirements specified below by the class of market participants described below may satisfy the corresponding requirements applicable to a security-based swap dealer or major security-based swap participant registered with the SEC that is not a U.S. person (together, "non-U.S. SBS entities").

The present application relates to French law requirements applicable to investment firms and credit institutions that are authorized by the ACPR after approval by the AMF of their programme of operations, in each case to provide investment services or perform investment activities in France (each, a "covered entity"). This application is submitted to the SEC on behalf of the AMF and ACPR, the financial regulatory authorities that supervise the activities of the non-U.S. SBS entities in France.

The AMF and ACPR believe that the French law requirements referenced above are comparable to the following areas of the Exchange Act and the rules and regulations thereunder applicable to non-U.S. SBS entities:

- Risk control requirements: capital, margin, risk management systems, trade acknowledgment and verification, portfolio reconciliation, portfolio compression and trading relationship documentation requirements
- Recordkeeping and reporting requirements: record creation, record maintenance, reporting and notice requirements
- Internal supervision and compliance requirements: supervision, conflict of interest and chief compliance officer requirements

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- Counterparty protection requirements: fair and balance communications, material risks and characteristics disclosure, material incentives or conflicts of interest disclosure, daily mark disclosure, "know your counterparty," suitability and clearing rights disclosure requirements

Further details regarding the specific Exchange Act provisions and rules for which we request substituted compliance, as well as a description of the European and French law requirements that are comparable to such Exchange Act provisions and rules are included in Annex 1, attached to this letter.

Annex 2 contains information relevant to the SEC's analysis of the AMF and ACPR and ECB's supervisory compliance program and enforcement authority with respect to the European and French law requirements listed in Annex 1.

Finally, in connection with the requirements set out in Rule 3a71-6(c)(3) regarding the SEC's access to books and records and onsite inspections and examinations, the AMF and ACPR confirm that there are no laws or policies in France or the European Union (see below with respect to the GDPR (as defined below) and French blocking statute and professional secrecy laws) that would impede the ability of a covered entity to, under the terms of a memorandum of understanding to be executed between SEC, AMF and ACPR, provide the SEC prompt access to its books and records or submit to onsite inspection and examination by the SEC.

With respect to the Regulation (EU) No. 2016/279 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR"), the AMF and ACPR have reached an understanding in principle that could be included in a substituted compliance memorandum of understanding and other arrangements, required by Rule 3a71-6(a)(2)(ii) under the Exchange Act, to be executed concurrently with the substituted compliance order.

With respect to the French Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to natural persons or legal entities, as amended by French Act No. 80-538 dated July 16, 1980 (the French blocking statute) and Articles L511-33 and L531-12 of the French Monetary and Financial Code (the French professional secrecy laws), the AMF and ACPR confirm that, if the SEC, AMF and ACPR enter into a memorandum of understanding fulfilling the cooperation agreement requirements set out in Article L. 632-7 of the French Monetary and Financial Code, with a view to address supervisory and enforcement cooperation and other matters arising under the substituted compliance determination, and/or a memorandum of understanding fulfilling the cooperation agreement requirements set out in Article L. 632-7 of the French Monetary and Financial Code, with a view to address supervisory cooperation in the oversight of covered entities, those laws would not impede the ability of a covered entity to provide the SEC prompt access to its books and records or submit to an onsite inspection or examination by the SEC.

Finally, the AMF notes that it has experience working with the SEC and its staff on supervisory and enforcement matters in connection with the regulation of securities and derivatives markets.

This letter also intends to officially replace the application of the ACPR and AMF of 6 November 2020 further to SEC's request to only have one application per jurisdiction for both banks and non-bank firms.

Yours sincerely,

Robert OPHÈLE

Denis BEAU

Attachments:

- Annex 1: substituted compliance comparability assessment of the relevant provisions and rules.
- Annex 2: items to be addressed in Element 4.

March 11, 2020

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Comparability Assessment of Certain Securities and Exchange Commission and EU Requirements Applicable to Security-Based Swap Dealers pursuant to SEC Staff Guidance on Substituted Compliance Applications

Master Chart on Substituted Compliance for Security-Based Swap Dealers – SEC Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Determinations dated December 23, 2019[1] (the **SEC Guidance**)

The purpose of this chart is to facilitate applications to the SEC for a substituted compliance determination with respect to the EU in relation to the SEC requirements contained in the SEC Guidance. The SEC Guidance provides detail on the approach by which SEC Staff will assess substituted compliance applications and poses questions for applicants to consider regarding the regulatory interests reflected in the relevant foreign requirements and asks how those are comparable to the interests associated with the analogous requirements under the Exchange Act. The chart below summarizes the relevant SEC requirements (including Exchange Act requirements) applicable to security-based swap dealers (**dealers**) without prudential regulators (i.e. nonbanks) and with prudential regulators (i.e. banks), in accordance with the discussion of these requirements in the SEC Guidance, and provides a summary of the relevant comparable EU requirements. The chart is organized by the regulatory categories set out in the SEC Guidance. This chart does not include category five of the SEC Guidance.

Throughout column 1 of this chart, requirements applicable to (i) all dealers are denoted in standard text, (ii) only dealers without prudential regulators (i.e. nonbanks) are denoted in bold text, and (iii) only dealers with prudential regulators (i.e. banks) are denoted in italicized text. Although certain SEC requirements may apply differently to banks and nonbanks, unless otherwise stated in column 2 or column 3, the analogous EU requirements apply equally to both banks and nonbanks.

Terms used in the chart are defined in the Glossary in Annex II.

Approach

This chart is organized following the order of the questions in the SEC Guidance. Column 1 sets out the relevant SEC requirements and a summary of the SEC's policy goals, generally tracking closely the language provided in the SEC Guidance. These are followed by the EU law requirements, and a summary of the EU's policy goals, that correspond to the SEC requirements (column 2). Finally, an assessment of the comparability of outcomes (or of requirements, where appropriate) is set out in the third column.[2]

Statements on EU law requirements and policy goals are drafted on the basis of requirements that apply to dealers when established in the EU (i.e. a direct comparison is made between how the US regime applies to dealers and how the EU regime applies to equivalent types of EU firms).

Regulation of EU firms in a comparable position to dealers

Scope of EU legislation

The activities of dealers established in the EU in relation to security-based swaps is regulated in the EU primarily in accordance with five sets of legislation:

[1] SEC Staff Guidance (Dec. 23, 2019), *available at* https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf.

[2] We note that comparability of outcomes alone is sufficient under the SEC's holistic approach to assessing substituted compliance because such approach "will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity." *See* SEC Guidance at p. 3 (quoting Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30074 (May 13,2016) (**Business Conduct Adopting Release**) *available at* https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf. Comparability of requirements is included, where applicable, for completeness.

1. the Markets in Financial Instruments Regulation (**MiFIR**) and the recast Markets in Financial Instruments Directive (**MiFID**) (also known as "MiFID II"): MiFIR is a regulation and MiFID is a directive which both entered into force on July 2, 2014 (see below for the distinction between regulations and directives as a matter of EU law).

   MiFIR and MiFID apply to "investment firms", which comprise any legal person whose regular occupation or business is the provision of one or more investment services to third-parties and/or the performance of one or more investment activities on a professional basis. Investment services and activities means any of the services and activities listed in Section A of Annex I of MiFID (e.g. dealing as principal or agent, advising on transactions) relating to any of the instruments listed in Section C of Annex I of MiFID. Section C of Annex 1 refers explicitly to swaps as well as "other derivative financial instruments".

   Credit institutions are also subject to MiFIR and MiFID when providing investment services or conducting investment activities and, accordingly, EU legislation that is stated in this chart to apply to investment firms also applies to Credit Institutions.

2. the European Market Infrastructure Regulation (**EMIR**): EMIR is a regulation which entered into force on August 16, 2012.

   EMIR implements various of the G20 commitments to reform OTC derivatives markets in an effort to promote greater stability and transparency. EMIR applies a G20 mandatory clearing obligation and bilateral risk-management requirements for persons dealing in 'over-the-counter' (**OTC**) derivatives and reporting requirements for derivatives contracts, as well as establishing requirements for central counterparties (**CCPs**), clearing members, trade repositories and, in some respects, trading venues. EMIR applies its requirements differently in certain respects to 'financial counterparties' (**FCs**) and 'non-financial counterparties' (**NFCs**).

3. the Capital Requirements Regulation (**CRR**) and Capital Requirements Directive (**CRD IV**): CRR is a regulation and CRD IV is a directive, which entered into force on June 28, 2013 and July 17, 2013, respectively.

   CRR and CRD IV establish prudential and supervisory requirements for "institutions", which comprise "credit institutions" and certain "investment firms" (together **CRR Firms**). Relevant investment firms include those with permission to deal on own account in and/or underwrite the placing of MiFID financial instruments. CRR and CRD IV together implement the Basel framework in the EU. The term dealing on own account is defined to capture "trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments" (art 4(1)(6)), and extended by recital 24 to include dealing as matched or riskless principal. Any investment firm that will be party as principal to a security based swap will be dealing on own account.

4. the Bank Recovery and Resolution Directive (**BRRD**): BRRD is a directive which entered into force on January 1, 2015.

   BRRD establishes rules and procedures relating to the recovery and resolution of CRR Firms (among other entities – despite the reference to "bank" in this directive's common name, it applies to both Credit Institutions and Investment Firms).

5. the Market Abuse Regulation (**MAR**) and the Criminal Sanctions for Market Abuse Directive (**CSMAD**): MAR is a regulation and CSMAD is a directive which both entered into force on July 2, 2014.

   MAR establishes restrictions on insider dealing and market manipulation and disclosure requirements for issuers of financial instruments. CSMAD establishes related criminal sanctions.[3]

EU member states can implement EU legislative requirements in a more onerous manner, and/or can impose additional requirements, through member state law (these are known as "gold-plating" of EU requirements).

Application of EU legislation

The various parts of EU legislation considered in this chart each apply where instruments are MiFID financial instruments and each cover different topics in relation to the relevant subject matter and are designed to operate in conjunction with each other. Transactions will be subject to EMIR, MiFIR, MIFID, CRR, CRD IV, BRRD, MAR and CSMAD requirements except where a particular transaction is exempt from a particular regime are specifically noted in the chart below. EU legislation does not vary on a product-specific basis (within the broader set of instruments treated in EU law as MiFID financial instruments) – i.e. there is no distinction between what would be categorized in the US as swaps and security-based swaps.

EU regulations are binding with direct effect in all EU member states (i.e. no transposition into the national law of each EU member state is required to give effect to them). All member states of the EU are legally bound to implement the provisions of EU directives, in accordance with the Treaty on the Functioning of the European Union, by transposing them into their national law. For each directive referred to, we have assumed that each EU member state has completed the process of transposing that directive into its national law on identical terms set out in the directive and such transposed law is in full force and effect.

MiFIR, MiFID, EMIR, CRR, CRD IV, MAR and CSMAD are so-called 'Level 1' legislation. These are supplemented by a range of subordinate 'Level 2' legislation and 'Level 3' guidance. All such legislation and guidance is referenced in this chart where relevant.

The EU regulations and directives considered in this document are intended to establish a high degree of minimum harmonisation and consistency across the laws of EU member states, with only limited scope for local discretion or deviation. This chart is limited to matters of EU law and does not address the laws of each EU member state.

All of the EU legislation considered in this chart is currently in force. This chart does not address upcoming or potential future revisions to such EU legislation.

Application to dealers covered in this chart

We would expect that the dealers would generally be treated by the EU regime as:

[3] CSMAD does not apply in the UK and Denmark.

- ***For the purposes of CRR and CRD IV:*** CRR Firms (either Credit Institutions or Investment Firms, as appropriate – in the context of this chart, there are some limited cases where CRR distinguishes between Credit Institutions and Investment Firms: these points have been expressly noted in the relevant responses;

- ***For the purposes of MiFIR and MiFID:*** Investment Firms; and

- ***For the purposes of EMIR:*** Financial Counterparties.

We have expressly noted in the relevant responses how MAR and CSMAD apply to dealers.

Some obligations under EMIR are also affected by EMIR's so-called 'clearing threshold'. FCs that exceed the clearing threshold (**FC+s**) are subject to the mandatory clearing requirement, whereas FCs that do not exceed the clearing threshold (**FC-s**) are not. We have noted where this is relevant in the chart. Whether a dealer would be a FC+ or an FC- will depend upon their individual trading activity and so no statement of general application can be made. How the clearing threshold applies to counterparties is dealt with in each relevant response.

Scope of Instruments

Pursuant to Exchange Act section 3(68), security-based swaps encompass any agreement, contract or transaction that is a swap as defined under section 1a of the Exchange Act (without regard to paragraph (47)(B)(x) of such section) and is based on (i) an index that is a narrow-based security index, including any interests therein or on the value thereof; (ii) a single security or loan, including any interest therein or on the value thereof; or (iii) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.[4]

For the rules discussed in this chart, we would expect security-based-swaps to fall within the scope of MiFID financial instruments and that the provisions of EMIR would apply to security-based-swaps.

[4] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c.pdf

1. Category: Risk Control Requirements

a. Executive Summary

The risk control requirements of the Exchange Act promote market stability by requiring that registered entities have adequate financial resources and follow risk mitigation and documentation practices that are appropriate to manage the market, counterparty, operational and legal risks associated with their security-based swap business.

b. Subcategory: Capital Requirements for Nonbank[5] Firms

See separate analysis.

[5] Note that the SEC's capital and margin rules (including certain risk-management system rules) only apply to dealers that do not have a prudential regulator, and that prudential regulators are responsible for capital and margin rules applicable to dealers that are banks. *See* Exchange Act section 15F(e)(1) [15 U.S.C. 78o-10(e)(1)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf.

c. Subcategory: Margin Requirements for Nonbank Firms

The SEC margin requirements help ensure, by providing adequate liquidity, that counterparty default does not impair the complying nonbank firm, and more generally help ensure that default does not result in wider issues within the market.

Overview of the scope of the EU margin rules

EMIR implements various G20 commitments to reform OTC derivatives markets in an effort to promote greater financial stability and transparency. Pursuant to EMIR, FCs and NFC+s are required to exchange margin in respect of OTC derivative contracts not cleared by a CCP (to the extent they transact with each other or non-EEA equivalents and, in certain cases, if two non-EEA equivalents transact with each other). EMIR, Article 11.

The detail of the EMIR margin requirements is set out in the EMIR Margin RTS which are designed to be consistent with the BCBS-IOSCO Global Standards on Margin.

The EMIR Margin RTS mandate the exchange of: (i) "variation margin" to reflect the results of the daily marking-to-market or marking-to-model of outstanding contracts, and (ii) "initial margin" to cover its current and potential future exposure in the interval between the last margin exchange and the liquidation of positions or hedging of market risk following a default of the other counterparty. EMIR Margin RTS, Articles 1(1) and 1(2).

Variation margin requirements have now been phased in for all in-scope entities. EMIR Margin RTS, Article 37.

Initial margin requirements are in the process of being phased in but will only apply if each counterparty's AANA outstanding on a group basis is above the relevant threshold. Phase-in has already occurred in respect of Phases 1 to 4 (i.e. in instances where the AANA of both counterparties on a group basis is greater than EUR 0.75 trillion). The Revised EMIR Margin RTS will amend the timeframe for Phase 5 implementation and include a new Phase 6 implementation date (where the AANA of both counterparties on a group basis is greater than EUR 50 billion and EUR 8 billion respectively) in line with recent revisions to the BCBS-IOSCO Global Standards on Margin. EMIR Margin RTS, Article 36 as amended by the Revised EMIR Margin RTS.

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)**	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
Models permitted: **The SEC's rules for nonbank dealers permit the nonbank dealer to calculate initial margin using either the standardized approach[6] to calculating initial margin or an approved model (including an industry standard model).**	**Models permitted**: Counterparties shall calculate the amount of initial margin to be collected using either a standardized approach or an initial margin model or both (but if both are used in relation to the same netting set, they must be applied consistently for each non-centrally cleared OTC derivative contract). If agreed with the other party, each party can apply a different approach. When one or both parties rely on an initial margin model, they shall agree on the model		**Comparability of outcomes**: The EU margin requirements relating to minimum standards for models provide a comparable regulatory outcome to the SEC margin model requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(d)(2) and the EMIR Margin RTS are comparable in that each permit the use of models and impose comparable minimum standards on such models with the overarching aim of reducing risk. While the SEC Guidance does not require that the EU have

[6] Under the standardized approach, if the dealer is not also registered as a broker-dealer, it must calculate initial margin using standardized haircuts specified as part of the capital provisions of rule 18a-1. Exchange Act rule 18a-3(d)(1) [17 CFR 240.18a-3(d)(1)]. For credit default swaps, the stand-alone dealer must use the calculation method specified in Exchange Act rule 18a-1(c)(1)(vi)(B)(1) [17 CFR 240.18a-1(c)(1)(vi)(B)(1)]; for other security-based swaps, the standalone dealer must use the calculation method specified in Exchange Act rule 18a-1(c)(1)(vi)(B)(2) [17 CFR 240.18a-1(c)(1)(vi)(B)(2)].

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)**	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
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	developed. EMIR Margin RTS, Article 11. The initial margin model may be developed by any of, or both, counterparties or by a third-party agent. EMIR Margin RTS, Article 14.		analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are comparable to analogous SEC requirements in the following ways:
Model authorization: **Firms seeking to use a model shall apply for authorization to use models (including an industry standard model) to calculate initial margin, subject**	**Model authorization:** Upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures		**Model authorization:** We note that Exchange Act rule 18a-3(d)(2) requires firms to apply for authorization to use models to calculate initial margin. The EU requirements

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to conditions addressing, inter alia, the associated confidence level, risk factors considered, and the use of empirical correlations.	relating to such model at any time. EMIR Margin RTS, Article 2(6). Currently, there is no EU requirement for regulators to validate initial margin models. However, we note that a new RTS mandated by EMIR Refit 2.1 which is expected to cover initial margin model approvals is expected to enter into effect during the course of 2020.[7]		currently do not require such an application. However, the EU requirements provide that, upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. EMIR Margin RTS, Article 2(6). While this is not the same as requiring specific pre-approval from a regulator, we note that the EC has represented to the CFTC in the context of the CFTC Substituted Compliance Decision on Margin on this point that competent authorities within the member state responsible for supervising FCs and NFC+s as

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			part of their on-going prudential regulation and supervision will enforce applicable legislation and control whether the models adopted by these entities comply with the requirements under the EU margin rules and that Article 12 of EMIR grants the competent authorities in each member state the authority to impose fines if EMIR rules are infringed. Consequently, the CFTC considered the rules to be comparable in outcome. *See* the CFTC Substituted Compliance Decision on Margin at 48403-48404. We note additionally that a new RTS which is expected to include a requirement for certain initial margin model approvals is

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			expected to enter into effect during the course of 2020.
Model standards: **For security-based swaps other than equity security-based swaps for a dealer, an acceptable model must use a 99%, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices. The model further must use risk factors sufficient to cover all the material price risks inherent in the positions for which the initial margin amount is being calculated, including foreign exchange or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate.**	**Model standards**: • Potential future exposure: Potential future exposure is an estimate of a one-tailed 99% confidence interval over an MPOR of at least ten days. EMIR Margin RTS, Article 15(1). • Initial margin models may only include non-centrally cleared OTC derivative contracts within the same netting set. Any diversification, hedging or risk offset within a netting set can only be applied to contracts within the same		**Model standards** • **Confidence level**. The confidence levels used to calculate the quantum of initial margin set forth in EMIR Margin RTS, Article 15(1) and Exchange Act rule 18a-3(d)(2)(i) are comparable. • **Account positions**. EMIR Margin RTS, Article 17(1) and (2) restrict models from including contracts with different underlying asset classes. These requirements

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)**	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
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Empirical correlations may be recognized by the model within each broad risk category, but not across broad risk categories. *See* Exchange Act rule 18a-3(d)(2)(i) [17 CFR 240.18a-3(d)(2)(i)]. [8] **For equity security-based swaps, a dealer (other than a full-purpose broker-dealer) may apply for authorization to use models to calculate initial margin, subject to the above requirements, provided the counterparty's account does not hold equity security positions other than equity security-based swaps and equity swaps. *See***	underlying asset class, not across asset classes. EMIR Margin RTS, Articles 17(1) and (2). • Initial margin models should capture all significant risks arising from entering into non-centrally cleared OTC derivative contracts included in the netting set. The model performance should be continuously monitored, including back testing the model at least every three months. EMIR Margin RTS, Article 14. • Initial margin calculations: For the purposes of initial margin model calculations,		are comparable to Exchange Act rule 18a-3(d)(2)(i). • **Risk factors**. The risk factors required to be considered in creating models set forth in EMIR Margin RTS, Article 14 are comparable to those set forth in Exchange Act rule 18a-3(d)(2)(i).

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

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Exchange Act rule 18a-3(d)(2)(ii) [17 CFR 240.18a-3(d)(2)(ii)]. [9]	any correlations between the value of the unsecured exposure and the collateral must not be taken into account. EMIR Margin RTS, Article 11. • Historical observation period requirements: (i) Equally weighted data from a period of three to five years, (ii) at least 25% of data must be representative of period of significant financial stress. EMIR Margin RTS, Articles 16(1) and 16(2). • Where stressed data referred to in Article 16(2) of the EMIR Margin RTS does not constitute at least 25% of the		

[9] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

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	data used in the initial margin model, the least recent data of the historical data referred to in Article 16(1) of the EMIR Margin RTS shall be replaced by data from a period of significant financial stress, until the overall proportion of stressed data is at least 25% of the overall data used in the initial margin model. EMIR Margin RTS, Article 16(3). **Model Risk Management**: • Counterparties are required to establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including		

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	all of the following: (a) an initial validation of the model by suitably qualified persons who are independent from the persons developing the model, (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually, and (c) a regular audit process to assess the following: (i) the integrity and reliability of the data sources, (ii) the management information system used to run the model, (iii) the accuracy and completeness of data used, and (iv) the accuracy and appropriateness of volatility and correlation assumptions.		

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)**	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	EMIR Margin RTS, Article 18(1). • The documentation of the risk management procedures relating to the initial margin model shall meet all of the following conditions: (a) it shall allow a knowledgeable third-party to understand the design and operational detail of the initial margin model, (b) it shall contain the key assumptions and the limitations of the initial margin model, and (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid. EMIR Margin RTS, Article 18(2).		

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level. **SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)**	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
c. Subcategory: Margin Requirements for Nonbank Firms			
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?			
	• Counterparties are required to document all changes to the initial margin model. That documentation shall also detail the results of the validations carried out after those changes. EMIR Margin RTS, Article 18(3). • Counterparties must establish, apply and document risk management procedures which include procedures providing for or specifying the calculation and collection of margin. Article 2(2)(b) of the EMIR Margin RTS.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
Dealers may account for netting agreements when calculating collection and delivery amounts so long as:	A "netting set" is a set of non-centrally cleared OTC derivative contracts between two counterparties that is subject to a legally enforceable bilateral netting agreement. EMIR Margin RTS, Article 1(3). The amount of variation margin to be collected by a counterparty shall be the aggregation of the values calculated in accordance with Article 11(2) of EMIR of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted. EMIR Margin RTS, Article 10. Counterparties shall calculate the amount of initial margin to be collected using either the standardized approach set out in Annex IV of the EMIR Margin RTS		**<u>Comparability of outcomes</u>**: The EU's requirements for netting agreements provide a comparable regulatory outcome to the netting agreement prerequisites to calculating margin set forth in the SEC's requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(5), the EMIR Margin RTS Articles 1(3), 2, 9, 10 and 11 and Annex IV and CRR Articles 295-298 are comparable in that each provides for margin calculations to be made by reference to netting agreements but only if such netting agreements are legally enforceable agreements documenting the key terms of the netting arrangement. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
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2. What are the prerequisites for netting agreements in connection with calculating margin?			
	or initial margin models, in each case, by reference to netting sets. EMIR Margin RTS, Articles 9 and 11 and Annex IV.		the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are comparable to analogous SEC requirements in the following ways:
Enforceability: **(i) the netting agreement is enforceable in each relevant jurisdiction, including in insolvency proceedings;**	**Enforceability**: **<u>EMIR Margin RTS</u>** Where counterparties enter into a netting or exchange of collateral agreement, they must perform an independent legal review of the enforceability of those agreements (which shall be considered satisfied in relation to the netting agreement where the agreement is recognized in accordance with Article 296 of the CRR). That review may be conducted by an internal independent unit or an		**Enforceability**: The enforceability of netting agreements required by EMIR Margin RTS, Articles 2(3) and 2(4) and Articles 296(2)(b) and 297 CRR are together comparable to Exchange Act rule 18a-3(c)(5) as each requires netting agreements to be enforceable, including in insolvency proceedings.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	independent third-party. EMIR Margin RTS, Article 2(3). Counterparties must establish policies to assess on a continuous basis the enforceability of the netting and exchange of collateral agreements that they enter into. EMIR Margin RTS, Article 2(4). **<u>CRR</u>** Investment Firms must obtain and provide to their regulator a written and reasoned legal opinion to the effect that, in the event of a legal challenge of the netting agreement, the relevant Investment Firm's claims and obligations would not exceed the single net sum determined under the netting agreement. The legal opinion must refer to the applicable law: (i) the jurisdiction in which the counterparty is incorporated; (ii) if a branch of an undertaking is involved, which is located in a country other than		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	that where the undertaking is incorporated, the jurisdiction in which the branch is located; (iii) the jurisdiction whose law governs the individual transactions included in the netting agreement; and (iv) the jurisdiction whose law governs any contract or agreement necessary to effect the contractual netting. Article 296(2)(b) CRR. Investment Firms must establish and maintain procedures to ensure that the legal validity and enforceability of their contractual netting is reviewed in the light of changes in the law of relevant jurisdictions referred to in Article 296(2)(b) of the CRR. Article 297(1) CRR.		
Determinability: **(ii) the gross receivables and gross payables under the netting**	**Determinability:** **<u>EMIR Margin RTS</u>** The EMIR Margin RTS requires that the terms of all necessary		**Determinability**: The risk management procedures for determining netting agreement terms and obligations set forth in EMIR Margin RTS,

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
agreement are determinable at any time; and	agreements (including, as relevant, the terms of any netting agreement and the terms of any exchange of collateral agreement) must document (at least): (a) any payment obligations arising between counterparties, (b) the conditions for netting payment obligations, (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts, (d) all calculation methods used in relation to payment obligations, (e) the conditions for netting payment obligations upon termination, (f) the transfer of rights and obligations upon termination, and (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(2)(g). **CRR**		Article 2(2)(g) and CRR Article 286(7) are comparable to the determinability requirements set forth in Exchange Act rule 18a-3(c)(5)(ii) as each requires gross payment obligations and exposures to be determinable.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	Investment Firms must measure current exposure gross and net of collateral. Article 286(7) CRR.		
Risk Management: **(iii) for internal risk management purposes, the dealer monitors and controls its exposure to the counterparty on a net basis. Exchange Act rule 18a-3(c)(5) [17 CFR 240.18a-3(c)(5)].**[10]	**Risk Management**: In order to recognize a derivatives netting agreement as being risk-reducing, Investment Firms must us a type of agreement that has been deemed suitable by their regulator. Article 295 CRR. Investment Firms must measure current exposure gross and net of collateral. Article 286(7) CRR. Investment Firms must factor the effects of netting into its measurement of each counterparty's aggregate credit risk exposure and must manage its CCR on the basis of those effects of that measurement. Article 297(3) CRR.		**Risk Management**: The internal risk management procedures required by CRR Articles 111(2), 295, 286(7), 297(3) and 298(1) are comparable to Exchange Act rule 18a-3(c)(5)(iii) as each requires that the dealer measures current exposures on a net basis, where permitted.

[10] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
2. What are the prerequisites for netting agreements in connection with calculating margin?			
	The exposure value of a derivative instrument is determined by taking into account the netting arrangement. Articles 111(2) and 298(1) CRR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
Calculating: **Nonbank dealers generally are required to calculate initial margin (or "potential future exposure") and variation margin (or "current exposure") as of the close of each business day for each counterparty account, although the calculations must be made more frequently "during periods of extreme volatility and for accounts with concentrated positions."**	**Calculating:** Counterparties must calculate variation margin at least on a daily basis. EMIR Margin RTS, Article 9(1). Counterparties are required to calculate initial margin no later than the business day following one of these events: (a) where a new non-centrally cleared OTC derivative contract is executed or added to the netting set, (b) where an existing non-centrally		**Comparability of outcomes**: **Calculating:** The EU margin requirements for calculating margin provide a comparable regulatory outcome to the SEC's margin calculation requirements. In particular, the regulatory outcomes pursued under the margin calculation requirements, Exchange Act rule 18a-3(c)(1) and EMIR Margin RTS, Article 9(1) are consistent in that

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
Exchange Act rule 18a-3(c)(6) [17 CFR 240.18a-3(c)(6)].[11]	cleared OTC derivative contract expires or is removed from the netting set, (c) where an existing non-centrally cleared OTC derivative contract triggers a payment or a delivery other than the posting and collecting of margins, (d) where the initial margin is calculated in accordance with the standardized approach and an existing contract is reclassified in terms of the asset category referred to by the EMIR Margin RTS as a result of reduced time to maturity, or (e) where no calculation has been performed in the preceding ten business days. EMIR Margin RTS, Article 9(2). Where two counterparties are located in the same time zone, the calculation is based on the netting set of the previous		each generally requires variation margin calculations to be made daily with provision for counterparties in different time zones. • In respect of initial margin, the SEC rule also requires calculation on a daily basis but the EMIR Margin RTS do not. *See* EMIR Margin RTS, Article 9(2). In this regard, we note however, that the CFTC margin rules mirror the SEC rules on this point and in the CFTC Substituted Compliance Decision on Margin, the EC has confirmed that the EMIR Margin RTS requirement to recalculate whenever there is a change to the netting set will in practice require dealer counterparties to recalculate daily and because of this the EC views the ten day allowance under Article

[11] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
	business day. EMIR Margin RTS, Article 9(3)(a). Where two counterparties are not located in the same time zone, the calculation is based on the transactions in the netting set which are entered into before 4:00 PM of the previous business day of the time zone where it is 4:00 PM. EMIR Margin RTS, Article 9(3)(b).		9(2)(e) of the EMIR Margin RTS as a backstop only and one that is likely to be exercised only in the case of a static portfolio. As set out in the CFTC Substituted Compliance Decision on Margin, the EC believes that as a result of these entities exchanging variation margin, and thereby eliminating current exposure, this difference will be mitigated. The CFTC has, therefore, determined that the EU rules are nonetheless comparable in outcome to the CFTC rules. *See* the CFTC Substituted Compliance Decision on Margin at 48405.
Collecting & Delivering: **No later than the close of business of the first business day following the day of the calculation, the dealer must:**	**Collecting & Delivering:** The amount of variation margin to be collected by a counterparty is the aggregation of the values calculated in accordance with Article 11(2) of EMIR of all contracts in the netting set,		**Collecting and Delivering**: The EU margin requirements for exchanging margin provide a comparable regulatory outcome to the SEC's margin collection and delivery requirements.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
– **Variation margin collection: Collect collateral in an amount equal to the dealer's current exposure to the counterparty. Exchange Act rule 18a-3(c)(1)(ii)(A)(1) [17 CFR 240.18a-3(c)(1)(ii)(A)(1)].[12]** – **Variation margin delivery: Deliver collateral in an amount equal to the counterparty's current exposure to the dealer, other than initial margin that the dealer collected. Exchange Act rule 18a-3(c)(1)(ii)(A)(2) [17**	minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted. EMIR, Article 11(2) and EMIR Margin RTS, Article 10. As already discussed above, counterparties calculate the amount of initial margin to be collected using either the standardized approach or initial margin models. EMIR Margin RTS, Article 11. The posting counterparty shall provide the variation margin as follows: (a) within the same business day of the calculation date; or (b) where certain conditions set out in Article 12(2) of the EMIR Margin RTS are met,[16] within two business days		In particular, the regulatory outcomes pursued under the initial and variation margin collection and delivery requirements, Exchange Act rules 18a-3(c)(1)(ii)(A) and 18a3(c)(1)(ii)(B), and EMIR Margin RTS Articles 10 to 13, are consistent in that each require that sufficient collateral be provided within a business day of calculation (where, in the context of calculation, we note different time zones are provided for). However, unlike the SEC rules, the EMIR Margin RTS, Articles 12(1) and 12(2) also allow for variation margin to be provided within two business days of the calculation date when certain conditions are met. In this regard, we note that the equivalent CFTC margin rule mirrors the SEC rule and that the

[12] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

[16] The provision of variation margin within two business of the calculation date may only be applied to the following: (a) netting sets comprising derivative contracts not subject to initial margin requirements in accordance with the EMIR Margin RTS, where the posting counterparty has provided, at or before the calculation date of the variation margin, an advance amount of eligible collateral

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
CFR 240.18a-3(c)(1)(ii)(A)(2)].[13] – **Initial margin collection: Collect collateral in an amount equal to the initial margin amount. Exchange Act rule 18a-3(c)(1)(ii)(B) [17 CFR 240.18a-3(c)(1)(ii)(B)].[14]** – **Initial margin delivery: The rule does not require dealers to deliver initial margin, but**	of the calculation date. EMIR Margin RTS, Article 12(1). In the event of a dispute over the amount of variation margin due, counterparties shall provide at least the part of the variation margin amount that is not being disputed within the original timeframe. EMIR Margin RTS, Article 12(3). The posting counterparty shall provide the initial margin within the same business day of the calculation date. EMIR Margin RTS, Article 13(2). In the event of a dispute over the amount of initial margin due, counterparties shall provide at		CFTC has taken the view that while the EMIR Margin RTS conditions to a delay in the exchange of variation margin do not make the EU's rule in this area the same as the CFTC margin rule, they do serve to mitigate the potential risks by increasing the initial margin's MPOR by the corresponding number of days associated with a delay in the exchange of variation margin and are, thus, comparable. *See* the CFTC Substituted Compliance Decision on Margin at 48405.

calculated in the same manner as that applicable to initial margins in accordance with Article 15 of the EMIR Margin RTS, for which the collecting counterparty has used a MPOR at least equal to the number of days in between and including the calculation date and the collection date; (b) netting sets comprising contracts subject to initial margin requirements in accordance with the EMIR Margin RTS, where the initial margin has been adjusted in one of the following ways: (i) by increasing the MPOR referred to in Article 15(2) of the EMIR Margin RTS by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) of the EMIR Margin RTS and the collection date determined in accordance with Article 12(1) of the EMIR Margin RTS; (ii) by increasing the initial margin calculated in accordance with the standardized approach referred to in Article 11 of the EMIR Margin RTS using an appropriate methodology taking into account a MPOR that is increased by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) of the EMIR Margin RTS and the collection date determined in accordance with Article 12(2) of the EMIR Margin RTS. For the purposes of point (a), in case no mechanism for segregation is in place between the two counterparties, those counterparties may offset the amounts to be provided.

[13] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

[14] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
3. What is the required frequency for calculating and collecting/delivering margin?			
does not prohibit the practice. **Margin can be collected or delivered on the second business day if the counterparty is located in another country and more than four time zones away. Exchange Act rule 18a-3(c)(1)(ii) [17 CFR 240.18a-3(c)(1)(ii)].[15]**	least the part of the initial margin amount that is not being disputed within the same business day of the calculation date determined in accordance with Article 9(3). EMIR Margin RTS, Article 13(3).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
Dealers must take prompt steps to liquidate positions in an account that does not meet the margin requirements to the extent necessary to eliminate the margin deficiency. Exchange	This is not discussed explicitly in requirements applicable to Investment Firms. However, Investment Firms' capital requirements are scaled to the volatility of collateral and CCR	**Risk management requirements**: French transposition of Article 74 of CRD IV is the following:	**<u>Comparability of outcomes</u>:** The EU requirements relating to risk management, position management and margin use provide a similar regulatory

[15] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
Act rule 18a-3(c)(7) [17 CFR 240.18a-3(c)(7)].[17]	risk management requirements also apply. Additionally, the risk management requirements that apply to Investment Firms and obligations in respect of position management and margin use are relevant in this context. In this regard, we note the following: **Capital levels and collateral volatility**: • The volatility of collateral held by Investment Firms is reflected in their capital requirements for credit risk mitigation and CCR purposes. Articles 224 and 285 CRR. Investment Firms that have permission to use internal modelling to calculate their CCR capital requirements are subject to enhanced risk management requirements, in particular, must take into	Article L.533-2-2 of the MFC provides that "Investment firms implement systems, strategies and procedures that are subject to regular internal control mentioned in Article L. 511-55 enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate risk, operational risk, liquidity risk and excessive leverage risk. Investment firms, particularly in view of their size, internal organization and activities, develop an internal capacity to assess the risks in question. They	outcome to the SEC requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(7) and MiFID, CRR, CRD IV and EMIR are comparable in that the risk posed to a non-defaulting party by a counterparty in default is required to be mitigated through capital requirements and risk management. A position that does not meet the margin requirements would be in default. The SEC's requirement to take prompt steps to liquidate positions in default is focused on the need to eliminate the margin deficiency – i.e. to reduce the risk posed to the non-defaulting party by the defaulting party. Although EU law does not require the termination of a defaulted position, or set a fixed time following default for termination

[17] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	account liquidity risks arising from prescribed events and shocks. Articles 286 and 290 CRR. **Risk management requirements**: • Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the firm. Article 23(1) MiFID Org Reg. • Investment Firms must have robust governance arrangements, which include (among other matters), effective processes to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound	use, if authorized by the Autorité de contrôle prudentiel et de résolution, an internal approach to determine the capital requirements appropriate to their situation. The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable investment firms to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Investment firms must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate liquidity buffers and have plans for restoring their liquidity. Parent companies of groups subject to supervision on a consolidated basis pursuant to	to occur, it adopts a comparable focus to Exchange Act rule 18a-3(c)(7) by requiring the appropriate risk management of a defaulted position. We also note that the absence of a requirement to liquidate positions in default does not negate the obligation to collect margin in respect of such positions and a failure to comply with such obligation would lead to regulatory breach – we assume in such a scenario the dealer would likely terminate or liquidate the positions in any event. In practice, to risk manage a defaulted position, the only options available to the non-defaulting party are to terminate (and realize the loss created in the margin shortfall) or to wait for additional margin to be provided. Whether an Investment Firm's risk management practices enable it

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
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4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	administrative and accounting procedures that are consistent with and promote sound and effective risk management. Article 74 CRD IV. **Position management requirements**: • Investment Firms must have internal methodologies that enable them to assess the credit risk of exposures. Article 79(b) CRD IV. Investment Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must set and monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. Investment Firms must revalue their trading book positions at least daily. Article 105(3) CRR. Investment Firms'	Article L. 613-20-1 shall ensure that the arrangements, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions of application of this article are set by *Arrêté* of the Minister in charge of the economy." Article L.533-29, I al. 1 of the MFC provides that "I.-Investment firms are required to comply with the obligations set forth in Articles L. 511-55 to L. 511-69. […]" Article L.511-55 al. 1 of the MFC provides that "Credit institutions and finance companies shall have a sound governance system, including a clear organization ensuring a well-defined, transparent and consistent division of responsibilities, effective procedures for the	to wait for additional margin to be provided will depend on its risk tolerance, the size of the position, the time since default and the circumstances of the situation. The EU law risk management requirements described would oblige an Investment Firm to terminate a position if this is required in order to give appropriate effect to these risk management principles. *See* Article 74 CRR and Article 23(1) MiFID Org Reg. The rigour with which these risk management requirements must be met is determined in part by the position management requirements. These ensure that the risk of defaulted positions is properly assessed. Investment Firms must closely, and at least daily, monitor their trading book positions, including in respect of credit risk, and that the costs of termination and closing out positions are taken into account

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	revaluation of trading book positions must account for valuation adjustments, including close-out costs and early termination. Article 105(10) CRR. **Margin use requirements for OTC derivatives**: • The non-defaulting counterparty must be able to liquidate assets collected as collateral as initial or variation margin in a sufficiently short time in order to protect against losses on non-centrally cleared OTC derivative contracts in the event of a counterparty default. These assets should therefore be highly liquid and should not be exposed to excessive credit, market or foreign exchange risk. EMIR Margin RTS, Recital (31).	detection, management, monitoring and reporting of the risks to which they are or could be exposed, an adequate internal control system, sound administrative and accounting procedures, remuneration policies and practices that enable and promote sound and effective risk management and, where appropriate, a preventive recovery plan as referred to in Article L. 613-35. […]" Article L.511-41-1-B of the MFC provides that: "Credit institutions and finance companies set up systems, strategies and procedures subject to regular internal control mentioned in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities.	as part of this position management. *See* Articles 79(b), 103, 103(b)(ii), 105(3) and 105(10) CRR. Finally, the margin use requirements ensure that an Investment Firm is able to give effect to its risk management strategy for defaulted positions. The margin use requirements for OTC derivatives achieve this by enabling an Investment Firm to terminate positions (if and when required) with minimum loss. *See* Recital (31) and Articles 2(2)(i), 7(5) and 19(1)(g) EMIR Margin RTS.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	Counterparties shall not use assets as eligible collateral where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty. EMIR Margin RTS, Article 7(5). The risk management procedures shall include procedures providing for or specifying the timely re-appropriation of collateral in the event of default by the posting counterparty from the collecting counterparty. EMIR Margin RTS, Article 2(2)(i). The risk management procedures shall include procedures providing for or specifying that initial margin is freely transferable to the posting counterparty in a timely manner on the default	These risks include in particular credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate fluctuation risk, operational risk, liquidity risk, excessive leverage risk and risks identified in the context of regularly implemented stress tests. Credit institutions and finance companies, taking into account their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the Autorité de contrôle prudentiel et de résolution, an internal approach to determine the capital requirements appropriate to their situation. The arrangements, strategies and procedures referred to in the first subparagraph may also be	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
	of the collecting counterparty. EMIR Margin RTS, Article 19(1)(g). The protections described above for OTC derivatives are not relevant for exchange-traded derivatives as these transactions must be cleared with a CCP and so the default of the counterparty has no direct effect on the non-defaulting party. Article 29 MiFIR.	designed to enable credit institutions and finance companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and finance companies must, depending on the nature of the risks incurred, establish contingency and business continuity plans, maintain adequate liquidity buffers and have plans for restoring their liquidity. Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
		The conditions of application of this article are set by *Arrêté* of the Minister in charge of the economy." French transposition of Article 79(b) of CRD IV is the following: Article 114 of the *Arrêté* of 3 November 2014 on internal control relating to the internal control of companies in the banking, payment services and investment services sector subject to the supervision of the ACPR (the "Arrêté of 3 November 2014 on internal control"), provides that: "Covered entities shall have the internal methodologies that enable them to assess the credit risk of exposures to individual counterparties, securities or securitization positions, and credit risk at the portfolio level.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?			
		Internal methodologies of assessment of the credit risk shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating calculated by an external credit rating institution or based on the fact that an exposure is unrated, the covered entities shall consider additionally other relevant information for assessing their allocation of internal capital."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
Haircut applicability: **The value of collateral delivered pursuant to the rules is subject to standardized haircuts set forth in the applicable capital**	**Haircut applicability**: Risk management procedures must provide for the daily valuation of collateral in accordance with Articles 21 and		**<u>Comparability of outcomes</u>**: The EU collateral haircut requirements provide a comparable regulatory outcome

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
rules (Exchange Act rule 18a-3(c)(3)(i) [17 CFR 240.18a-3(c)(3)(i)]),[18] but a dealer can elect to apply the standardized CFTC haircut rules if the dealer applies those deductions consistently with respect to a particular counterparty. Exchange Act rule 18a-3(c)(3)(ii) [17 CFR 240.18a-3(c)(3)(ii)][19] (cross referencing 17 CFR 23.156). There is no ability for dealers to apply their own haircut estimates.	22 of the EMIR Margin RTS. EMIR Margin RTS, Articles 2(2)(d) and 19(1)(a). Parties must apply haircuts when valuing collateral either using the standard methodology in Annex II to the EMIR Margin RTS or using their own estimates in accordance with Article 22 of the EMIR Margin RTS. EMIR Margin RTS, Article 21(1). There is a narrow exemption whereby counterparties may disregard the foreign exchange risk arising from positions in currencies which are subject to a legally binding intergovernmental agreement to limit their variation relative to other currencies covered by the same agreement. Article 21(2) of the EMIR Margin RTS.		to the SEC collateral haircut requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(3) and the standard methodology described in EMIR Margin RTS, Articles 21 and Annex II are consistent in that each require comparable levels of collateral haircuts across similar asset classes to reflect the risk and liquidity in relation to a given asset. We note that the SEC rules provide that dealers can comply by either (i) complying with standardized haircuts set forth in the applicable capital rules, or (ii) complying with the standardized CFTC haircut rules. In respect of compliance with the standardized haircuts set forth in the applicable capital rules, we note that the SEC stated in the

[18] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[19] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
			adopting release of the final rule on capital and margin that "the haircuts in proposed Rule 18a-3 (i.e., the standardized haircuts in the proposed nonbank SBSD capital rules) and the haircuts in the margin rules of the CFTC and the prudential regulators (which are based on the recommended standardized haircuts in the BCBS/IOSCO Paper are largely comparable." Exchange Act Release No. 34-86175 (Jun. 21, 2019), 84 FR at 43919 (Aug. 22, 2019) (**Capital and Margin Adopting Release**). As the SEC has already acknowledged this comparability we have therefore focused on comparability between the CFTC and EU haircuts.
Haircut amounts: **Initial margin (CFTC Haircut Rules (17 CFR 23.156(a))):**[20]	**Haircut amounts**: **Standard methodology: Initial margin**		**Haircut amounts:** The CFTC Substituted Compliance Decision on Margin found that EMIR Margin RTS, Annex II sets forth haircuts specific to certain

[20] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
The value of any eligible collateral collected or posted to satisfy initial margin requirements shall be subject to the sum of the following discounts, as applicable: **(A) An 8% discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement; and** **(B) The discounts set forth in the table**	The standard method set out in Annex II to the EMIR Margin RTS sets out haircuts delineated between debt security issuer/securitisation positions, credit quality step and residual maturity. The tables in Annex II to the EMIR Margin RTS setting out the haircuts for long term and short term credit quality assessments are set out in Annex I hereto. Equities in main indices, bonds convertible to such equities and gold shall have a haircut of 15%. For eligible units in UCITS the haircut is the weighted average of the haircuts that would apply to the assets in which the fund is invested. A currency mismatch haircut of 8% is applied to initial margin. For cash and non-cash initial margin, the 8% haircut applies where the collateral is posted in		asset classes that are comparable in outcome to those set forth in the CFTC (and, consequently, the SEC) haircut rules, 17 CFR 23.156 and Exchange Act rule 18a-3(c)(3) respectively. Please see Annex I for the CFTC haircuts. Moreover, the CFTC Substituted Compliance Decision on Margin found that the EU margin rules require larger haircuts on government, central bank, and corporate debt where a credit quality assessment indicates low credit quality for the debt. *See* the CFTC Substituted Compliance Decision on Margin at 48409.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
found in Annex I hereto. **The value of initial margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all initial margin collateral is calculated as the sum of those values for each eligible collateral asset.** **Variation Margin (CFTC Haircut Rules (17 CFR 23.156(b))):[21]** **The value of any eligible collateral collected or posted to satisfy variation margin requirements shall be subject to the sum of the following discounts, as applicable:** **(A) An 8% discount for variation margin collateral**	a currency other than the currency in which the payments in case of early termination or default have to be made in accordance with the single derivative contract, the relevant exchange of collateral agreement or the relevant credit support annex (**termination currency**). Each of the counterparties may choose a different termination currency. Where the agreement does not identify a termination currency, the 8% haircut shall apply to the market value of all the assets posted as collateral. EMIR Margin RTS, Annex II. **Standard methodology: Variation margin** The same rules apply as for initial margin with the following differences: • There is no haircut for cash variation margin.		

[21] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
denominated in a currency that is not the currency of settlement for the uncleared swap, except for immediately available cash funds denominated in U.S. cash funds or another major currency; and **(B) The discounts set forth in the table found in Annex I hereto.** **The value of variation margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all variation margin collateral shall be calculated as**	• A currency mismatch haircut of 8% is applied to non-cash variation margin. • For non-cash variation margin, the 8% haircut applies where the non-cash collateral is posted in a currency other than those agreed in an individual derivative contract, the relevant governing master netting agreement or the relevant credit support annex. **Own estimates**: We have not included a discussion of the EU rules relating to the calculation of own volatility estimates for calculating haircuts as there is no corresponding requirement under the SEC rules.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
5. What collateral haircuts are required in connection with the exchange of margin?			
the sum of those values of each eligible collateral asset			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
Custodian requirements: **Collateral (initial margin or variation margin) must be either: (A) subject to the dealer's physical possession or control, and able to be liquidated promptly by the dealer without intervention by any other party; or (B) carried by an independent third-party custodian that is a bank or a registered U.S. clearing organization or depository that is not affiliated with the**	**Custodian requirements**: • **Initial margin**: Initial margin must be protected from the default or insolvency of the collecting counterparty by segregating it in either or both of the following ways: (a) on the books and records of a third-party holder or custodian, (b) via other legally binding arrangements. EMIR Margin RTS, Articles 19(3) and 19(1)(d).		**Comparability of outcomes:** The EU third-party custodian requirements for counterparty collateral provide a comparable regulatory outcome to the SEC third-party custodian requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c) and the EMIR Margin RTS are consistent in that each permit, and in some cases under EMIR require, collateral to be held by

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies. Exchange Act rule 18a-3(c)(4)(ii) [17 CFR 240.18a-3(c)(4)(ii)].[22] **There is a corresponding exception from the initial margin collection requirement when a counterparty delivers margin to an independent third-party custodian. *See* Exchange Act rule 18a-3(c)(1)(iii)(C) [17 CFR 240.18a-3(c)(1)(iii)(C)].[23]**	• **Variation margin**: Third-party custodians are permitted to hold variation margin although there is not a specific requirement for variation margin to be held by third-party custodians under EMIR or the EMIR Margin RTS. As discussed above, any exchange of collateral agreement must be legally enforceable. EMIR Margin RTS, Article 2(3). In addition, variation margin must be held in accordance with all relevant provisions of the EMIR Margin RTS (for example, see further "Liquidity" below). **Eligible Collateral and Concentration Limits**: Counterparties may collect various types of "eligible		third-party custodians to minimize credit risk. The SEC rules prohibit collateral from being held by an affiliate of the posting party while the EMIR Margin RTS do not. We note that the CFTC margin rules mirror the SEC rules in this respect and that the CFTC Substituted Compliance Decision on Margin provides that the EC has highlighted that Article 19(3) of the EMIR Margin RTS provide equivalent finality and protection to that offered under the CFTC regime because of the requirement that "initial margin shall be protected from the default or insolvency of the collecting counterparty." See CFTC Substituted Compliance Decision on Margin at 48410. While the SEC Guidance does not require that the EU have analogues to every requirement

[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[23] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	collateral" to satisfy an initial margin obligation with the eligibility of some asset classes being subject to initial margin concentration limits. EMIR Margin RTS, Articles 4 and 8. In certain circumstances, if initial margin collateral collected from an individual counterparty exceeds EUR 1 billion then in respect of the excess over EUR 1 billion, the sum of values of initial margin collateral collected from that counterparty in the form of certain assets issued by a single issuer or by issuers domiciled in the same country must not exceed 50% of the initial margin collateral collected from that counterparty. The 50% limit also applies to risk exposures arising from a single third-party holder or custodian holding initial margin collected in cash. EMIR Margin RTS, Articles 8(2) and (3).		under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways: **Custodian requirements:** • **Initial Margin:** The EMIR Margin RTS require initial margin to be segregated in either or both of the following ways: (a) on the books and records of a third party-holder or custodian, (b) via other legally binding arrangements. The SEC rules require initial margin to either be subject to the dealer's physical possession

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	Where a G-SII or O-SII collects initial margin in cash from a single G-SII or O-SII counterparty, the collecting party shall ensure that not more than 20% of the total initial margin is maintained in cash with a single third-party custodian. EMIR Margin RTS, Article 8(5). **Risk management procedures**: Risk management procedures for management and segregation of margin must provide (i) for the legal arrangements and collateral holding structure that allow access to collateral held by a third-party; and (ii) that non-cash collateral is transferable without encumbrance, including any otherwise imposed by the collecting party's liquidator or a third-party custodian (other than certain routine liens). EMIR		or control (and subject to applicable segregation requirements under the SEC rules)[24] or carried by an independent third-party custodian that is a bank, clearing organization or depository that is not affiliated with the counterparty. • **Variation Margin:** Under the EMIR Margin RTS, third-party custodians are permitted to hold variation margin but there is not a specific requirement for it to be held in this manner. Likewise, the SEC rules permit third-party custodians to hold variation margin but there is not a specific requirement for it to be held in this manner.

[24] The SEC's segregation requirements are set-out at Exchange Act rule 15c3-3 and Exchange Act rule 18a-4. There is an exception from the SEC's segregation requirements for uncleared and cleared security-based swap transactions between a non-US nonbank firm and a non-US person if the firm does not hold customer funds or other property for any US customer.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	Margin RTS Article 19(1)(b) and (h). Where initial margin is held by the collateral provider, collateral must be maintained in insolvency-remote custody accounts. EMIR Margin RTS, Article 19(1)(c). **Segregation**: Counterparties shall ensure that non-cash collateral exchanged as initial margin is segregated as follows: (a) where collateral is held by the collecting counterparty on a proprietary basis, it shall be segregated from the rest of the proprietary assets of the collecting counterparty; (b) where collateral is held by the posting counterparty on a non-proprietary basis, it shall be segregated from the rest of the proprietary assets of the posting counterparty; (c) where collateral is held on the books and records of a custodian or other third-		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	party holder, it shall be segregated from the proprietary assets of that third-party holder or custodian. EMIR Margin RTS, Articles 19(4) and 19(1)(d). If non-cash initial margin is to be held by the collecting party or a third-party holder or custodian, the posting counterparty must have the option for the collateral to be segregated from the collateral of other posting counterparties. EMIR Margin RTS, Articles 19(5). Cash collected as initial margin must be maintained in cash accounts at central banks or credit institutions which fulfil all of the following conditions: (i) they are authorized in accordance with CRD IV or are authorized in a non-EEA jurisdiction whose supervisory and regulatory arrangements have been found to be equivalent in accordance with Article 142(2) CRR; and (ii) they		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	are neither the posting nor the collecting counterparties, nor part of the same group as either of the counterparties. The collecting counterparty must take into account the credit quality of such credit institution without relying "solely or mechanistically" on external credit quality assessments. EMIR Margin RTS, Articles 19(1)(e) and 19(8). Collateral protects the collecting counterparty in the event of the default of the posting counterparty. However, both counterparties are also responsible for ensuring that the manner in which collateral collected is held does not increase the risk of a loss of excess posted collateral for the posting counterparty in case the collecting counterparty defaults. For this reason, the bilateral agreement between the counterparties should allow both counterparties to access the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	collateral in a timely manner when they have the right to do so, hence the need for rules on segregation and for rules providing for an assessment of the effectiveness of the agreement in this respect, taking into account the legal constraints and the market practices of each jurisdiction. EMIR Margin RTS, Recital (34). Each party to perform an independent legal review in order to verify that the initial margin segregation arrangements meet the requirements set out in Articles 19(1)(g) and 19(3) to 19(5) of the EMIR Margin RTS, to provide evidence to the relevant competent authority of compliance in each relevant jurisdiction and, upon request by a competent authority, to establish policies ensuring the continuous assessment of		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	compliance. EMIR Margin RTS, Articles 19(6) and 19(7).		
Liquidity: **Generally, margin collateral held by third-parties or otherwise must have a ready market and be readily transferrable.**[25] **Exchange Act rule 18a-3(c)(4)(i) [17 CFR 240.18a-3(c)(4)(i)].**[26]	**Liquidity**: Counterparties shall not use assets as eligible collateral[27] where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty. EMIR Margin RTS, Article 7(5). The collateral arrangements must ensure that the initial margin is freely transferable to the posting counterparty in a timely manner on the default of		**Liquidity:** The EMIR Margin RTS require that the initial margin is freely transferable to the posting counterparty in a timely manner on the default of the collecting counterparty. This is comparable to the requirement under the SEC rules that if the collateral is subject to the dealer's physical possession or control, it is able to be liquidated promptly by the dealer without intervention by any other party.

[25] Acceptable collateral consists of cash, securities, money market instruments, a major foreign currency, the settlement currency of the non-cleared security-based swap, or gold. The collateral cannot consist of securities and/or money market instruments issued by the counterparty, or by a party related to the dealer or the counterparty.

[26] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

[27] Eligible collateral consists of: (a) cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits; (b) gold; (c) debt securities issued by Member States' central governments or central banks; (d) debt securities issued by Member States' regional governments or local authorities; (e) debt securities issued by Member States' public sector entities; (f) debt securities issued by certain multilateral development banks; (g) debt securities issued by certain international organizations; (h) debt securities issued by third countries' governments or central banks, regional governments or local authorities; (i) debt securities issued by credit institutions or investment firms including bonds referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council; (j) corporate bonds; (k) the most senior tranche of a securitization, as defined in Article 4(61) of the CRR, that is not a re-securitization as defined in Article 4(63) of the CRR; (l) convertible bonds provided that they can be converted only into equities which are included in an index specified pursuant to point (a) of Article 197(8) of the CRR; (m) equities included in an index specified pursuant to point (a) of Article 197(8) of the CRR; and (n) units or shares in undertakings for collective investments in transferable securities (UCITS) but only if the conditions set out in Article 5 of the EMIR Margin RTS are met.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
	the collecting counterparty. EMIR Margin RTS, Article 19(1)(g).		
Enforceability: **The collateral must be subject to an agreement that is legally enforceable by the dealer against counterparty and any other parties to the agreement. Exchange Act rule 18a-3(c)(4)(i)(E) [17 CFR 240.18a-3(c)(4)(i)(E)].[28]**	**Enforceability**: Where counterparties enter into an exchange of collateral agreement, they shall perform an independent legal review of the enforceability of those agreements and assess this on a continuous basis. EMIR Margin RTS, Articles 2(3) and 2(4).		**Enforceability**: The SEC rules require that collateral be subject to an agreement that is legally enforceable by the dealer against counterparty and any other parties to the agreement. Similarly, the EMIR Margin RTS require an independent legal review of the enforceability of

[28] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
6. To what extent are third-party custodians permitted to hold counterparty collateral?			
			agreements governing the exchange of collateral.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
There is no obligation on the dealer to deliver initial margin to its counterparty, but there is no prohibition on this practice. There are a number of targeted exceptions to the margin collection and delivery requirements, addressing:	The EMIR margin requirements only apply to *uncleared* OTC derivative contracts, and the EMIR margin requirements require the dealer both to collect initial margin from, and post initial margin to, its counterparty. EMIR and the EMIR Margin RTS provide for a number of exceptions and derogations including:		**<u>Comparability of outcomes</u>**: Overall the exceptions to the EU's margin requirement achieve a comparable regulatory outcome to the exceptions to the SEC's margin requirement. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(1)(iii) and EMIR and the EMIR Margin RTS are consistent in that each provides certain exceptions for (i) commercial end user/non-financial counterparty accounts, (ii) legacy transactions entered into prior to the start date of the applicable margin requirements,

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
			(iii) inter-affiliate transactions, (iv) multilateral development banks, (v) sovereigns (in the case of the EU, if sovereigns are regarded as "non-undertakings"), and (vi) where the margin required to be transferred and/or exposure falls below certain thresholds. We note that the exceptions to the EU's margin requirement are not identical in all respects to the exceptions to the SEC's margin requirement and there are certain circumstances where an exception may apply under EMIR but would not apply under the SEC rules. Likewise, there are exceptions under the SEC's rules which do not apply under EMIR (for example, there is no obligation on the dealer to deliver initial margin to its counterparty under the SEC's rules). Despite some differences in the scope of the exceptions the two regimes are comparable

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
			from a outcomes perspective. We note this approach is consistent with the approach taken by the CFTC in its Substituted Compliance Decision on Margin (as supplemented by the subsequent remarks of Chairman J. Christopher Giancarlo on January 19, 2018), where it found broad comparability between the CFTC and EU margin rules in the interests of providing "certainty to market participants" and ensuring that "global markets are not stifled by fragmentation, inefficiencies and higher costs" despite certain differences in the exceptions, including the fact that transactions with a counterparty that is an NFC- under EMIR would not be subject to the CFTC's margin rules even though it may be a financial end-user that would otherwise be subject to the CFTC's margin rules.[29]

[29] https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo34#P127_31677

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
			Comparability of specific requirements:
Commercial accounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin for commercial end user accounts. Exchange Act rule 18a-3(c)(1)(iii)(A) [17 CFR 240.18a-3(c)(1)(iii)(A)];[30]**	**Commercial accounts**: If one or both parties is a non-financial counterparty below the "clearing threshold" (**NFC-**) or a non-EEA equivalent, the EMIR variation margin and initial margin requirements do not apply. EMIR Margin RTS, Article 24.		**Commercial accounts**: This EU exception is comparable to Exchange Act rule 18a-3(c)(1)(iii)(A) [17 CFR 240.18a-3(c)(1)(iii)(A)] because both exceptions provide that no variation margin or initial margin is required to be exchanged with counterparties that are not subject to the clearing requirement under EMIR or the Exchange Act (as applicable).
Development banks: **Dealers need not collect initial margin, and need not collect or deliver variation margin for certain multilateral development banks, including the Bank for International Settlements and the European Stability Mechanism. Exchange**	**Development banks**: If one or both parties is an exempt entity set out in Article 1(4) or Article 1(5) of EMIR (namely, (i) a member of the European System of Central Banks (**ESCB**) or other Member State body performing similar functions or other EU public body		**Development banks**: This EU exception is comparable to the Exchange Act rule 18a-3(c)(1)(iii)(E) [17 CFR 240.18a-3(c)(1)(iii)(E)] because both exceptions cover substantially the same type of entities.

[30] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
Act rule 18a-3(c)(1)(iii)(E) [17 CFR 240.18a-3(c)(1)(iii)(E)];[31]	charged with or intervening in the management of the public debt; (ii) the Bank for International Settlements; (iii) the central banks and public bodies charged with or intervening in the management of the public debt in Japan, United States of America, Australia, Canada, Hong Kong, Mexico, Singapore and Switzerland; (iv) certain multilateral development banks; (v) certain public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments; and (vi) the European Financial Stability Facility and the European Stability Mechanism), the EMIR variation margin and initial		

[31] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
	margin requirements do not apply.		
Financial market intermediary accounts: **Dealers need not collect initial margin, but still need to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(B) [17 CFR 240.18a-3(c)(1)(iii)(B)];[32]**	**Financial market intermediary accounts**: There is no such exception under EMIR.		**Financial market intermediary accounts**: EMIR does not contain an exception which is analogous to the financial market intermediary account exception under the SEC rules and therefore EMIR is stricter in this regard. However, we note that under the back-to-back model of client clearing used in the EU we note that the transaction entered into between a client and its clearing member is not subject to the EMIR variation margin and initial margin requirements because the parties thereto are deemed to have fulfilled their clearing obligation with respect to such contract and therefore the EMIR risk-mitigation requirements

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
			applicable to uncleared contracts do not apply.[33]
Affiliate accounts/intragroup transactions: **Dealers need not collect initial margin, but still need to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(G) [17 CFR 240.18a-3(c)(1)(iii)(G)];[34]**	**Affiliate accounts/intragroup transactions**: There are exemptions from the EMIR variation margin and initial margin requirements in respect of certain intragroup transactions. The conditions to this exemption depend on whether the parties are established in the same EU Member State, different EU Member States or outside the EU and also on the classification of the parties. EMIR, Articles 11(5) to 11(10), and EMIR Margin RTS Articles 36(2), 36(3), 37(3), and 37(4) as amended by the Revised EMIR Margin RTS.		**Affiliate accounts/intragroup transactions**: The SEC rules are comparable to the CFTC margin rules in this respect (i.e. both state that initial margin does not need to be collected but that variation margin does need to be collected in respect of inter-affiliate transactions). We note that, notwithstanding differences between the EU and the CFTC margin rules on affiliate accounts/intragroup transactions, in the CFTC's Substituted Compliance Decision on Margin, the CFTC found that the treatment of inter-affiliate transactions under the CFTC margin rules is comparable to the treatment of inter-affiliate transactions under EMIR on an outcomes basis.

[33] See General Question 2 in the ESMA Q&A on EMIR.

[34] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
Sovereigns: **Dealers need not collect initial margin, but still need to collect and deliver variation margin for accounts of sovereigns with minimal credit risk. Exchange Act rule 18a-3(c)(1)(iii)(F) [17 CFR 240.18a-3(c)(1)(iii)(F)];[35]**	**Sovereigns**: Under EMIR, only "undertakings" are subject to the margin requirements. There is no explicit definition of the term 'undertaking' in EMIR. However, the EC Q&A on EMIR provide some guidance on the meaning of "undertaking". Consequently, the EU analysis on whether a sovereign may benefit from an exemption from margin requirements will depend on the activities carried out by the sovereign in question and whether it is, therefore, an undertaking. If a sovereign is not acting as a commercial entity and is entering into derivative contracts solely for hedging purposes, there may be an argument that this is the proper exercise of public authority or powers which does not constitute economic activity and,		**Sovereigns**: To the extent that a sovereign is not an "undertaking" for the purposes of EMIR the dealer will not be required to exchange initial margin or variation margin under the EMIR Margin RTS. Under Exchange Act rule 18a-3(c)(1)(iii)(F) [17 CFR 240.18a-3(c)(1)(iii)(F)] the dealer would not be required to collect initial margin but would be required to exchange variation margin with such an entity.

[35] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
	consequently, that the sovereign is not an undertaking. Article 1(5) of EMIR (as further discussed above) may also be relevant.		
Legacy accounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(D) [17 CFR 240.18a-3(c)(1)(iii)(D)].[36]**	**Legacy accounts**: The EMIR Margin RTS apply to uncleared OTC derivative contracts entered into or novated on or after the relevant margin start date.		**Legacy accounts**: The EU requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(D) [17 CFR 240.18a-3(c)(1)(iii)(D)] as both specify that dealers do not need to collect initial margin or exchange variation margin in respect of transactions entered into before the compliance date of the relevant margin requirement.
Material swaps exposure: **There is no such exception under the SEC's rules.**	**Material swaps exposure:** Initial margin requirements do not apply to contracts concluded from January in a given year if the AANA of either party was below EUR 8 billion for the months of March, April and May		**Material swaps exposure:** While the EU requirement is different from Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H)], the CFTC margin rules contain this same exception from initial margin

[36] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
	of the previous year. EMIR Margin RTS, Article 28.		requirements, and the SEC has stated that the CFTC margin rules are "largely comparable" to the SEC margin rules. In addition, this exception is intended to screen out counterparties whose positions opposite a dealer are unlikely to result in the dealer facing potential future credit exposure in excess of the USD 50 million initial threshold so that those counterparties are not required to put in place documentation relating to the exchange of initial margin. The SEC margin rules similarly address this situation by permitting the dealer to defer collecting initial margin from a counterparty for two months after they initially cross the threshold.
Initial margin threshold: **Dealers need not collect initial margin to the extent the amount of initial margin would be below the USD 50 million threshold but this does not impact the**	**Initial margin threshold**: Counterparties may provide in their risk management procedures that initial margin collected is reduced by an amount up to EUR 50 million		**Initial margin threshold**: The EU requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H) as both set a

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
obligation to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H)];[37] and	where neither counterparty belongs to any group or the counterparties are part of different groups, or EUR 10 million where both counterparties belong to the same group. EMIR Margin RTS, Article 29(1).		comparable threshold (EUR 50 million and USD 50 million respectively). We note that the SEC requirement is the same in this regard as the CFTC margin rules, and the CFTC has found that the USD 50 million threshold in the CFTC margin rules is comparable with the threshold under EMIR, notwithstanding the possibility that fluctuating exchange rates may mean the EU threshold may be greater than that under the CFTC margin rules and vice versa.
Minimum transfer amounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin until the total amount of collateral that needs to be collected with respect to the counterparty is greater than USD 500,000. Exchange Act rule 18a-**	**Minimum transfer amounts**: Counterparties may provide in their risk management procedures that no collateral is collected from a counterparty where the amount due from the last collection of collateral is equal to or lower than the amount agreed by the counterparties. The minimum		**Minimum transfer amounts**: The EU requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(I) [17 CFR 240.18a-3(c)(1)(iii)(I)] as both set a comparable minimum transfer amount (EUR 500,000 and USD 500,000 respectively).

[37] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms			
7. To what extent are there exceptions to the margin requirement?			
3(c)(1)(iii)(I) [17 CFR 240.18a-3(c)(1)(iii)(I)].[38]	transfer amount shall not exceed EUR 500,000 or the equivalent amount in another currency. EMIR Margin RTS, Article 25(1).		We note that the SEC requirement is the same in this regard as the CFTC margin rules, and the CFTC has found that the USD 500,000 minimum transfer amount in the CFTC margin rules is comparable with the minimum transfer amount under EMIR, notwithstanding the possibility that fluctuating exchange rates may mean the EU minimum transfer amount may be greater than that under the CFTC margin rules and vice versa.

[38] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

d. Subcategory: Internal Risk Management Requirements

Dealers are obligated to follow policies and procedures reasonably designed to assist them in managing the risks associated with their business activities.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements			
1. To what extent are firms required to implement internal risk management controls?			
Firms must "establish robust and professional risk management systems adequate for managing [their] day-to-day business." Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)].[39] Firms are generally required, as part of their supervisory systems, to establish, maintain and enforce written policies and procedures addressing the obligations to, *inter alia*, monitor trading, establish a day-to-day business risk management system, disclose trading information to the SEC, establish internal recordkeeping systems, and implement systems to safeguard against conflicts of interest. Exchange Act rule 15Fh-	MiFID Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. The requirement goes beyond this to encompass monitoring the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and	French transposition of Article 16(5) al.2 MiFID is the following: Article L 533-2 of the MFC provides that "Investment service providers other than asset management companies shall have sound administrative procedures, internal control mechanisms, effective risk assessment techniques, effective control and back-up arrangements for their IT systems and risk mitigation techniques for OTC derivative contracts not cleared through a central counterparty that comply with Article 11 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives,	**Comparability of outcomes**: The EU's requirements to implement internal risk management controls provide a similar regulatory outcome to the SEC requirements for risk management controls. In particular, the regulatory outcomes pursued under Exchange Act section 15F(j)(2) and MiFID are consistent in that each require Investment Firms to establish robust internal risk management systems to manage risks associated with their business activities. While we believe that the SEC as a market regulator regulating derivatives activity should find the directly equivalent MiFID requirements alone sufficient,

[39] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[40] **The capital rule for nonbank firms imposes a requirement that firms comply with a separate rule related to internal risk management control systems that requires firms to establish, document, and maintain a system of internal risk management controls to assist them in managing the risks associated with their business activities. Exchange Act rule 18a-1(f) [17 CFR 240.18a-1(f)].**[41] **Firms must comply with Exchange Act rule 15c3-4 [17 CFR 240.15c3-4][42] as if they were an OTC derivatives dealer, with the exclusion of select provisions. Dealers must comply with rule 15c3-4 with respect to all of their business activities.** **The margin rule requires that dealers must monitor the risk of each account and establish, maintain and document procedures and guidelines for**	mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. Article 23 MiFID Org Reg. A specific risk management function is required where appropriate and proportionate that must: (i) operate independently, (ii) implement the Investment Firm's risk management policies and procedures, and (iii) provide required reports and advice to senior management. Article 23(2) MiFID Org Reg. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 16(5) MiFID.<u>EMIR Margin RTS</u> Counterparties must establish, apply and document risk management procedures for the	central counterparties and trade repositories. Investment service providers other than portfolio management companies are required, with respect to their investment service activities, to comply with the management standards designed to guarantee their liquidity, solvency and the balance of their financial structure defined by the Minister for the Economy in application of Article L. 611-3. In particular, they must comply with coverage and risk division ratios. Failure to comply with these obligations will result in the application of the procedure provided for in Articles L. 612-39, L. 612-40 and L. 621-15." French transposition of Article 76(1) of CRD IV is the following: Article L.511-60 of the MFC provides that:	we have, for background, also listed additional risk management requirements relevant EU regulated entities are subject to, as they contribute to the regulatory landscape on the topic of risk management. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways: • **Policies and procedures**. Article 23 MiFID Org Reg. requires Investment Firms to establish and maintain policies and procedures to

[40] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[41] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=sg17.4.240_117ad_622.sg51&rgn=div7
[42] https://www.govinfo.gov/content/pkg/CFR-2011-title17-vol3/pdf/CFR-2011-title17-vol3-sec240-15c3-4.pdf

monitoring the risk of accounts as part of their required risk management and control systems. The rule specifies minimum requirements for associated policies and procedures including, *inter alia*, requirements related to the review or monitoring of financial information, counterparty credit limits and credit risk exposure, the use of stress tests, determinations regarding the need to collect collateral, and the maintenance of sufficient equity in each counterparty account. Exchange Act rule 18a-3(e) [17 CFR 240.18a-3(e)].[43]	exchange of collateral for non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(1). The risk management procedures must include procedures providing for or specifying the following: (a) the eligibility of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 2 of Chapter 1 of the EMIR Margin RTS; (b) the calculation and collection of margins for non-centrally cleared OTC derivative contracts in accordance with Section 3 of Chapter 1 of the EMIR Margin RTS; (c) the management and segregation of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 5 of Chapter 1 of the EMIR Margin RTS; (d) the calculation of the adjusted value of collateral in accordance with Section 6 of Chapter 1 of the EMIR Margin RTS; (e) the exchange of information between counterparties and the authorisation and recording of any exceptions to the risk	"The management board, the supervisory board, or any other body performing equivalent supervisory functions shall approve and periodically review the strategies and policies governing the taking, management, monitoring and mitigating of the risks to which the credit institution or the finance company is or might be exposed to, including those generated by the economic environment. […]. " Article L.533-29, I al. 1 of the MFC provides that "I.-Investment firms are required to comply with the obligations set forth in Articles L. 511-55 to L. 511-69. […] An *Arrêté* of the Minister in charge of the economy defines the conditions of application of this I. […]" French transposition Article 76(3) of CRD IV is the following:	identify risk, set risk tolerance levels, and monitor the effectiveness of such policies and procedures and address deficiencies in them, while Article 23(2) MiFID Org Reg. requires an independent risk management function to be established to implement risk management policies and procedures. Counterparties are required to establish a thorough and dynamic internal governance processes to assess the appropriateness of the initial margin model on a continuous basis and document associated risk management procedures under RTS, Articles 1, 18(2) and 18(3). Article 74 CRD IV requires CRR Firms to establish robust internal risk management systems, including internal administrative and accounting procedures. Article 76(1) CRD IV requires management bodies of CRR Firms to review and approve internal risk management strategies and policies.

[43] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

	management procedures; (f) the reporting of the exceptions in Chapter II of the EMIR Margin RTS to senior management; (g) the terms of all necessary agreements to be entered into by counterparties before the time in which a non-centrally cleared OTC derivative contract is concluded, including the terms of the netting agreement and the terms of the exchange of collateral agreement in accordance with Article 3 of the EMIR Margin RTS; (h) the periodic verification of the liquidity of the collateral to be exchanged; (i) the timely re-appropriation of the collateral in the event of default by the posting counterparty from the collecting counterparty; and (j) the regular monitoring of the exposures arising from OTC derivative contracts that are intragroup transactions and the timely settlement of the obligations resulting from those contracts. EMIR Margin RTS, Article 2(2). Risk management procedures must be tested, reviewed and updated as necessary and at	Article L. 511-89 of the MFC provides that "The management board, the supervisory board or any other body performing equivalent supervisory functions in a significant credit institution and finance company shall constitute a risk committee, a nomination committee and a remuneration committee. […] The criteria to determine the significance of a credit institution or finance company according to which these entities are subject to the obligations set forth in this Article are specified by an *Arrêté* of the Minister of the Economy." Article L. 511-90 of the MFC provides that "Committees referred to in Article L. 511- 89 shall consist of members of the management board, supervisory board or any other body performing equivalent supervisory functions which do not perform any executive functions within the credit institution or the finance company. […] Members of these committees referred to in Article L. 511-89 shall have adequate knowledge	Article 76(3) CRD IV requires CRR Firms that are sufficiently large and complex to establish a risk committee which we would expect to encompass most dealers. Article 16(5) MiFID requires Investment Firms to establish robust internal risk management assessment procedures. These requirements are consistent with the policy and procedure requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(I). • **Internal risk management systems**. Article 16(5) MiFID requires Investment Firms to establish robust internal risk management assessment procedures. Article 23 MiFID Org Reg. requires Investment Firms to establish and maintain policies and procedures to identify risk, set risk tolerance levels, and monitor the effectiveness of such policies and procedures and address deficiencies in them, while Article 23(2) MiFID Org Reg. requires an independent risk

	least annually. EMIR Margin RTS, Article 2(5). Upon request, counterparties using initial margin models shall provide the competent authorities with any documentation relating to the risk management procedures regarding the calculation and collection of margins for non-centrally cleared OTC derivative contracts at any time. EMIR Margin RTS, Article 2(6). Counterparties shall establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including all of the following: (a) an initial validation of the model by suitably qualified persons who are independent from the persons developing the model; (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually; and (c) a regular audit process to assess the following: (i) the integrity and reliability of the data sources; (ii) the management information system used to run the model; (iii) the accuracy and	and skills to carry out the tasks of the committee to which they participate. […]" Article L. 511-91 of the MFC provides that "Where the credit institutions and finance companies referred to in Article L. 511- 89 are part of a group subject to the supervision of the Autorité de contrôle prudentiel et de resolution on a consolidated or sub-consolidated basis, the management board, the supervisory board or any other body performing equivalent supervisory functions may decide in accordance with Article L. 511-41-3, except injunction of the Autorité de contrôle prudentiel et de resolution to comply with Article L. 511-89 on an individual basis, that the functions of the committees referred to in Article L. 511- 89 are exercised by the competent committee of the consolidating or sub-consolidating credit institution or finance company. In such case the management board, the supervisory board or any other body performing	management function be established to implement risk management policies and procedures. These requirements are comparable to the internal risk management requirements set forth in Exchange Act rules 15c3-4, 15F(j)(2) and 18a-1(f). Furthermore, Article 74 CRD IV requires CRR Firms to establish robust internal risk management systems, including internal administrative and accounting procedures. Article 76(1) CRD IV requires management bodies of CRR Firms to review and approve internal risk management strategies and policies. Article 76(3) CRD IV requires CRR Firms that are sufficiently large and complex, which we would expect to encompass most dealers, to establish a risk committee. • **Managing account risk**. CRR Firms are obliged by Article 79(b) CRD IV to monitor the risk of accounts as part of

	completeness of data used; and (iv) the accuracy and appropriateness of volatility and correlation assumptions. EMIR Margin RTS, Article 18(1). The documentation of the risk management procedures relating to the initial margin model needs to meet all of the following conditions: (a) it shall allow a knowledgeable third-party to understand the design and operational detail of the initial margin model, (b) it shall contain the key assumptions and the limitations of the initial margin model, and (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid. EMIR Margin RTS, Article 18(2). Counterparties must document all changes to the initial margin model. That documentation shall also detail the results of the validations carried out after those changes. EMIR Margin RTS, Article 18(3). The risk management procedures referred to in Article 2(1) of the EMIR Margin RTS (i) ensure that the performance of an initial	equivalent supervisory functions of the credit institution or the finance company shall be receiving the information relating to it contained in the annual review carried out at the level of the credit institution or the finance company supervised by the Autorité de contrôle prudentiel et de resolution on a consolidated or sub-consolidated basis." Article L. 511-92 of the MFC provides that "The members of the risk committee shall have appropriate knowledge, skills and expertise to understand and monitor the strategy and the risk appetite of the credit institution or finance company." Article L.511-93 of the MFC provides that "The risk committee shall advise the management board, the supervisory board or any other body performing equivalent supervisory functions on the credit institution's or the finance company's overall strategy and on current and future risk appetite.	their assessment of the credit risk of exposures. More specifically: • Article 103 and 103(b)(ii) CRR require CRR Firms to have policies and procedures for the active management of trading book positions, which must include the monitoring of position limits for such positions. – Account risk is also managed by stress testing of exposures when using models for the purpose of credit risk, CCR, market risk, as well as for exposures to CCPs and credit risk concentrations, including in relation to the realizable value of any collateral taken. – The EMIR Margin RTS requires an account level review to be taken in the calculation, collection and adjustment of the

	margin model is monitored on a continuous basis including by back-testing the model at least every three months; (ii) outline the methodologies used for undertaking back-testing, including statistical tests of performance; (iii) describe what results of the back-testing would lead to a model change, recalibration or other remediation action; and (iv) ensure that counterparties retain records of the results of the back-testing. EMIR Margin RTS, Article 14. <u>EMIR risk mitigation (other than margin)</u> See below discussion of risk mitigation techniques set out in RTS 149/2013 in section 1(e) and (1)(f). <u>CRR & CRD IV</u> The management body of a CRR Firm must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the	The risk committee shall assist the management board, the supervisory board or any other body performing equivalent supervisory functions when the latter monitors the implementation of this strategy by the persons referred to in Article L. 511-13 and by the head of the risk management function. […]." Article L. 511-94 of the MFC provides that "The risk committee shall review, as part of its duties, whether the prices of the regulated products and services referred to in Books II and III of the MFC are consistent with the risk strategy of the credit institution or the finance company. When these prices do not properly reflect risks, the risk committee shall present a remedy plan to the management board, the supervisory board or any other body performing equivalent supervisory functions. […]." Article L. 511-96 of the MFC provides that "The management	value of collateral for non-centrally cleared OTC derivative contracts and the management and segregation of collateral for such contracts. Taken together these requirements are comparable to the account risk requirements set forth in Exchange Act rule 18a-3(e).

	macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV. CRR Firms are required to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures. Article 74 CRD IV. CRR Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must set and monitor position limits for trading book positions. Article 103 and 103(b)(ii) CRR. CRR Firms that are significant in terms of size, internal organisation and nature, scope and complexity of their activities must establish a risk committee composed of members of the	board, the supervisory board, or any other body performing equivalent supervisory functions and, where applicable, the risk committee shall have all information concerning the risk situation of the credit institution or the finance company. They may, if necessary, use the services of the risk management function referred to in Article L. 511-64 or call on external experts." Article L. 511-97 of the MFC provides that "Credit institutions and finance companies other than those referred to in Article L. 511-89 may entrust, subject to permission by the Autorité de contrôle prudentiel et de résolution, the tasks assigned to the risk committee to the specialized committee referred to in Article L. 823-19 of the French commercial code." Article L. 532-2.7° of the MFC provides that ' In order to grant authorisation to an investment firm, the Autorité de contrôle prudentiel et de résolution verifies whether it: […] 7° Complies with the provisions of	

	management body who do not perform any executive function in the entity concerned. Article 76(3) CRD IV. CRR Firms must have internal methodologies that enable them to assess the credit risk of exposures. Article 79(b) CRD IV. CRR Firms must revalue their trading book positions at least daily. Article 105(3) CRR. CRR Firms must conduct stress testing on their exposures when using models for the purpose of credit risk, CCR, market risk, as well as for their exposures to CCPs and credit-risk concentrations, including in relation to the realisable value of any collateral taken. Articles 177, 286(8), 290, 302, 369, 376 and 401 CRR.	Articles L. 511-58 to L. 511-60, L. 511-67 to L. 511-69, L. 511-89 to L. 511-91, L. 511-98 to L. 511-101 and L. 533-25 to L. 533-28." Article L. 533-31 of the MFC provides that "Investment firms are bound by the obligations set forth in Articles L. 511-89 to L. 511-102. […] An *Arrêté* of the Minister in charge of the economy defines the conditions for the application of this article." French transposition of Article 79(b) of CRD IV is the following: See above.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements			
2. What types of risks are those internal controls required to address?			
The capital rules related to internal risk management control systems are meant to address risks associated with their business activities, including market, credit, leverage, liquidity, legal, and operational risks. Exchange Act rule 18a-1(f) [17 CFR 240.18a-1(f)].[44] **The margin rules are meant to address risks associated with the review or monitoring of financial information, counterparty credit limits and credit risk exposure, the use of stress tests, determinations regarding the need to collect collateral, and the maintenance of sufficient equity in each counterparty account. Exchange Act rule 18a-3(e) [17 CFR 240.18a-3(e)].[45]**	**<u>MiFID</u>** Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 23(1) MiFID Org Reg. **<u>EMIR</u>** **Margin**: The EMIR Margin RTS are intended to protect counterparties from the risk of a potential default of the other counterparty. EMIR Margin RTS, Recital (3). **<u>CRR & CRD IV</u>** An Investment Firm's risk management strategy will,	French transposition of Articles 79 to 87 of CRD IV is the following: Article L.533-2-2 of the MFC provides that "Investment firms implement systems, strategies and procedures that are subject to regular internal control mentioned in Article L. 511-55 enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate risk, operational risk, liquidity risk and excessive leverage risk.	**<u>Comparability of outcomes</u>**: The EU's risk management requirements provide for similar outcomes with respect to the types of risks that must be managed as the SEC's risk management requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 18a-1(f) and 18a-3(e) and MiFID Org Reg, EMIR, CRD IV [and Article 290 CRR] are consistent in that each requires Investment Firms to ensure that their internal risk management structures address all varieties of risk. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[44] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=sg17.4.240_117ad_622.sg51&rgn=div7
[45] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

	amongst other things, be required to cover: credit and counterparty risk, residual risk, concentration risk, securitisation risk, market risk, interest rate risk, operational risk, liquidity risk, risk of excessive leverage, etc. Articles 79-87 CRD IV.	Investment firms, particularly in view of their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the Autorité de contrôle prudentiel et de résolution, an internal approach to determine the capital requirements appropriate to their situation. The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable investment firms to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Investment firms must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate liquidity buffers and have plans for restoring their liquidity. Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure	requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways: • **Risks addressed**. Article 23(1) MiFID Org Reg. requires Investment Firms to establish risk management policies and procedures addressing risks relating to an Investment Firm's activities, processes and systems. Articles 79-87 CRD IV require Investment Firms to implement risk management strategies to address, *inter alia*, credit and counterparty risk, residual risk, concentration risk, securitization risk, market risk, interest rate risk, operational risk, liquidity risk and risk of excessive leverage. These requirements are consistent with the risks addressed in

		that the arrangements, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions of application of this article are set by *Arrêté* of the Minister in charge of the economy." Article L.511-41-1-B of the MFC provides that "Credit institutions and finance companies set up systems, strategies and procedures subject to regular internal control mentioned in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate fluctuation risk, operational risk, liquidity risk, excessive leverage risk and risks identified	Exchange Act rules 18a-1(f) and 18a-3(e).

		in the context of regularly implemented stress tests. Credit institutions and finance companies, taking into account their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the Autorité de contrôle prudentiel et de résolution, an internal approach to determine the capital requirements appropriate to their situation. The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable credit institutions and finance companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and finance companies must, depending on the nature of the risks incurred, establish contingency and business continuity plans, maintain adequate liquidity	

		buffers and have plans for restoring their liquidity. Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions of application of this article are set by an *Arrêté* of the Minister in charge of the economy." These Articles are supplemented by Article 10, 94 to 197, 211 to 230 of the ***Arrêté*** of 3 November 2014 on internal control.	

e. Subcategory: Trade Acknowledgement and Verification Requirements

Trade acknowledgment and verification rules are intended to help avoid legal and operations risks by providing for definitive written records of transactions and procedures to avoid disputes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
1. To what extent are transactions subject to trade acknowledgment, confirmation, or similar requirements that provide for the creation of definitive written records of the transaction?			
The trade acknowledgment rules apply to any transaction in which a firm "purchases from or sells to any counterparty a security-based swap." Exchange Act rule 15Fi-2(a) [17 CFR 240.15Fi-2(a)].[46]	**<u>MiFID requirements</u>** An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. **<u>EMIR: timely confirmation</u>**	**<u>MiFID requirements</u>** French transposition of Article 25(6) MiFID is the following: Article L 533-15 of the MFC provides that "I. Investment service providers other than asset management companies shall provide their clients with a report on the services provided in a durable medium. The report shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services	**<u>Comparability of outcomes</u>**: The timely confirmation requirement under EMIR and the MiFID requirements provide a comparable regulatory outcome to the SEC trade acknowledgement and confirmation requirements. In particular, the regulatory outcomes pursued under the Exchange Act rule 15Fi-2(a) and Article 11(1)(a) of EMIR and MiFID are consistent, in that each requires the timely confirmation of relevant details of a trade in order to promote effective risk management and minimize legal and operational risks.

[46] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
1. To what extent are transactions subject to trade acknowledgment, confirmation, or similar requirements that provide for the creation of definitive written records of the transaction?			
	FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a).	undertaken on behalf of the client." For your information, Article 59 MiFID Org Reg (which is directly applicable and does not require any transposition into French law), provides that : "1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order: (a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order; (b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than	In the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EMIR timely confirmation requirements were "[g]enerally identical in intent", as well "comparable to and as comprehensive as the swap transaction confirmation requirements of Commission regulation 23.501".

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
1. To what extent are transactions subject to trade acknowledgment, confirmation, or similar requirements that provide for the creation of definitive written records of the transaction?			
		the first business day following receipt of the confirmation from the third party. Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person. […] 2. In addition to the requirements under paragraph 1, investment firms shall supply the client, on request, with information about the status of his order. […]".	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
2. To what extent are transactions further subject to verification or similar requirements intended to identify disagreements regarding transaction terms?			
A firm must verify[47] the accuracy of, or dispute with the counterparty, the terms of the trade acknowledgment. Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[48] The trade verification requirement applies to security-based swap transactions for which a firm has received a trade acknowledgment (subject to certain exceptions). Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[49]	**EMIR** Both counterparties to an uncleared OTC derivative transaction are equally subject to the timely confirmation obligation described in question 1 of section 1(e). EMIR, Article 11(1)(a).		**Comparability of outcomes**: Although the timely confirmation requirements under EMIR apply in a different manner to the SEC's transaction verification requirements, the risk management objectives pursued under Exchange Act rule 15Fi-2(d)(2) and Article 11(1)(a) of EMIR are consistent and comparable, in that each regulation is designed to ensure that both parties to a transaction are informed of, and agree upon, all terms of that transaction in writing and in a timely manner following execution. The SEC requirement with respect to timely confirmation is substantially the same as the CFTC requirement and the CFTC noted in the CFTC Substituted Compliance Decision on

[47] "Trade verification" means "the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty." Exchange Act rule 15Fi-1(i) [17 CFR 240.15Fi-1(i)].

[48] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

[49] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
2. To what extent are transactions further subject to verification or similar requirements intended to identify disagreements regarding transaction terms?			
			Transaction-Level Requirements that "the trade confirmation requirements of the EMIR standards are comparable to and as comprehensive as the swap transaction confirmation requirements of CFTC Regulation 23.501."

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
Responsible Parties (Exchange Act rule 15Fi-2(a) [17 CFR 240.15Fi-2(a)]):[50] – For transactions between a dealer and a participant, the dealer will provide	**EMIR: timely confirmation (responsible parties)** Both counterparties to an uncleared OTC derivative transaction are equally subject to the timely confirmation obligation described in question 1 of section 1(e). Article 11(1)(a).		**Comparability of outcomes**: The timely confirmation requirement under EMIR provides for a comparable regulatory outcome to the SEC's responsible parties and trade acknowledgment requirements.

[50] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
the trade acknowledgment. – For transactions in which only one counterparty is a dealer or participant, the dealer or participant will provide the trade acknowledgment. – For all other transactions in which a dealer or participant purchases or sells a security-based swap, the counterparties will agree as to who provides the trade acknowledgment. **Contents**: Trade acknowledgments are comprised of written or electronic records of a security-based swap transaction sent by one	**EMIR: timely confirmation (contents)** A confirmation is defined in RTS 149/2013 as the documentation of the agreement of the counterparties to all the terms of an OTC derivative contract. RTS 149/2013, Article 1(c). To comply with the timely confirmation obligation, counterparties must therefore reach a legally binding agreement as to all the terms of an OTC derivative contract. ESMA Q&A on EMIR, OTC Answer 4(a). **EMIR: timely confirmation (delivery)** A timely confirmation may take the form of an electronically executed contract or a document signed by both counterparties. RTS 149/2013, Recital 26.		In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-1 and 15Fi-2 and Article 11(1)(a) of EMIR, along with RTS 149/2013, are consistent and comparable in that each requires parties to promptly provide a confirmation containing all details of a transaction to their counterparty following execution. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
counterparty to the other (Exchange Act rule 15Fi-1(h) [17 CFR 240.15Fi-1(h)]),[51] that disclose all the terms of the transaction (Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)]).[52] **Delivery**: Trade acknowledgments must be provided through electronic means that provide reasonable assurance of delivery and a record of transmittal. Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)].[53] **Timing**: Trade acknowledgments "must be provided promptly, but in any event by the end of the first business day[54] following the day of execution." Exchange Act	**EMIR: timely confirmation (timing)** Confirmation is required within two working days if one or both of the parties to the transaction is an NFC- and otherwise within one working day. RTS 149/2013, Article 12. Where a transaction is concluded after 4:00 PM. local time or with a counterparty located in a different time zone which does not allow for confirmation by the set deadline, confirmation shall take place as soon as possible and, at the latest, one business day after the expiration of the confirmation time limit which would otherwise have applied. RTS 149/2013, Article 12(3);		requirements in the following ways: • **Responsible parties**. The timely confirmation requirement under Article 11(1)(a) of EMIR applies equally in respect of both counterparties. Article 25(6) of MiFID and Article 59 of MiFID Org Reg. require Investment Firms to provide confirmations to their clients following the execution of transactions with those clients. While the requirements under EMIR do not align exactly with the SEC requirements, the EMIR, MiFID and SEC obligations all promote the same underlying policy goal of

[51] https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-15Fb6-1.pdf
[52] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[53] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[54] For those purposes: the term "business day" means any day other than a Saturday, Sunday or legal holiday; the term "execution" means the point at which the counterparties become irrevocably bound to a transaction under applicable law; and the term "day of execution" means the calendar day of the counterparty to the security-based swap transaction that ends the latest, with special accommodations for late-afternoon and non-business day transactions. *See* Exchange Act rules 15Fi-1(a), (d) and (e) [17 C.F.R. 240.15Fi-1(a), (d) and (e)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
rule 15Fi-2(b) [17 CFR 240.15Fi-2(b)].[55]	ESMA Q&A on EMIR, OTC Answer 4(d). **MiFID** **Responsible parties:** All Investment Firms must provide confirmations to their clients following the execution of orders on behalf of such clients (including by executing an order as principal with its client). Article 25(6) MiFID and Article 59 MiFID Org Reg.**Contents:** An Investment Firm must provide the client with the essential information concerning the execution of orders and to send a notice to the client in a durable medium confirming execution of orders. The confirmation must include: the reporting firm identification; the name or other designation of the client; the trading day; the trading time; the type of order; venue	**MiFID:** **Responsible parties** French transposition of Article 25(6) MiFID is the following: Article L 533-15 of the MFC provides that "I. Investment service providers other than asset management companies shall provide their clients with a report on the services provided in a durable medium. The report shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services	providing an agreed confirmation following the execution of a transaction. • **Contents**. ESMA has clarified in the ESMA Q&A on EMIR that compliance with the timely confirmation requirement as defined in RTS 149/2013, requires counterparties to reach a legally binding agreement as to all the terms of an OTC derivative contract. Article 25(6) MiFID and Article 59 MiFID Org Reg. require an Investment Firm to confirm a plethora of essential information concerning the execution of that order (including all material terms of the transaction). These requirements are comparable to the requirements of Exchange Act rule 15Fi-2(c) [17 CFR

[55] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
	identification; instrument identification; a buy/sell indicator; the nature of the order if other than buy/sell; the quantity; the unit price; the total consideration; information on commissions and expenses charged; the rate of exchange (where relevant); the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client; and, where the client's counterparty was the Investment Firm itself or any person in the Investment Firm's group or another client of the Investment Firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading. In addition,	undertaken on behalf of the client." For your information, Article 59 MiFID Org Reg (which is directly applicable and does not require any transposition into French law), provides that : "1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order: […] (b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.[…] "	240.15Fi-2(c)], which requires the trade acknowledgement to disclose all the terms of the transaction. • **Delivery**. Article 11(1)(a) of EMIR requires a confirmation to be provided by electronic means where available. Article 3 MiFID Org Reg. allows for the use of electronic communications where the client provides an email address in order to ensure that the client is reasonably likely to receive the electronic communication. These requirements are comparable to Exchange Act rule 15Fi-2(c) which requires delivery of a trade acknowledgment through electronic means.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
	Investment Firms must supply the client, on request, with information about the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. **Delivery:** This information must be provided to the client in a 'durable medium'. This means any instrument which: (a) enables a client to store information addressed personally to that client in a way accessible for future reference, and (b) allows the unchanged reproduction of the information stored. Article 4(1)(62) MiFID. Investment Firms can use a medium other than on paper only if: (a) the provision of that information in that medium is appropriate to the context in which the business between the Investment Firm and the client is, or is to be, conducted; and (b) the person to whom the information is to be provided,	**<u>Contents:</u>** French transposition of Article 25(6) MiFID is the following: Article L 533-15 of the MFC provides that "I. Investment service providers other than asset management companies shall provide their clients with a report on the services provided in a durable medium. The report shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client." For your information, Article 59 MiFID Org Reg (which is directly applicable and does not require	• **Timing**. Article 12 of RTS 149/2013 requires counterparties to confirm the terms of each uncleared OTC derivative contract within one or two working days, depending on the nature of the counterparties. Article 59 MiFID Org Reg. requires an Investment Firm to promptly provide the client with a confirmation as soon as possible and no later than the first business day following execution or, where the confirmation is received by the Investment Firm from a third-party, no later than the first business day following receipt of the confirmation from the third-party. These requirements are comparable to the timing requirements set forth in Exchange Act rule 15Fi-2(b), which requires confirmation by the end of the first

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
	when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium. For this purpose, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Investment Firm and the client is, or is to be, conducted where there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of conducting business shall be treated as such evidence. Article 3 MiFID Org Reg. **Timing:** This information must be provided to the client promptly, meaning as soon as possible and no later than the first business day following execution or, where the confirmation is	any transposition into French law), provides that : "1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order: (a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order; (b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party. Point (b) shall not apply where the confirmation would contain	business day following the day of execution. The CFTC also noted in their Substituted Compliance Decision on Transaction-Level Requirements that the specific timing requirements under the EMIR and the relevant US rules were comparable.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
	received by the Investment Firm from a third-party, no later than the first business day following receipt of the confirmation from the third-party. Article 25(6) MiFID and Article 59 MiFID Org Reg.	the same information as a confirmation that is to be promptly dispatched to the client by another person. […] 2. In addition to the requirements under paragraph 1, investment firms shall supply the client, on request, with information about the status of his order. […] 4. The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable and, where relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) No 600/2014: (a) the reporting firm identification; (b) the name or other designation of the client; (c) the trading day;	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
		(d) the trading time; (e) the type of the order; (f) the venue identification; (g) the instrument identification; (h) the buy/sell indicator; (i) the nature of the order if other than buy/sell; (j) the quantity; (k) the unit price; (l) the total consideration; (m) a total sum of the commissions and expenses charged and, where the client so requests, an itemised breakdown including, where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when dealing on own account, and the investment	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
		firm owes a duty of best execution to the client; (n) the rate of exchange obtained where the transaction involves a conversion of currency; (o) the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client; (p) where the client's counterparty was the investment firm itself or any person in the investment firm's group or another client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
		For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the client with information about the price of each tranche upon request. […]". **Delivery:** French transposition of Article 4(1)(62) MiFID is the following: Article L.311-7 of the MFC provides that "For the purpose of this title, is a durable medium any instrument which enables a client or a professional to store information addressed personally to that client or that professional, in a way accessible for future reference and for a period of time adequate for the purposes of the information, and	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
		which allows the unchanged reproduction of the information stored." **Timing:** French transposition of Article 25(6) MiFID is the following: Article L 533-15 of the MFC provides that "I. Investment service providers other than asset management companies shall provide their clients with a report on the services provided in a durable medium. The report shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
3. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?			
		For your information, Article 59 MiFID Org Reg (which is directly applicable and does not require any transposition into French law), provides that : "1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order: […] (b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.".	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
4. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?			
Policies and Procedures: Firms are required to "establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment", regardless of whether the counterparty is also subject to the trade acknowledgment requirement. Exchange Act rule 15Fi-2(d)(1) [17 CFR 240.15Fi-2(d)(1)].[56] **Negative affirmation**: The SEC has clarified that the policies and procedures may rely on a counterparty's "negative affirmation" to the terms of a trade acknowledgment. *See* Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR at 39820 (Jun. 17, 2019) (**Trade**	**EMIR: timely confirmation (policies and procedures) & negative affirmation** Both counterparties must comply with the timely confirmation requirement and the obligations contained in RTS 149/2013 and must agree in advance on the specific process for this compliance. Processes under which documentation is deemed to be finalised and accepted by both parties after a fixed deadline has expired (i.e. negative affirmation) are compliant with RTS 149/2013, provided that both counterparties have agreed in advance to provide for negative affirmation. ESMA Q&A on EMIR, OTC Answer 4(a). FCs and NFCs are also obliged, in relation to uncleared OTC derivative contracts, to have		**Comparability of outcomes**: The timely confirmation requirement under EMIR provides for a comparable regulatory outcome to the SEC trade verification requirements. In particular, both Exchange Act rules 15Fi-1 and 15Fi-2 and RTS 149/2013 require parties to have processes in place to provide trade confirmations and promptly resolve any disputes which may arise in respect of such trade confirmations. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**:

[56] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
4. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?			
Acknowledgment and Verification Adopting Release).[57] **Timing**: Firms must "promptly" verify or dispute the terms of trade acknowledgments they receive. Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[58] Exchange Act rule 15Fi-1(i) defines trade verification as "the process by which a trade acknowledgement has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty."	agreed detailed procedures and processes in relation to: (a) the identification, recording and monitoring of disputes relating to the recognition of the contract;[59] and (b) the resolution of disputes in a timely manner, with a specific process for those disputes which are not resolved within five business days. RTS 149/2013, Article 15(1). **EMIR: timely confirmation (timing)** As the timely confirmation obligation under Article 11(1)(a) of EMIR applies equally to both counterparties, the information on timing in question 3 of section		The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Negative affirmation.** Both the SEC and ESMA have clarified that negative affirmation is possible, although the ability for counterparties to rely on a negative affirmation under the EMIR Margin RTS is required to be agreed by the counterparties in advance. • **Timing**. Article 12 of RTS 149/2013 requires parties to confirm the terms of each uncleared OTC derivative contract within one or two working days, depending on

[57] The SEC generally would consider negative affirmation policies and procedures reasonable if they require the counterparty to agree to be bound by negative affirmation before or at the time of execution, and provide adequate time after the counterparty receives the trade acknowledgment to dispute its terms or otherwise respond, and adding that the policies and procedures generally should require the entity to document its counterparty's agreement to rely on negative affirmation. Trade Acknowledgment and Verification Adopting Release, 81 FR at 39820. https://www.govinfo.gov/content/pkg/FR-2016-06-17/pdf/2016-13915.pdf

[58] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

[59] This requirement has been widely interpreted to include questions as to whether the contract exists and if so, what its terms are.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
4. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?			
	1(e) applies equally in response to question 4 of section 1(e).		the nature of the counterparties. This is comparable to the timing requirements in Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)], which require firms to "promptly" verify or dispute the terms of trade acknowledgments they receive.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
The trade acknowledgment and verification requirements are subject to exceptions regarding: • Transactions with a clearing agency as counterparty: An exception applies to any "clearing transaction," which is defined as a security-based swap "that has a clearing agency as a direct	The timely confirmation requirement under Article 11(1)(a) of EMIR only applies to uncleared OTC derivative contracts and does not apply to derivative contracts entered into on a regulated market (whether in the EU or in a non-EEA market considered as equivalent).		**Comparability of outcomes**: The exceptions to the timely confirmation obligation under Article 11(1)(a) of EMIR provide a comparable regulatory outcome to the SEC transaction exceptions to the trade acknowledgement and verification rules.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
counterparty." Exchange Act rules 15Fi-1(b), 15Fi-1(c), 15Fi-2(e) [17 CFR 240.15Fi-1(b), (c),[60] 240.15Fi-2(e)];[61] • Transactions on execution facilities: An exception applies to transactions executed on a security-based swap execution facility or national securities exchange, provided that the facility's rules, procedures or processes provide for the acknowledgment and verification of all terms of the transaction "no later than" the time otherwise required by the rule.	Exempt entities under EMIR, as specified in Articles 1(4) and (5) of EMIR,[65] are not subject to these requirements and accordingly, counterparties to such exempt entities are not subject to the Article 11(1)(a) timely confirmation obligation in respect of transactions with these exempt entities.[66] In the context where the Investment Firm deals as principal with its client, it is only not required to provide a confirmation if the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person (e.g. a clearing broker).		In particular, there are comparable exceptions under EMIR and the Exchange Act rules for cleared derivative contracts and derivative contracts entered into on a regulated market. In addition: (1) exemptions from MiFID confirmation requirements exist where the confirmation would be duplicative of a confirmation provided by another party involved in the transaction; and (2) the timing and content of MiFID confirmation may be adjusted as agreed with the client where the client is an ECP.

[60] https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-15Fb6-1.pdf

[61] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

[65] This includes: (i) a member of the European System of Central Banks (**ESCB**) or other Member State body performing similar functions or other EU public body charged with or intervening in the management of the public debt; (ii) the Bank for International Settlements; (iii) the central banks and public bodies charged with or intervening in the management of the public debt in Japan; United States of America; Australia; Canada; Hong Kong; Mexico; Singapore and Switzerland; (iv) certain multilateral development banks, (v) certain public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments; and (vi) the European Financial Stability Facility and the European Stability Mechanism

[66] OTC Answer 12(g) in the ESMA Q&A on EMIR provides additional guidance on this point.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
Exchange Act rule 15Fi-2(f)(1) [17 CFR 240.15Fi-2(f)(1)];[62] • Transactions accepted for clearing: An exception applies to transactions that are submitted for clearing to a clearing agency, provided: (i) the transaction is submitted "as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment" under the rule; and (ii) the clearing agency's rules, procedures or processes provide for acknowledgment and verification of all terms of the transaction "prior to or at the same time" the transaction is accepted for clearing. Exchange Act rule	Investment Firms are permitted to enter into agreements with ECPs to determine the content and timing of the reports required by art 59 delegated regulation (see above) and reports required relating to holdings of client assets and client money. Article 61 MiFID Org Reg.		

[62] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements			
5. To what extent are those requirements subject to exceptions with regard to particular types of transactions?			
15Fi-2(f)(2) [17 CFR 240.15Fi-2(f)(2)];[63] and • Additional provisions for transactions that have not been acknowledged, verified or accepted for clearing: If a firm receives notice that a transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of an execution facility or exchange, or accepted for clearing by a clearing agency (per the above exceptions), the firm must comply with the applicable trade acknowledgment and verification requirements "as if" the transaction were executed at the time it receives the notice. Exchange Act rule 15Fi-2(f)(3) [17 CFR 240.15Fi-2(f)(3)].[64]			

[63] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[64] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

f. Subcategory: Risk Mitigation Requirements

Registered entities are required to take steps to identify and resolve discrepancies in transaction terms and valuations, reduce offsetting or redundant security-based swaps, and document their trading relationships in order to mitigate market, credit, operational and legal risks by, *inter alia*, increasing the likelihood that parties (i) remain in agreement with existing material terms, and (ii) identify problems with parties' internal valuation systems, models or internal controls. SEC Guidance at Category I.F;[67] *see* Exchange Act Release No. 87782 (Dec. 18, 2019) at 10-11 (**Risk Mitigation Adopting Release**).[68]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
Portfolio reconciliation requirements do not apply to cleared security-based swaps. Exchange Act rule 15Fi-3(d) [17 CFR 240.15Fi-3(d)].[69] Firms are required to take the following actions to engage in portfolio reconciliation with their counterparties: 1. Portfolios and security-based swap transactions with counterparties that are dealers or participants:	**<u>EMIR: portfolio reconciliation</u>** FCs and NFCs to an OTC derivative contract not cleared by a CCP are required to establish formalised processes which are robust, resilient and auditable in order to reconcile portfolios. EMIR, Article 11(1)(b). FCs and NFCs to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios should be reconciled before entering into that OTC		**<u>Comparability of outcomes</u>**: The EU reconciliation and dispute resolution requirements provide a similar regulatory outcome to the corresponding SEC requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-3 and Articles 13 and 15 of RTS 149/2013 are consistent, in that each require parties to agree to develop procedures to comply with extensive reconciliation requirements tailored to the type of firm at issue, in order to identify and resolve any discrepancies or disputes

[67] https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf
[68] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf
[69] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
– The two counterparties must engage in portfolio reconciliation in the manner specified in paragraph (a) to Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3];[70] – Firms must establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation for transactions with all other counterparties in the manner set forth in paragraph (b) to Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3];[71]	derivative contract. RTS 149/2013, Article 13(1). This reconciliation shall be performed by the counterparties to the OTC derivative contract or by a qualified third-party duly mandated to this effect by a counterparty (for example, a third-party service provider). It shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract in accordance with Article 11(2) of EMIR. RTS 149/2013, Article 13(2). In addition to the valuation attributed to each contract, key trade terms may also include other relevant details such as the effective date, the notional value of the contract and currency of the transaction, the underlying		between counterparties regarding the valuation of the transaction in a timely manner. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, both the EU and SEC rules are aimed at achieving a process in which overall risk can be identified and reduced. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are comparable to analogous SEC

[70] https://www.sec.gov/rules/final/2019/34-87782.pdf
[71] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
– Rule 15Fi-3(a) and (b) address the potential use of third-party service providers to perform the reconciliations, and require firms to agree in writing on the terms of portfolio reconciliation with their counterparties. Exchange Act rule 15Fi-3(a), (b) [17 CFR 240.15Fi-3(a), (b)];[72] – Portfolio reconciliation must be performed no less frequently than once per business day for portfolios that include 500 or more security-based swaps, once each week for portfolios that include more	instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates. RTS 149/2013, Recital 28. Reconciliation shall be performed: (a) for an FC or NFC+: (i) On each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; (ii) Once per week when the counterparties have between fifty-one and 499 OTC derivative contracts		requirements in the following ways: • **General reconciliation requirement framework**. Article 13(1) of RTS 149/2013 provides that FCs and NFCs to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios should be reconciled before entering into that OTC derivative contract. Under Article 13(2) of RTS 149/2013, the reconciliation shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract. These requirements are comparable to the portfolio

[72] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
than fifty security-based swaps, and once each calendar quarter for portfolios that include no more than fifty security-based swaps at any time during the quarter. Exchange Act rule 15Fi-3(a)(3) [17 CFR 240.15Fi-3(a)(3)];[73] – Firms must resolve discrepancies in material terms[74] immediately. Exchange Act rule 15Fi-3(a)(4) [17 CFR 240.15Fi-3(a)(4)];[75] – Firms must establish, maintain and follow written policies and	outstanding with each other at any time during the week; and (iii) Once per quarter when the counterparties have fifty or less OTC derivative contracts outstanding with each other at any time during the quarter. (b) for a NFC-: (i) Once per quarter when the counterparties have more than 100 OTC derivative contracts		reconciliation requirements in Exchange Act rule 15Fi-3. • **Policies and procedures**. Article 11(1)(b) of EMIR requires that FCs and NFCs to an OTC derivative contract not cleared by a CCP establish formalized processes which are robust, resilient and auditable, in order to reconcile portfolios. This requirement is comparable to Exchange Act rule 15Fi-3. • **Third-party service providers**. Article 13(2) of RTS 149/2013 prescribes that reconciliation shall be performed by the counterparties to the OTC derivative contract with each other or by a qualified third-

[73] https://www.sec.gov/rules/final/2019/34-87782.pdf

[74] In this context, and in the same context where the counterparties are not dealers or participants, a "material term" includes the terms required to be reported to security-based swap data repositories or the SEC pursuant to Regulation SBSR rule 901, and excludes terms that are not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap. 17 CFR 242.901; *see* Exchange Act rule 15Fi-1(i) [17 CFR 240.15Fi-1(i)].

[75] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
procedures reasonably designed to resolve valuation discrepancies of 10% or more as soon as possible but in any event within five business days.[76] Exchange Act rule 15Fi-3(a)(5), (c) [17 CFR 240.15Fi-3(a)(5), (c)];[77] and – Firms must promptly notify the SEC and any applicable prudential regulation regarding valuation disputes, at the transaction or portfolio level, in excess of $20 million, if not resolved within a specified period of time. Exchange Act rule 15Fi-3(a)(5), (c)	outstanding with each other at any time during the quarter; or (ii) Once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other. RTS 149/2013, Article 13(3). **EMIR: dispute resolution** FCs and NFCs to an OTC derivative contract not cleared by a CCP are also required to establish formalised processes which are robust, resilient and auditable in order to identify disputes early and resolve them. EMIR, Article 11(1)(b).		party duly mandated to this effect by a counterparty. This requirement is comparable to Exchange Act rules 15Fi-3(a) and 15Fi-3(b). • **Frequency**. Article 13(3) of RTS 149/2013 sets out the frequency with which reconciliation be performed for FCs and NFCs. These frequency requirements are comparable to those set out in Exchange Act rules 15Fi-3(a)(3) and 15Fi-3(b)(3). • **Resolving discrepancies**. Article 15(1) of RTS 149/2013 requires parties to agree to detailed procedures and processes to identify, record, monitor and resolve disputes relating to the recognition or valuation of the contract. This requirement is comparable to Exchange Act

[76] Provided that the firm has procedures to identify how it will comply with applicable variation margin requirements pending resolution of the discrepancy.
[77] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
[17 CFR 240.15Fi-3(a)(5), (c)].[78] Firms must report such valuation disputes within three business days, and must provide amended notices if the amount of any valuation dispute that was the subject of a previous notice increases or decreases by more than $20 million at the transaction or portfolio level. Exchange Act rules 15Fi-3(c)(1), (2) [17 CFR 240.15Fi-3(c)(1), (2)].[79] 2. Portfolios and security-based swap transactions with counterparties that	In relation to uncleared OTC derivative contracts, RTS 149/2013 requires FCs and NFCs to have agreed detailed procedures and processes in relation to: (a) the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract (recording at least the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed); and (b) the resolution of disputes in a timely manner, with a specific process for those disputes that are not resolved within five business days. RTS 149/2013, Article 15(1). FCs shall report to the competent authority designated in accordance with Article 48 of		rules 15Fi-3(a)(5), 15Fi-3(c) and 15Fi-3(b)(4). • **Regulator notification**. Article 15 of RTS 149/2013 requires FCs to report to relevant competent authorities any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or value higher than EUR 15 million and outstanding for at least fifteen business days. While the equivalent requirement under Exchange Act rules 15Fi-3(a)(5) and 15Fi-3(c) is slightly different, in that firms must notify the SEC and any applicable prudential regulator of valuation disputes in excess of $20 million if not resolved within a specified period of time,

[78] https://www.sec.gov/rules/final/2019/34-87782.pdf
[79] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
are not dealers or participants: – Timing: Portfolio reconciliation must be performed no less frequently than once each calendar quarter for portfolios that include no more than 100 security-based swaps at any time during the quarter, and once annually for portfolios that include no more than 100 security-based swaps at any time during the calendar year. Exchange Act rule 15Fi-3(b)(3) [17 CFR 240.15Fi-3(b)(3)];[80]	MiFID any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or value higher than EUR 15 million and outstanding for at least fifteen business days. RTS 149/2013, Article 15(2). As a minimum, FCs are expected to make a monthly notification of any disputes outstanding in the preceding month.[84] ESMA Q&A on EMIR, OTC Answer 13(d).		we note that in the CFTC Substituted Compliance Decision on Transaction-Level Requirements the CFTC acknowledged this discrepancy and nonetheless considered that the EU and relevant US requirements were comparable. Overall, in the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EMIR portfolio reconciliation requirements were "[g]enerally identical in intent" and further "comparable to and as comprehensive as the portfolio reconciliation requirements of Commission regulation 23.502".

[80] https://www.sec.gov/rules/final/2019/34-87782.pdf

[84] Although national competent authorities may require more frequent reporting of outstanding disputes

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
– Firms must resolve discrepancies in the material terms or valuation of security-based swaps, and must establish, maintain and follow written procedures reasonably designed to resolve discrepancies in valuation (of 10% or less) or in the material terms of security-based swaps in a timely fashion. Exchange Act rule 15Fi-3(b)(4) [17 CFR 240.15Fi-3(b)(4)];[81] and – Firms must promptly notify the SEC and any applicable prudential regulation regarding security-based swap			

[81] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
1. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?			
valuation disputes, at the transaction or portfolio level, in excess of $20 million, if not resolved within a specified period of time. Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3].[82] Firms must report such valuation disputes within five business days, and must provide amended notices if the amount of any valuation dispute that was the subject of a previous notice increases or decreases by more than $20 million. Exchange Act rule 15Fi-3(c)(1), (2) [17 CFR 240.15Fi-3(c)(1), (2)].[83]			

[82] https://www.sec.gov/rules/final/2019/34-87782.pdf
[83] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
Portfolio compression Firms must establish, maintain and follow written policies and procedures addressing bilateral offset, bilateral compression and multilateral compression. For counterparties that are dealers or participants, Exchange Act rule 15Fi-4(a) addresses bilateral offset, bilateral compression and multilateral compression requirements. Exchange Act rule 15Fi-4(a) [17 CFR 240.15Fi-4(a)].[85] Compression rules do not apply to cleared security-based swaps. Exchange Act rule 15Fi-4(c) [17 CFR 240.15Fi-4(c)].[86] Compression rules may reduce a market participant's "gross exposure to its direct counterparties," and may	**<u>EMIR: portfolio compression</u>** FCs and NFCs to an OTC derivative contract not cleared by a CCP are required to establish formalised processes which are robust, resilient and auditable to manage the risk associated with portfolios. EMIR, Article 11(1)(b). FCs and NFCs with 500 or more uncleared OTC derivative contracts outstanding with a counterparty shall have in place procedures to regularly and, at least twice a year, analyse the possibility of a portfolio compression exercise in order to decrease counterparty risk and either: (i) engage in such an exercise; or (ii) be able to provide a reasonable and valid explanation to the relevant		**<u>Comparability of outcomes</u>**: The EU portfolio compression requirements provide a similar regulatory outcome to the SEC portfolio compression requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-4 and Article 14 of RTS 149/2013 are consistent, in that each require regular determinations of whether portfolio compression is appropriate and policies and procedures to be put in place to engage in such exercise. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[85] https://www.sec.gov/rules/final/2019/34-87782.pdf
[86] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
provide "important operational benefits and efficiencies for market participants . . . ." Risk Mitigation Adopting Release at 12-13.[87]	competent authority if they conclude such exercise is not appropriate. RTS 149/2013, Article 14.		requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Policies and Procedures**. Pursuant to the Article 11(1)(b) of EMIR requirement that parties to an OTC derivative contract not cleared by a CCP establish formalized risk management processes, Article 14 of RTS 149/2013 provides that FCs and NFCs with 500 or more uncleared OTC derivative contracts outstanding with a counterparty shall have procedures in place to regularly and, at least twice a

[87] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
			year, analyze the possibility of a portfolio compression exercise in order to decrease counterparty risk and either: (i) engage in such an exercise; or (ii) be able to provide a reasonable and valid explanation to the relevant competent authority if they conclude such exercise is not appropriate. This requirement is comparable to the policies and procedures required by Exchange Act rule 15Fi-4(a) to be put into place to analyze and effect compression. • **Applicability**. The portfolio compression rules created pursuant to Article 11(1)(b) of EMIR only apply to parties to an OTC derivative contract not cleared by a CCP. This is comparable to Exchange Act rule 15Fi-4(c).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
2. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?			
			• In the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EMIR portfolio compression requirements were "[g]enerally identical in intent" and further "comparable to and as comprehensive as the portfolio compression requirements of Commission regulation 23.503".

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
Except for pre-existing security-based swaps, cleared security-based swaps, or certain security-based swaps executed anonymously on a national securities exchange or security-	**MiFID requirements** MiFID requires counterparties to be classified as retail clients, professional clients, and eligible counterparties, and	**MiFID requirements** French transposition of Annex II MiFID is the following:	**Comparability of outcomes**: The EU documentation requirements applicable to OTC derivatives trading relationships provide a similar regulatory

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
based swap execution facility, firms must establish, maintain and follow policies and procedures reasonably designed to ensure that they execute written security-based swap trading relationship documentation with each of their counterparties prior to, or contemporaneously with, executing a security-based swap. Exchange Act rule 15Fi-5(a)(1), (2), (b)(1)-(3) [17 CFR 240.15Fi-5(a)(1), (2), (b)(1)-(3)].[88] These requirements should: – promote sound collateral and risk management practices; – reduce counterparty credit risk; and – promote certainty regarding the agreed-upon	corresponding different conduct of business rules apply. Investment firms have to correctly categorize clients and notify those clients of their classification; furthermore, investment firms should be able to demonstrate the correctness of the classification. Articles 24 and 30 and Annex II MiFID and Article 45 MiFID Org Reg. An Investment Firm must establish a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 25(5) MiFID. This must be in writing and on paper or another durable medium. Article 58 MiFID Org Reg. In practice, Investment	Article D. 533-4 of the MFC provides that" I. Investment service providers other than asset management companies establish and implement appropriate written internal policies and procedures to categorise clients as non-professional client, professional client or eligible counterparty. II. - An investment service provider other than an asset management company shall inform its clients of their categorisation as a non-professional client, a professional client or an eligible counterparty. It shall also inform them in the event of a change of category. It informs its clients on a durable medium of their right to request a different categorisation and of	outcome to the SEC trading relationship documentation requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fi-5, EMIR and MiFID are consistent in that each provide for documentation requirements in order to mitigate the risks associated with entering into transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are comparable to analogous SEC

[88] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
valuation and other material terms of a security-based swap. Risk Mitigation Adopting Release at 14.[89] Where both counterparties are dealers or financial counterparties,[90] or upon counterparty request – documentation must include: – Written documentation regarding the process for determining the value of security-based swaps for purposes of complying with margin and risk management requirements. Exchange Act rule	Firms meet this obligation through their standard client-facing terms of business (addressing MiFID client protection requirements amongst other things), in combination with derivatives master agreements and related collateral documentation where appropriate. An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about	the consequences this would have for their degree of protection. III. Professional clients or eligible counterparties are responsible for keeping the investment service provider informed about any change, which could affect their current categorisation. IV. Should the investment service provider become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action. [...]" French transposition of Article 25(5) MiFID is the following: Article L.533-14 of the MFC provides that " Investment	requirements in the following ways: • **Creation of trading records**. Article 25(5) MiFID requires an Investment Firm to establish a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 59 MiFID Org Reg. requires an Investment Firm that has carried out an order on behalf of a client, other than for portfolio management (which means the provision of discretionary investment management), to promptly provide the client a

[89] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf

[90] For those purposes, the term "financial counterparty" includes swap dealers, major swap participants, certain commodity pools, private funds and employee benefit plans, and persons predominately engaged in activities that are in the business of banking or that are financial in nature. Exchange Act rule 15Fi-1(g) [17 CFR 240.15Fi-1(g)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
15Fi-5(b)(4) [17 CFR 240.15Fi-5(b)(4)];[91] – Information regarding the status of the dealer or its counterparty, as an insured financial institution or financial company. Exchange Act rule 15Fi-5(b)(5) [17 CFR 240.15Fi-5(b)(5)];[92] and – Information regarding security-based swaps that have been accepted for clearing. Exchange Act rule 15Fi-5(b)(6) [17 CFR 240.15Fi-5(b)(6)].[93] Firms must have an independent audit of their documentation	the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. The responsibilities of this function must include to: establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Investment Firm's systems, internal control mechanisms and arrangements; issue	service providers other than asset management companies shall establish a record that includes the document or documents agreed between the investment firm and the client that set out the rights and obligations of the parties, and the other terms on which the investment firm will provide services to the client." French transposition of Article 24 (1) and (2) MiFID is the following: Article L. 533-11 of the MFC provides that "When providing investment and related services to clients, investment service providers other than portfolio management companies act in an honest, fair and professional manner, serving the best interests of clients." Article L. 533-24 of the MFC provides that " Investment	confirmation, in a durable medium, with the essential information concerning the execution of that order. Articles 74 and 75 MiFID Org Reg. require Investment Firms to keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted. These requirements are comparable to Exchange Act rules 15Fi-5(a) and 15Fi-5(b). • Article 24 MiFID Org Reg. requires Investment Firms, where appropriate and proportionate, to establish an internal audit function, the remit of which includes reviewing the effectiveness of internal controls – these internal controls would normally include, among

[91] https://www.sec.gov/rules/final/2019/34-87782.pdf
[92] https://www.sec.gov/rules/final/2019/34-87782.pdf
[93] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
policies and procedures. Exchange Act rule 15Fi-5 [17 CFR 240.15Fi-5].[94] Trading relationship documentation must address, in part: payment obligations, netting, termination events, termination obligations, transfer of rights and obligations, governing law, valuation, dispute resolution, trade acknowledgments and verifications, and credit support arrangements. Exchange Act rules 15Fi-5(a)(1), (b)(1)-(3) [17 CFR 240.15Fi-5(a)(1), (b)(1)-(3)].[95]	recommendations based on the result of this work and verify compliance with those recommendations; and report to senior management in relation to internal audit matters. Article 24 MiFID Org Reg. **EMIR: netting and collateral agreements** FCs and NFCs subject to the margin requirement will generally be required to enter into netting agreements and exchange collateral agreements, at the latest, at the moment in which a non-centrally cleared OTC derivative contract is concluded, as further detailed in question 2 of section 1(c) above. The terms of all necessary agreements (including, as relevant, the terms of any netting agreement and any exchange of collateral	service providers other than portfolio management companies that design financial instruments for sale to clients : 1° Maintain, apply and review a validation process for each financial instrument and significant adaptations of existing financial instruments before their marketing or distribution to clients. This validation process determines a defined target market of end customers within the relevant customer category for each instrument and ensures that all relevant risks for this defined target market are assessed ; 2° Ensure that the financial instruments are designed in accordance with the validation process referred to in 1° and that the distribution strategy for	other matters, the Investment Firm's documentation policies and procedures. These requirements are comparable to Exchange Act rules 15Fi-5. • **Required terms**: Article 2(2)(g) of the EMIR Margin RTS requires, at a minimum, that the terms of all necessary agreement (including as relevant the terms of any netting or collateral agreements) document, *inter alia*, payment obligations, the conditions for netting, termination events and the transfer of rights and obligations upon termination. These requirements are comparable to the trading relationship documentation

[94] https://www.sec.gov/rules/final/2019/34-87782.pdf
[95] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
	agreement) must document (at least): (a) any payment obligations arising between counterparties; (b) the conditions for netting payment obligations; (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts; (d) all calculation methods used in relation to payment obligations; (e) the conditions for netting payment obligations upon termination; (f) the transfer of rights and obligations upon termination; and (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(2)(g). **<u>EMIR: dispute resolution</u>** FCs and NFCs are required to agree on detailed written procedures and processes to identify, record, monitor and resolve disputes, in particular in relation to the identification, recording and monitoring of	these instruments is compatible with the defined target market ; 3° Make available to any distributor all useful information on the financial instruments and their validation process, including the defined target market; 4° take reasonable measures to ensure that the financial instruments are distributed to the defined target market." Article L. 533-24-1 of the MFC provides that " Investment service providers that offer, recommend or market financial instruments : 1° Ensure that they understand the characteristics of these financial instruments and assess their compatibility with the needs of the clients to whom they provide investment services,	requirements under Exchange Act rules 15Fi-5(a)(1) and (b)(1)-(2).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
	disputes relating to the recognition or valuation of the contract and to the exchange of collateral, as further detailed in question 1 of section 1(f). EMIR, Article 11(1)(b) and RTS 149/2013, Article 15(1). **<u>EMIR: portfolio reconciliation</u>** FCs and NFCs are obliged to agree on procedures for, and carry out, portfolio reconciliation to identify any discrepancies at an early stage. The reconciliation process is required to be agreed in writing or other equivalent electronic means and cover the key trade terms (including, at least, valuation). Further details are provided in question 1 of section 1(f). EMIR, Article 11(1)(b) and RTS 149/2013, Article 13.	in particular in relation to the defined target market ; 2° Ensure that financial instruments are only offered or recommended in the interest of the client; 3° Examine these financial instruments on a regular basis, taking into account any event that could significantly affect the potential risk to the defined target market, in order to assess at least whether these instruments continue to correspond to the needs of the defined target market and whether the planned distribution strategy remains appropriate ; 4° Where they do not design these financial instruments, have appropriate arrangements in place to obtain the information mentioned in 3° of Article L. 533-24 and to understand the characteristics and identify the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		defined target market for each financial instrument." French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "investment service providers other than asset management companies authorised to provide the services mentioned in 1, 2 or 3 of Article L.321-1 [96], may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles L.533-11 to L.533-14 [which includes Article L.533-14 on documenting the rights and obligations of the parties] […]in respect of those transactions or in respect of any ancillary service directly relating to those transactions. In their relationship with eligible counterparties, investment	

[96] The services refer to the service of execution of orders on behalf of clients, dealing on own account and/or the reception and transmission of orders

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		service providers act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business." Article D533-13 of the MFC provides that " Have the status of eligible counterparties within the meaning of Article L. 533-20 : 1. a) The credit institutions mentioned in Article L. 511-9 ; b) The investment firms mentioned in article L. 531-4 ; c) Other authorized or regulated financial institutions; d) The insurance and reinsurance companies mentioned respectively in the first paragraph of Article L. 310-1 and in Article L. 310-1-1 of the Insurance Code, the insurance group companies	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		mentioned in Article L. 322-1-2 of the same code, the mutual and mutual benefit societies and unions of mutual benefit societies governed by Book II of the Mutual Code, the group mutual benefit societies mentioned in Article L. 111-4-2 of the same code, as well as the provident institutions and their unions governed by Title III of Book IX of the Social Security Code, as well as the group companies providing social protection insurance mentioned in Article L. 931-2-2 of the same code; e) The collective investment schemes mentioned in I of Article L. 214-1 as well as the collective investment management companies mentioned in Article L. 543-1 ; f) The pension reserve fund mentioned in article L. 135-6 of the Social Security Code, the occupational pension institutions mentioned in article L. 370-1 of	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		the Insurance Code for their operations mentioned in article L. 370-2 of the same code, as well as the legal entities administering an occupational pension institution mentioned in article 8 of order no. 2006-344 of March 23, 2006 relating to supplementary occupational pensions ; g) Persons whose principal activity consists in trading on their own account in commodities or commodity derivatives, as mentioned in j of 2° of Article L. 531-2; h) Local companies, within the meaning of Article 4, paragraph 1 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 28, 2013 ; 2. The State, the Caisse de la dette publique, the Caisse d'amortissement de la dette sociale, the Banque de France, the Institut d'émission des	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		départements d'outre-mer, the Institut d'émission d'outre-mer ; 3. International financial organizations of a public nature to which France or any other Member State of the Organization for Economic Cooperation and Development adheres. 4. Legal entities meeting at least two of the following three criteria, on the basis of individual accounting statements : - balance sheet total equal to or greater than 20 million euros ; - net sales or net income equal to or greater than 40 million euros ; - equity equal to or greater than 2 million euros. An investment services provider other than a portfolio management company that enters into transactions in accordance with the provisions of	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		Article L. 533-20 with a legal person mentioned in the first paragraph of this 4 must obtain express confirmation from that legal person that it agrees to be treated as an eligible counterparty. The investment services provider may obtain such confirmation either in the form of a general agreement or for each transaction. 5. The Caisse des dépôts et consignations and other approved or regulated institutional investors ; 6. At their request, the legal entities mentioned in Article D. 533-11. In this case, the legal entity concerned shall be recognized as an eligible counterparty only for the services or transactions for which it would be treated as a professional client ;	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		7. Entities of foreign law equivalent to those mentioned in 1, 2 and 4. Where a legal person mentioned in 4 has its registered office or effective management outside metropolitan France, Guadeloupe, French Guiana, Martinique and Réunion de Mayotte, the investment service provider other than an asset management company shall take into account the status of the said legal person as defined by the provisions in force in the State where it has its registered office or effective management.Article D. 533-14 of the MFC provides that " Investment service providers other than portfolio management companies may, on their own initiative or at the request of a client, treat as a professional or non-professional client, either generally or for each transaction, a client who might otherwise be classified as an eligible counterparty in	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		accordance with the provisions of Article D. 533-13. An investment services provider other than a portfolio management company may, at the request of a professional client, treat that client as an eligible counterparty, under the conditions set out in Article 71(5) of the delegated regulation (EU) 2017/565 of the Commission of 25 April 2016." French transposition of Article 25(6) MiFID is the following: Article L 533-15 of the MFC provides that "I. Investment service providers other than asset management companies shall provide their clients with a report on the services provided in a durable medium. The report shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client." For your information, Article 59 MiFID Org Reg (which is directly applicable and does not require any transposition into French law), provides that : "1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order: (a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order; (b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements			
3. To what extent are parties to transactions required to document the terms of their trading relationships?			
		business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party. Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.[…] 2. In addition to the requirements under paragraph 1, investment firms shall supply the client, on request, with information about the status of his order."	

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Draft 11.20.2020

[ ], 2020

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

Re: Substituted Compliance Application for EU Security-based Swap Dealers from Exchange Act Section 15F(e) and Exchange Act Rule 18a-1

Dear Ms. Countryman:

We are submitting this application to request that the Securities and Exchange Commission ("Commission") make a determination with respect to the capital and related requirements of the European Union ("EU") specified herein (the "EU Capital Framework") that compliance with the EU Capital Framework by a nonbank security-based swap ("SBS") dealer licensed as an investment firm in the EU (an "EU SBSD") may satisfy the capital requirements applicable to a nonbank SBS dealer ("SBSD") under Section 15F(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 18a-1 thereunder.[1] As we describe in more detail below, the EU Capital Framework aims at ensuring the safety and soundness of EU SBSDs in a manner comparable to Section 15F(e) of the Exchange Act ("Section 15F(e)") and Rule 18a-1 thereunder ("Rule 18a-1"). As further detailed below, French investment firms that have indicated they intend to register as nonbank SBSDs will be re-authorized by the European Central Bank as credit institutions in 2021. However, this change of status should not affect the substituted compliance determination pursuant to Rule 3a71-6 under the Exchange Act, as they will remain subject to the EU Capital Framework, which is currently applicable to both credit institutions and investment firms and will remain applicable to credit institutions going forward.

I. Introduction

In making a substituted compliance determination pursuant to Rule 3a71-6 under the Exchange Act in regards to the capital requirements under Section 15F(e) and Rule 18a-1, the Commission intends to consider whether the capital requirements of the foreign regulatory system "are designed to help ensure the safety and soundness of registrants in a manner that is comparable" to Section 15F(e) and Rule 18a-1 thereunder.[2]

[1] As used herein, a "nonbank" SBSD refers to an SBSD that does not have a Prudential Regulator as defined in Section 3(a)(74) of the Exchange Act.

[2] 17 C.F.R. 240.3a71-6(d)(4)(i).

The Commission has explained that it will "endeavor to take a holistic approach in considering whether regulatory requirements are comparable for purposes of substituted compliance, and will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity."[3] In guidance to non-U.S. SBSDs (the "Staff Guidance"), the Commission staff request that applications for substituted compliance address the general comparability of the foreign regulatory regime's requirements and analogous requirements under the Exchange Act, including any general differences between the two sets of requirements and the consistency of the two sets' objectives,[4] as well as certain specific questions relating to particular rule areas.

In response to the Staff Guidance, this application is organized as follows. In Section II, we provide an overview addressing general comparability of the EU Capital Framework's requirements and the capital requirements of Section 15F(e) and Rule 18a-1, including any general differences between the two sets of requirements and the consistency of the two sets' objectives. In Section III, we address the following specific questions set forth by the Staff Guidance:

A. How does the foreign jurisdiction establish minimum capital requirements?

B. What are the legal consequences if a firm falls below the minimum capital requirements? Does the foreign jurisdiction require that a firm cease conducting business if its capital falls below the required minimum?

C. How effective is the level of capital required of applicable nonbank firms under the foreign jurisdiction's approach with respect to helping ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to SBS customers and creditors, therefore assuring the continued market liquidity?

D. To what extent do the required capital levels for nonbank firms in the foreign jurisdiction reflect regulatory concerns that differ from the concerns that underpin Exchange Act Rule 18a-1? Do any differences in the regulatory concerns that underpin the jurisdiction's required capital levels lead to different regulatory outcomes from those attained under the Exchange Act? If so, are there any conditions that could be applied to substituted compliance to promote comparable regulatory outcomes, notwithstanding differences in the underlying concerns?

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[3] Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 81 Fed. Reg. 29960, 30078 (May 13, 2016).

[4] Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Applications 9 (2019).

For the reasons set forth below, the EU Capital Framework is designed to ensure the safety and soundness of EU SBSDs in a manner comparable to the capital requirements of Section 15F(e) and Rule 18a-1.

II. Overview

Rule 18a-1. Rule 18a-1 mirrors the net liquid assets approach that Exchange Act Rule 15c3-1 applies to securities broker-dealers, requiring a nonbank SBSD to compute its "net capital" requirement by determining its net worth according to U.S. generally accepted accounting principles and then subtracting certain illiquid assets, adding certain subordinated liabilities and making specified additional adjustments. These additional adjustments include certain standardized or model-based market and credit risk deductions, as well as penalty charges for operational risks. The SBSD must maintain net capital at the greater of $20 million or 2 percent of its risk margin amount. The risk margin amount equals the sum of the total initial margin ("IM") required to be maintained by the SBSD at each clearing agency with respect to the SBS that the firm clears for its SBS customers and the total IM calculated by the SBSD with respect to non-cleared SBS pursuant to Exchange Act Rule 18a-3. SBSDs permitted to use models to compute market or credit risk deductions are required also to maintain tentative net capital of $100 million.

The EU Capital Framework. The Capital Requirements Regulation (575/2013) ("CRR") and its related legislation, the Capital Requirements Directive IV (2013/36/EU) ("CRD IV"), include the prudential capital requirements applicable to both credit institutions[5] and investment firms[6] (hereinafter, "Institutions"). CRR and CRD IV impose mandatory capital and liquidity requirements that address market, credit, counterparty and liquidity risks. On May 20, 2019, the EU passed the Capital Requirements Regulation II (2019/876) ("CRR II") and the Capital Requirements Directive V (2019/878/EU) ("CRD V"), which further refine and implement Basel III standards by amending sections of CRR and CRD IV related to liquidity, large exposures and market and counterparty credit risk, amongst others.[7] In addition, on December 25, 2019, the Investment Firms Regulation (2019/2033) ("IFR") and Investment Firms Directive

[5] "Credit institution" is defined under CRR, Article 4(1), as any undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

[6] "Investment firm" is defined under CRR, Article 4(2), as any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis, and which is subject to the requirements imposed by the Markets in Financial Instruments Directive (2014/65/EU) ("MiFID").

[7] The majority of the amendments contained in the CRR II will apply from June 2021, although certain measures (including total loss-absorbing capacity ("TLAC") requirements for global systemically important institutions ("G-SIIs"), the European equivalent for global systemically important banks ("GSIBs)) began to apply on June 27, 2019 when the legislation entered into force and other measures will apply from December 28, 2020 (including changes to the rules on prudential consolidation). EU Member States are required to adopt and publish measures to implement CRD V by December 2020.

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(2019/2034/EU) ("IFD") went into effect. The IFR/IFD framework will tailor the existing prudential rules under the EU Capital Framework to investment firms based on their size and complexity. The substantive requirements under the IFR/IFD framework will apply beginning on June 26, 2021. Under this framework, investment firms with €30 billion in assets and above that engage in dealing on own account and/or underwriting of financial instruments or placing of financial instruments on a firm commitment basis, such as French firms that have indicated they intend to register as nonbank SBSDs, be re-authorized as credit institutions by the European Central Bank[8]. Such credit institutions will continue to be subject to the capital requirements under CRR and CRD IV (as amended by CRR II and CRD V)[9], and will be supervised by the European Central Bank, together with competent national authorities[10]. Investment firms that do not meet these conditions will remain licensed as investment firms and will be subject to generally lighter prudential requirements under the IFR/IFD framework.

The EU Capital Framework requires institutions to hold an initial minimum capital depending on the activities they carry out.[11] Moreover, the EU Capital Framework requires institutions to hold equity and loss-absorbing liabilities, composed primarily of common equity, cash reserves and perpetual or long-term subordinated debt instruments, equal to at least 8 percent of the sum of their risk-weighted assets.[12] In addition, institutions must maintain certain capital buffers above the minimum 8 percent capital level composed of Common Equity Tier 1 capital instruments.[13] These minimum levels set by the Pillar I capital obligations may be supplemented by Pillar II obligations. Broadly, the Pillar II regime requires an assessment of an institution's capital needs by reference to its risks, to be conducted by the institution itself and, separately, its prudential supervisor. Critically, this Pillar II assessment enables the supervisor to increase an institution's capital requirements above the Pillar I minimum capital requirements and capital buffers. Furthermore, resolution authorities also require institutions to satisfy a minimum requirement for own funds and eligible liabilities[14]

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[8] See IFD, Article 62, introducing an Article 8a in the CRD IV (as modified by the CRD V).

[9] IFR, Recital 39.

[10] IFR, Recital 39. IFR, Article 62, amending Article 4.1.1) CRR and Regulation 1024/2013 of 15 October 2013, Article 6.4.

[11] The French implementation of the EU Capital Framework requires investment firms carrying out, *inter alia*, safekeeping and administration of financial instruments for the account of clients to hold a minimum capital of at least 3.8 million euros. See Article L. 532-2 of the Monetary and Financial Code (the "MFC") and Article 2 of the Arrêté of 4 December 2017 relating to the authorization, changes of situation, withdrawal of authorization and deregistration of investment firms and assimilated institutions.

[12] See CRR, Articles 26, 28, 50–52, 61–63 & 92.

[13] E.g., CRD IV, Articles 129, 130, 131 & 133.

[14] Eligible liabilities include, among others, instruments that are issued and fully paid up with remaining maturities of at least a year. Bank Recovery and Resolution Directive (2014/59/EU) ("BRRD"), Article 45(4). The respective rules will be tightened and refined under Article 1(17) of the Bank Recovery and Resolution Directive II (2019/879/EU) ("BRRD II"), which inserted BRRD, Article 45b. In addition, the

("MREL").[15] Separately, CRR imposes liquidity requirements designed to ensure that institutions can meet both short- and long-term obligations.

General Comparability. Like Rule 18a-1, the EU Capital Framework is designed to ensure that an institution maintains sufficiently liquid and high quality assets to meet its obligations to customers, counterparties and other creditors if the firm were to experience financial distress. Especially for larger institutions with approval to calculate market and credit risk using internal models, both Rule 18a-1 and the EU Capital Framework permit firms to apply risk-based market charges that are consistent with the value-at-risk ("VaR") specifications set forth in Basel II standards.[16] In addition, both Rule 18a-1 and the EU Capital Framework permit firms with model approval to apply model-based credit risk charges to their derivatives counterparties.[17] For firms without model approval, both Rule 18a-1 and the EU Capital Framework provide for standardized

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instruments cannot arise from a derivative, be owed to, secured or guaranteed by the institution itself, and the institution cannot have either directly or indirectly funded its purchase. Id. Under BRRD II, the inclusion of derivatives will be possible if certain requirements are met. On June 7, 2019, the EU published the BRRD II which, among other things, amended the BRRD regarding the loss-absorbing and recapitalization capacity of credit institutions and investment firms, namely the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as MREL, through targeted amendments. The respective changes have to be implemented into the national laws of the member states by December 28, 2020.

[15] CRR II imposes an additional supplemental standard of TLAC and requires the G-SIIs to maintain a risk-based ratio of capital and MREL of 18 percent and a non-risk-based ratio of capital and MREL of 6.75 percent against the institution's total calculated risk exposure (until December 31, 2021, 16 percent of total risk exposure and 6 percent of the leverage ratio exposure measure). CRR II, Article 92a(1). In addition, the competent authorities have the ability to impose MREL requirements on G-SIIs that exceed the statutory minimum requirements. Institutions that are subsidiaries of U.S. GSIBs will be required to maintain MREL equal to 90 percent of the foregoing as applied to their U.S. parent at all times. Id. Article 92b(1).

[16] Compare 17 CFR § 240.18a-1(d)(1), (9)(i)–(ii), (e)(1), with CRR, Articles 143(1) and 363. See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 Fed. Reg. 43872, 44038 n.1302 (Aug. 22, 2019) ("Capital Final Rule Release") (noting the use of internal models to compute market risk charges is based on the capital rules for U.S. banking institutions which are, in turn, based on the Basel II requirements).

[17] Compare 17 CFR § 240.18a-1(d)(1), (9)(i)–(ii), (e)(2), with CRR, Article 283(1). See also Capital Final Rule Release, 84 Fed. Reg. at 44038 (noting that the final rule's approach to credit risk charges for SBS counterparties is generally consistent with the approach for banking institutions, which are based on the Basel Accords). For OTC derivatives, credit valuation adjustment requirements also apply under the EU Capital Framework, but not Rule 18a-1. CRR II will remove the option that an institution with model approval may calculate counterparty credit risk using internal models when calculating large exposures. CRR II, Article 1(93) amending CRR, Article 390(4). Rather, CRR II replaces the existing standardized approaches and models approaches with the standardized approach to counterparty credit risk ("SA-CCR") in line with the Basel framework. SA-CCR is intended to provide a better measure of counterparty risk as opposed to the existing standardized approaches by reflecting netting, hedging and collateral benefits, but it generally is a more conservative measurement of credit risk than internal models-based approaches.

approaches for market and credit risk charges and deductions, depending on the asset or exposure. Both rule sets also impose operational risk capital requirements.

The minimum capital levels required by the EU Capital Framework are robust and comparable to the minimum levels required by Rule 18a-1. In particular, taking into account applicable capital buffer requirements, institutions generally must hold own funds equal to at least 10.5 percent of their total risk exposure amounts (composed of market, credit, settlement, credit valuation adjustment, and operational risk requirements), which may be compared in some respects to the sum of the 2 percent risk margin amount requirement and market and credit risk charges applicable under Rule 18a-1. Institutions are also required to calculate and report a leverage ratio of tier 1 capital divided by their total exposures and, from June 2021, they will be required to comply with a leverage ratio requirement of 3 percent.

The EU Capital Framework also imposes liquidity requirements on institutions. This approach differs from Rule 18a-1, which in lieu of a specific liquidity requirement requires nonbank SBSDs to deduct from their net capital 100 percent of the carrying value for unsecured receivables (except that an SBSD with credit risk model approval may instead apply a credit risk weighted charge for receivables to certain derivatives counterparties) and other assets that cannot readily be converted into cash, as well as securities that have no ready market.[18] Conversely, the EU Capital Framework imposes separate liquidity buffers and "stable funding" requirements that ensure institutions can cover both long-term obligations and short-term payment obligations under stressed conditions for thirty days.[19]

In addition, liquidity risks are generally less significant for EU SBSDs than standalone U.S. SBSDs:

Bank-Style Resolution Regimes. Institutions are subject to a bank-style resolution regime under the BRRD. The existence of resolution powers permits the relevant resolution authorities to take action well in advance of resolution in order to preserve the continuity of critical services and reduce the impact of an institution's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the institution's own funds. Accordingly, the focus of the EU resolution regime is not the liquidation of the institution. Also, to the extent an institution relies on the exemption from Commission segregation requirements under Exchange Act Rule 18a-4(f), it will not be subject to liquidation as a stockbroker under the U.S. Bankruptcy Code.

Minimal Risk to U.S. Customer Property. U.S. customer property should be at minimal risk if an institution were to experience financial distress. Specifically, an

[18] 17 CFR § 240.18a-1(c)(1)(iv).

[19] CRR, Article 413, establishes a general requirement that firms ensure that long-term obligations are adequately met with stable funding requirements. The Net Stable Funding Ratio ("NSFR"), introduced by Basel III, will become applicable to EU SBSDs as of June 2021.

institution is required to segregate IM from the firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[20] As a result, U.S. customer property placed with the institution to margin SBS transactions should be protected in the event the institution experiences financial difficulties, enters resolution proceedings or is liquidated.

III. Responses to the Staff's Specific Questions

A. How does the EU establish minimum capital requirements applicable to SBSDs?

1. Measurement of Assets and Total Risk Exposure

Consistent with the Basel framework, EU SBSDs are subject to bank-like capital requirements that require a firm to hold sufficient amounts of own funds, composed of Common Equity Tier 1, Tier 1 and Tier 2 capital instruments subject to certain capital deductions (referred to as Pillar I of the Basel framework).[21] The amount of own funds required to be held is determined by calculating the institution's total risk exposure, which requires the institution to risk weight its assets and exposures using specified standardized weights or approved internal model-based methodologies.[22] The categories of risk charges include:[23]

- credit and dilution risk, excluding risk-weighted exposure amounts from the trading book business of the firm;
- position risk and certain large exposures;
- foreign-exchange risk, settlement risk and commodities risk;
- credit valuation adjustment risk of OTC derivative instruments, other than credit derivatives recognized to reduce risk-weighted exposure amounts for credit risk;

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[20] European Market Infrastructure Regulation Margin RTS (EU) (2016/2251) ("EMIR Margin RTS"), Articles 19(1)(d)–(e), (3) & (8). While not specifically required to be segregated from the institution's assets, counterparties may elect for variation margin ("VM") to also be segregated and placed with a third-party custodian. See EMIR Margin RTS, Article 3(b) (stating that the "exchange of collateral agreement" must address "segregation arrangements").

[21] CRR, Article 92(1)-(2).

[22] With supervisory permission, institutions may use internal models to calculate credit, dilution and counterparty risk, id. Article 143, certain counterparty credit risk exposure, id. Article 283, operational risk, id. Article 312(2), market risk, id. Article 363, and credit valuation adjustment risk, id. Article 383. The permission to use, and continue using, internal models is subject to strict criteria and supervisory oversight by competent authorities.

[23] Id. Article 92(3).

- operational risk; and
- counterparty risk arising from the trading book business of the institution for certain derivative transactions, repurchase transactions, securities or commodities lending or borrowing transactions, margin lending or long settlement transactions.

When the total risk exposure amount is multiplied by the relevant capital ratio requirements, the calculation may be compared to the haircuts and other deductions from net capital specified under Rule 18a-1 plus 2 percent of the risk margin amount.

i. Derivative Instruments and Marketable Securities

Under the EU Capital Framework, as under Rule 18a-1, derivative instruments and marketable securities are subject to charges for market and credit risk. The comparability between the risk-weighted approach under the EU Capital Framework and Rule 18a-1 can be illustrated by comparing their respective approaches to market and credit risk.

In terms of market risk, Rule 18a-1 requires a nonbank SBSD to take certain net capital deductions for its derivatives positions and marketable securities using either standardized haircuts or, if approved to use internal models, market risk models. Rule 18a-1's model-based methodology is based on the internal model approach under Basel 2.5,[24] and the Commission will provisionally permit the use of models approved by qualifying foreign regulators.[25] Similarly, the EU Capital Framework's model-based methodology is based on the Basel 2.5 standard.[26] Both regimes incorporate relevant aspects of Basel II in terms of requiring firms with model approval to use a VaR model with a 99 percent, one-tailed confidence level with (i) price changes equivalent to a ten business-day movement in rates and prices, (ii) effective historical observation periods of at least one year and (iii) at least monthly data set updates.[27] The EU Capital Framework also implements aspects of Basel 2.5, such as requirements to calculate a "stressed" VaR,[28] which we understand the Commission informally requires model-approved firms it regulates to calculate as well.

In terms of credit risk, Rule 18a-1 requires nonbank SBSDs to take a net capital deduction for unsecured current exposure and uncollected IM, but firms with

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[24] Compare 17 CFR § 240.18a-1(d)(1), (9) & (e)(1), with Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), https://www.bis.org/publ/bcbs193.pdf (describing the revised internal model approach under Basel 2.5).

[25] 17 CFR § 240.18a-1(d)(5)(ii).

[26] Compare CRR, Article 362–377, with Revisions to the Basel II Market Risk Framework, supra note 2417.

[27] Compare 17 CFR § 240.18a-1(d)(9)(ii)(A)-(C), with CRR, Article 365(1).

[28] CRR, Article 365(2).

model approval may instead multiply that deduction by 8 percent and further by a credit risk weight. Under the EU Capital Framework, an institution calculates its credit risk exposure by taking the accounting value of each of its on- and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset's credit quality.[29] For instance, high quality credit exposures, such as exposures to EU member states' central banks, carry a 0 percent risk weight, whereas exposures to EU institutions or to other businesses may carry risk weights between 20-150 percent depending on the credit ratings available for the entity or (for exposures to institutions) for its central government.[30] If no credit rating is available, the institution must generally apply a 100 percent risk weight, meaning the total accounting value of the exposure is used.[31] If an institution is permitted to use models for determining credit risk, any positions in a basket for which the institution cannot determine the risk-weight using its models are assigned a risk-weight of 1,250 percent (which is equivalent to a full capital deduction for the 8 percent minimum capital requirement).[32]

Accordingly, for firms with model approval the two approaches are largely similar, with the EU Capital Framework imposing potentially larger risk charges due to imposing risk charges for exposures to central counterparties,[33] credit valuation adjustment requirements to OTC derivatives instruments,[34] and additional capital buffers.[35]

In addition, the internal and external supervisory process provided in Pillar II of the EU Capital Framework further helps ensure that institutions do not take on excessive uncollateralized credit risk.[36] Specifically, institutions are required to maintain

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[29] Id. Article 111 & 113(1).

[30] Id. Articles 114–122.

[31] Id. Articles 121(2) & 122(2).

[32] Id. Article 153(8).

[33] Id. Articles 300–311.

[34] Id. Article 382. The credit valuation adjustment requirement requires institutions to calculate a capital charge for potential mark-to-market losses associated with a deterioration in the credit worthiness of a counterparty (so-called credit valuation adjustment) applicable to all derivative transactions that are not cleared through a qualifying central counterparty.

[35] For example, $100 million of exposure to a counterparty with a 100 percent risk weight would result in an $8 million capital requirement under Rule 18a-1 versus at least a $10.5 million capital requirement under the EU Capital Framework, taking into account the capital conservation buffer. Additional capital would then be required for credit valuation risk.

[36] As mentioned above, Pillar II obligations require additional own funds to be held above the minimum levels set by the Pillar I capital obligations.

adequate internal capital to cover the nature and level of risks, including credit and counterparty risks, to which they may be exposed.[37] To this effect, institutions must have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis adequate internal capital (which is commonly referred to as internal capital adequacy assessment process – ICAAP).[38] Those strategies and processes are subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned. At least annually, supervisors must review those strategies and processes and evaluate the risks that the institution is or might be exposed to, the risks that the institution poses to the financial system, and the risks revealed by the institution's stress testing (taking into account the nature, scale and complexity of the institution's activities).[39] The internal and external assessments of risks often results in institutions holding own funds in excess of the minimum capital requirements.[40]

We consider these requirements to be an effective backstop, especially for firms that do not have market or credit risk model approval. For these firms, Rule 18a-1 is arguably stricter than the EU Capital Framework, at least in regards to applying 100 percent capital charges to unsecured current exposure to OTC derivatives counterparties, without risk-weighting of these exposures. However, under the EU Capital Framework, an institution with such exposures that create risks that are not covered or not fully covered by the minimum own funds requirements under CRR would be expected to address those exposures as part of its Pillar II capital requirements.[41]

ii. Other Types of Assets and Exposures

Under Rule 18a-1, other types of proprietary assets and exposures are generally subject to a 100 percent deduction to net capital in order to address liquidity

[37] CRD IV, Article 73, implemented into French law by Article L. 511-41-1 B for credit institutions and Article L. 533-2-2 for investment firms and CRD IV, Article 79, implemented into French law by Articles 106, 111, 114 and 115 of the *Arrêté* of 3 November 2014 on internal control relating to the internal control of companies in the banking, payment services and investment services sector subject to the supervision of the ACPR (the "Arrêté of 3 November 2014 on internal control"), applicable to both credit institutions and investment firms.

[38] Id. Article 73, implemented into French law by Article L. 511-41-1 B and L. 533-2-2 of the MFC.

[39] Id. Article 97, implemented into French law by Article 6 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, and CRD IV, Article 99, implemented into French law by Article 9 of the aforementioned *Arrêté*.

[40] Id. Article 104, implemented into French law by Article L. 511-41-3, L. 612-24, L. 612-32 and R. 612-32 of the MFC for credit institutions and investment firms, and CRD V, Article 1(32), which added Article 104a CRD IV.

[41] European Banking Authority, *Final Report - Guidelines on the revised common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing* 5 (2018).

risk. Conversely, the EU Capital Framework subjects each asset to the risk weight approach described above, but then addresses liquidity risk by imposing separate liquidity requirements composed of three main obligations. First, an institution is required to hold an amount of sufficiently liquid assets to meet its expected payment obligations under gravely stressed conditions for thirty days (Liquidity Coverage Ratio or "LCR").[42] The ratio between its liquidity buffer and the net liquidity outflows over a period of 30 days must be equal to 100%. Second, an institution is subject to a stable funding requirement whereby it must hold a diversity of stable funding instruments[43] sufficient to meet long term obligations under both normal and stressed conditions (Net Stable Funding Ratio or "NSFR").[44] Third, to ensure that an institution continues to meet its liquidity needs, it is required to maintain robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, and management and monitoring of funding positions, so as to ensure that it maintains adequate levels of liquidity buffers and adequate funding (which is commonly referred to as internal liquidity adequacy assessment process – ILAAP).[45] Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks. The methodologies for managing and monitoring of funding positions must include the current and projected material cash-flows in and arising from assets, liabilities and off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk. Further, as part of the Pillar II supervisory requirements under the EU Capital Framework, supervisors annually review the exposure, measurement and management of liquidity risk by institutions (including the composition and quality of liquidity buffers).[46]

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[42] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. Id. Article 416(1).

[43] Stable funding instruments include Tier 1 and Tier 2 capital instruments and other preferred shares and capital instruments in excess of the Tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1).

[44] Id. Article 413(1). As of June 28, 2021, the Basel III NSFR requirements will become applicable, as specified in CRR, Articles 428a to 428az introduced by CRR 2, Article 1(116).

[45] CRD IV, Article 86, implemented into French law by Article L. 511-41-1 B and L. 511-41-1 C for credit institutions and Article L. 533-2-2 and L. 533-2-3 for investment firms, as well as Articles 148 to 186 of the *Arrêté* of 3 November 2014 on internal control and Article 7 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms.

[46] Id, Article 98(1)(e), implemented into French law by Article 8 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms.

2. Qualifying Components of Capital

Rule 18a-1 permits a nonbank SBSD to include both equity capital and satisfactory subordinated debt as net capital by permitting the SBSD to exclude subordinated liabilities from the net worth calculation, with satisfactory subordinated debt allowed to comprise up to 70 percent of the sum of the SBSD's subordinated debt and equity.[47]

The EU Capital Framework imposes different ratios for the various capital components of own funds. The components of own funds include:

- Common Equity Tier 1 capital instruments, which are mainly comprised of retained earnings and common equity;[48]
- Additional Tier 1 capital instruments, which include other capital instruments and certain long-term convertible debt instruments;[49] and
- Tier 2 capital instruments, which provide an additional layer of supplementary capital that includes other reserves, hybrid capital instruments and certain subordinated term debt.[50]

The EU Capital Framework also requires institutions to make certain capital deductions from Common Equity Tier 1, Tier 1 and Tier 2 capital instruments that further help ensure that any assets held as capital have a positive realizable value in periods of stress. Due to the Common Equity Tier 1 ratio representing at least 4.5% of its total risk exposure amount and capital buffers representing at least 2.5% of its total risk exposure amount, an institution must hold, at a minimum, 66.67% of the firm's total capital requirements (representing at least 10.5% of its total risk exposure amount) in the form of Common Equity Tier 1 instruments (e.g., shareholder's equity, retained earnings and other immediately available reserves).[51]

In addition, institutions are also required to maintain MREL, which includes certain subordinated debt, in an amount set by the relevant resolution authority.[52]

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[47] 17 CFR § 240.18a-1(c)(1), (g).

[48] CRR, Article 28.

[49] Id. Article 52.

[50] Id. Article 63.

[51] The Common Equity Tier 1 ratio and capital conservation buffer alone (other buffers may apply on top of these requirements, as further described below) require an institution to hold, at a minimum, 66.67 percent of total capital amount in shareholder's equity, retained earnings and other reserves available for immediate use. At most, 14.3 percent of the total capital could be made up of additional Tier 1 capital instruments and 23.8 percent could be composed of Tier 2 instruments.

[52] BRRD, Article 45(6), implemented into French law by Article L. 613-44 of the MFC for both credit institutions and investment firms.

In effect, MREL serves as a less subordinated tier of contingent capital. The required amount of MREL varies by institution depending on its size, funding model and risk profile, among other considerations, and is designed to absorb losses in the case that a bail-in tool were applied so that the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with its capital requirements.[53] Under BRRD II, the relevant rules will be further refined and tightened, also with a view to restore other required levels of capital leverage ratios.[54]

Accordingly, both approaches permit firms to count both equity and certain subordinated debt towards their capital requirements, with the EU Capital Framework requiring institutions to make additional capital deductions from their capital instruments and maintain a larger portion of their required capital as retained earnings and common equity, as compared to Rule 18a-1.

3. Required Minimum Amounts of Capital and Early Warning Notification Requirements

As noted above, Rule 18a-1 requires nonbank SBSDs without model approval to maintain net capital, subject to the adjustments described above, at the higher of $20 million or 2 percent of the SBSD's risk margin amount.[55] Nonbank SBSDs with model approval are also required to maintain tentative net capital, which is the net capital *before* taking certain market and credit risk deductions, of at least $100 million.[56]

In comparison, the EU Capital Framework sets forth minimum capital ratios for each component of own funds. Specifically, institutions must maintain sufficient levels of Common Equity Tier 1 capital, Tier 1 capital and Tier 2 capital, after making required capital deductions, to satisfy the following capital ratios, expressed as a percentage of the firm's total risk exposure amount:

- Common Equity Tier 1 capital ratio of 4.5 percent,[57]
- Tier 1 capital ratio of 6 percent,[58]
- Total capital ratio of 8 percent,[59]

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[53] Id.

[54] BRRD II, Article 1(17), which added BRRD, Articles 45(c) & 45(d).

[55] 17 CFR § 240.18a-1(a)(1)(i), (i)(A).

[56] Id. § 240.18a-1(a)(2).

[57] CRR, Article 92(1)(a).

[58] Id. Article 92(1)(b).

[59] Id. Article 92(1)(c).

- Additional buffers that must be met with Common Equity Tier 1 capital (in addition to the Common Equity Tier 1 capital used to meet the capital ratios above):[60]
    - Capital conservation buffer of 2.5 percent,[61]
    - Countercyclical buffer which varies between member states and in some instances may exceed 2.5 percent,[62] and
    - Systemic risk buffer, which varies between member states and depends on the relative size and significance of the institution.[63] Global systemically important institutions (G-SIIs) must maintain a capital buffer representing at least 1% of their total risk exposure amount, which amount is determined by the relevant supervisor (the ACPR in France). Similarly, the relevant supervisor may require other systemically important institutions (O-SIIs) to maintain a capital buffer of up to 3% of the total risk exposure amount. Finally, Member States may introduce a systemic risk buffer for the financial sector or one or more subsets of that sector in order to prevent or mitigate macroprudential or systemic risks. To this date, such buffer has not been introduced in France.

[60] CRD IV, Article 129(1), implemented into French law by Article L. 511-41-1 A of the MFC and Article 2 of the *Arrêté* of 3 November 2014 relating to the capital buffers of banking service providers and investment firms other than portfolio management companies (the "*Arrêté* of 3 November 2014 relating to capital buffers"), CRD IV, Article 130(5), implemented into French law by Article L. 511-41-1 A of the MFC and Article 23 of the *Arrêté* of 3 November 2014 relating to capital buffers and CRD IV, Article 133(4), implemented into French law by Article L. 511-41-1 A of the MFC and Articles 37 and 38 of the *Arrêté* of 3 November 2014 on capital buffers. These provisions apply both to credit institutions and to investment firms (Article L. 533-2-1 of the MFC provides that investment firms carrying out certain activities, including the services A3 and/or A6 under the MiFID classification shall be subject to Article L. 511-41-1 A of the MFC).

[61] Id. Article 129(1), implemented into French law by Article L. 511-41-1 A of the MFC and Article 2 of the *Arrêté* of 3 November 2014 relating to capital buffers, applicable to both credit institutions and investment firms.

[62] Id. Article 130(1), implemented into French law by Article L. 511-41-1 A and L. 631-2-1 of the MFC and Articles 16 and 23 of the *Arrêté* of 3 November 2014 relating to capital buffers, applicable to both credit institutions and investment firms.

[63] Id. Article 133(1), implemented into French law by Article L. 511-41-1 A and L. 631-2-1 of the MFC and Articles 37 and 38 of the *Arrêté* of 3 November 2014 relating to capital buffers, applicable to both credit institutions and investment firms.

Institutions must also hold sufficient MREL, as determined by their relevant resolution authority.

Accordingly, the EU capital ratios are calibrated up to, at a minimum, 10.5% of the institution's total risk exposure, rather than 2 percent of the firm's risk margin amount plus applicable capital deductions.

In addition, institutions are currently required to report to supervisors their leverage ratio, which is calculated as a non-risk based "backstop" measure based on the amount of Tier 1 capital and gross exposures.[64] The leverage ratio calculation sits alongside the minimum risk-based capital requirement. Importantly, although this leverage ratio reporting does not yet automatically impose a binding capital requirement on institutions, supervisors will take the leverage of an institution into account in their annual Pillar II supervisory requirements and can exercise their Pillar II powers to increase an institution's capital requirements in order to address any concerns regarding excessive leverage.[65] From June 2021, institutions will be required to comply with a leverage ratio requirement of 3 percent.[66]

In addition, institutions are also subject to annual stress testing requirements performed by their relevant supervisors,[67] and those with model approval are subject to additional internal credit risk and counterparty credit risk stress testing requirements for testing capital adequacy.[68] Identified deficiencies in an institution's stress testing may lead to the institution holding additional own funds and act as a further check to ensure that institutions continue to hold sufficient own funds in response to evolving risks.

Both Commission rules and the EU Capital Framework provide for notification to the relevant supervisors if a firm's capital level approaches its minimum capital requirements. Under Exchange Act Rule 18a-8, a nonbank SBSD is required to notify the Commission within twenty-four hours if its total net capital or tentative net capital is less than 120 percent of the minimums required by Rule 18a-1.[69] Similarly, the

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[64] CRR, Article 430.

[65] CRD IV, Article 98(6), implemented into French law by Article 8(5) of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms.

[66] CRR II, Article 1(46), which amended CRR, Article 92(1).

[67] CRD IV, Article 100(1), implemented into French law by Article 10 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms.

[68] CRR, Article 177(2), 290.

[69] 17 CFR § 240.18a-8(b).

EU Capital Framework requires an institution to provide notice to its prudential supervisor if it breaches its capital buffers within five business days, along with a capital conservation plan that sets forth how the institution will restore its capital levels.[70] Notably, both notification requirements ensure that institutions alert supervisors to possible distress *before* actually breaching minimum capital levels. We describe the further implications under the EU Capital Framework of breaching the various MREL requirements, capital buffers and capital ratios below.

B. What are the legal consequences if a firm falls below the minimum capital requirements? Does your jurisdiction require that a firm cease conducting business if its capital falls below the required minimum?

Under the Commission's rules, a nonbank SBSD automatically must cease operations if it falls below its minimum net capital threshold and provide notice of the deficiency to the Commission the same day.[71] EU authorities, in turn, have more flexibility, possessing wide ranging tools to deal with an institution's financial deterioration.

Under French law, the breach of capital, MREL or liquidity requirements by an institution may result in sanctions imposed by the competent supervisor[72]: if an institution has infringed a provision of the CRR, or of applicable French laws and regulations, or if it has not complied with a formal notice to comply with those provisions or an injunction from the supervisor, the disciplinary commission may impose one or more of the following disciplinary sanctions, depending on the seriousness of the breach:

1° A warning ;

2° A reprimand;

3° Prohibition of certain transactions and any other limitations on its activities;

4. Partial withdrawal of authorization;

5. Total withdrawal of authorization or removal from the list of authorized persons, with or without the appointment of a liquidator.

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[70] CRD IV, Article 142, implemented into French law by Article L. 511-41-1 A of the MFC and Article 61 to 64 of the *Arrêté* of 3 November 2014 relating to capital buffers, applicable to both credit institutions and investment firms. The capital conservation plan includes estimates of income and expenditures and a plan to increase its own funds to meet its capital buffers. Id. Article 142(2), implemented into French law by Article 62 of the *Arrêté* of 3 November 2014 relating to capital buffers. If the supervisor does not approve the capital conservation plan, the supervisor will impose requirements for the firm to increase its own funds to specified levels (or may impose more stringent restrictions on distributions). Id. Article 142(4), implemented into French law by Article L. 511-41-1 A(XIV) of the MFC, applicable to both credit institutions and investment firms.

[71] 17 CFR § 240.18a-8(a)(1).

[72] Article L. 612-40 of the MFC.

In addition, persons who effectively direct the business of the institution[73], as well as members of the board of directors, supervisory board, management board or other body carrying out similar functions, who are directly and personally responsible for such offenses may be subject to temporary suspension or dismissal.

In addition, persons who effectively direct the business of the institution and who are directly and personally responsible for such offenses may be subject to a fine of a maximum amount of €5 million (or double the amount of any benefit gained from the offense, if it can be determined).

The competent supervisor may impose fines of up to 10% of the net annual turnover (or double the amount of any benefit gained from the offense, if it can be determined), either in place of or in addition to these penalties.

The competent supervisor's decision is published in the publications, journals or media that it designates, in a format appropriate e to the infraction and to the penalty imposed. Costs are paid by the disciplined parties. However, in particular where publication threatens to seriously disturb the financial markets or cause disproportionate injury to the parties in question, the decision may be anonymized.

- *Liquidity requirements are breached.* Supervisors may impose administrative penalties, as set forth above, or other administrative measures, including prudential charges, if an institution's liquidity position falls below any liquidity and stable funding requirements established at the national or EU level.[74] In particular, under French law, the competent supervisor may require an institution to take early intervention measures when it breaches its liquidity requirements as a result of a rapid deterioration in its liquidity situation, and to submit a recovery plan to restore compliance with its liquidity requirements[75]. The competent supervisor may also take the necessary precautionary measures when an institution breaches its liquidity requirements[76]. Ultimately, if early intervention measures are not sufficient either to put an end to serious breaches of liquidity requirements, or to restore the institution's financial situation, the supervisor may remove one or more of the persons effectively directing its business, or all or some of the members of the board of directors, the supervisory board or any other body exercising equivalent supervisory functions[77].

- *MREL is breached.* If the institution falls below its required MREL, the resolution authority may take early measures to intervene, such as, requiring

[73] Within the meaning of Article L. 511-13 or L. 532-2 of the MFC.
[74] CRD IV, Article 105, implemented under French law by Article L. 511-41-3 of the MFC.

[75] See Article L. 612-32 of the MFC.

[76] See Article L. 612-33.I of the MFC.

[77] Article L. 612-33.II of the MFC.

management take certain actions, order members of management removed or replaced, or require changes to the institution's business strategy or legal or operational structure, among others.[78] An institution must immediately notify its competent resolution authority when in a situation where it meets the combined buffer requirement, but it fails to meet the combined buffer requirement when considered in addition to the applicable MREL requirements.[79] In addition, the institution must notify the competent resolution authority if it considers the firm to be failing or likely to fail.[80]

- *Capital buffers are breached*. A breach of an institution's capital buffers automatically triggers restrictions on the institution's ability to make certain distributions (e.g., paying certain dividends or employee bonuses).[81] Institutions must also prepare a capital conservation plan and submit it to the relevant supervisor within five business days after breaching the capital buffers.[82] The restrictions increase in severity with the degree of the breach.

  Supervisors may also impose other measures in case of non-compliance with regulatory requirements, such as:[83]

  - requiring the institution to have additional own funds in excess of any minimum requirements[84];
  - requiring the institution to submit a plan to restore compliance with applicable capital and liquidity requirements and set a deadline for implementation[85];

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[78] BRRD, Article 27(1), implemented under French law by Article L. 511-41-5 of the MFC.

[79] Id.

[80] BRRD, Article 81(1), implemented under French law by Article L. 613-49 of the MFC.

[81] CRD IV, Article 141, implemented under French law by Article L. 511-41-1 A and Article L. 533-2-1 of the MFC, and Articles 56 to 60 of the Arrêté of 3 November 2014 relating to capital buffers ; CRD V, Article 141b.

[82] CRD IV Article 142, implemented into French law by Article L. 511-41-1 A.XIV of the MFC and Article 61 to 64 of the *Arrêté* of 3 November 2014 relating to capital buffers, applicable to both credit institutions and investment firms. The capital conservation plan includes estimates of income and expenditures and a plan to increase its own funds to meet its capital buffers. Id. Article 142(2), implemented into French law by Article 62 of the *Arrêté* of 3 November 2014 relating to capital buffers. If the supervisor does not approve the capital conservation plan, it will impose requirements for the institution to increase its own funds to specified levels (or may impose more stringent restrictions on distributions). Id. Article 142(4), implemented into French law by Article L. 511-41-1 A(XIV) of the MFC.

[83] Id. Article 104(1).

[84] See Article L. 511-41-3.II of the MFC.

[85] See Article L. 612-32 of the MFC, Article R. 612-30 and Article L. 511-41-5 of the MFC.

- requiring the institution to restrict or limit its business or operations, or requiring the divestment of activities that pose excessive risks to the soundness of the institution[86];
- requiring the institution to use net profits to strengthen its own funds[87];
- restricting or prohibiting distributions or interest payments by an institution to its shareholders or holders of Additional Tier 1 instruments[88];
- imposing additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage[89]; and
- imposing specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities[90].[91]

Under French law, the competent supervisor may also remove one or more directors of the institution, or, in case of serious breaches and provided early intervention measures are not sufficient, remove one or more of the persons effectively directing the business of the entity, or all or some of the members of the board of directors, the supervisory board or any other body exercising equivalent supervisory functions[92].

Note that while supervisors generally have broad discretion as to <u>what</u> powers they may exercise, supervisors must, under the EU Capital Framework, require institutions to hold increased capital when:[93]

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[86] See Article L. 612-33.I of the MFC.

[87] See Article L. 511-41-3.III of the MFC.

[88] See Article L. 612-33.I of the MFC.

[89] See Article L. 511-41-3.III and Article L. 511-41-4 of the MFC.

[90] See Article L. 511-41-3.IV of the MFC.

[91] In addition to such measures, the Governor of the Banque de France may take additional measures with respect to credit institutions. Under Article L. 511-42 of the MFC, where it appears that the situation of a credit institution so warrants, the Governor of the Banque de France, Chairman of the ACPR, shall, after having, except in an emergency, obtained the opinion of the ACPR, invite the shareholders to provide the necessary support to the undertaking.

[92] Article L. 612-33.II of the MFC.

[93] <u>Id.</u> Article 104(2), implemented under French law by Article L. 511-41-3. II of the MFC. This rule will be replaced and further refined by CRD V, Article 1(33) which inserted CRD IV, Article 104a.

- risks or elements of risks are not covered by the capital requirements in the EU Capital Framework;
- the institution lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types and distribution of internal capital needed to cover the nature and level of risks to which it might be exposed; or
- the sole application of other administrative measures would be unlikely to timely and sufficiently remedy the situation.

- *Minimum capital requirements are breached*. As provided for above, supervisors also can sanction an institution (or its management) if the firm either falls below the capital or liquidity thresholds under the EU Capital Framework.[94] They may also withdraw an institution's authorization.[9596]

  In all of the above above circumstances, and provided additional requirements are met, it is also possible that resolution authorities may, in consultation with the supervisory authorities, assess the institution as "failing or likely to fail," triggering a resolution action (which could occur even *before* the institution actually breaches its minimum capital, liquidity or MREL requirements).[97] A breach of applicable requirements may also trigger restrictions on the institution's ability to make certain distributions (e.g., paying certain dividends or employee bonuses).[98]

C. How effective is the level of capital required of applicable nonbank firms under your jurisdiction's approach with respect to helping ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to SBS customers and creditors, therefore assuring the continued market liquidity?

The EU Capital Framework's liquidity requirements directly address the ability of institutions to continue to meet obligations to their customers and counterparties. As noted above, these liquidity requirements require an institution to hold

[94] Id. Article 102(1), implemented under Article L. 511-41-5 of the MFC. See also Article L. 612-40 of the MFC.

[95] MiFID, Article 8(c), as implemented under French law by Article L. 532-6 of the MFC.

[96] In the case of credit institutions, the European Central Bank is the authority in charge of withdrawals of authorization, on the basis of Article 4 of Regulation 1024/2013 of 15 October 2013 and Article L. 511-15 of the MFC.

[97] Id. Article 32(1)(a), implemented under Article L. 613-49 of the MFC.

[98] BRRD II, Article 1(6), which inserted BRRD, Article 16a.

an amount of sufficiently liquid assets to meet any expected liquidity outflows under gravely stressed conditions for thirty days.[99] Stable funding requirements also require institutions to maintain sufficient diversity of stable funding instruments to meet long term obligations under both normal and stressed conditions.[100] To ensure that institutions continue to meet their liquidity needs, they are required to maintain robust strategies, policies, processes and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day.[101] Accordingly, the liquidity requirements under the EU Capital Framework help ensure that institutions can continue to fund their operations over various time horizons, including timely making payments to customers and counterparties.

In addition, institutions are subject to a resolution regime. The EU resolution regime does not focus on liquidation. Rather, it emphasizes the continuity of critical services and reduction of the impact of an institution's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the institution's own funds where this, among other requirements, cannot be ascertained through normal insolvency proceedings.

In particular, EU resolution authorities must have regard to the following resolution objectives: (i) to ensure the continuity of critical functions (i.e. those that support financial stability in the relevant member state); (ii) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline; (iii) to protect public funds by minimizing reliance on extraordinary public financial support; (iv) to protect depositors covered by the member states' Deposit Guarantee Schemes and investors covered by the member states' Investor Compensation Schemes; and (v) to protect client funds and client assets.[102] A resolution action, rather than insolvency proceedings, would be instituted where the resolution objectives above would not be met under normal insolvency proceedings to the same extent as resolution, provided that the other conditions to resolution are met.[103] In order to enable resolution with a minimum impact on client funds and assets, taxpayers and financial stability, institutions must have sufficient loss-

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[99] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. Id. Article 416(1).

[100] Id. Article 413(1). As of June 28, 2021, the Basel III NSFR requirements will become applicable, as specified in CRR, Articles 428a to 428az introduced by CRR 2, Article 1(116).

[101] CRD IV, Article 86, implemented into French law by Article L. 511-41-1 B and L. 511-41-1 C for credit institutions and Article L. 533-2-2 and L. 533-2-3 for investment firms, as well as Articles 148 to 186 of the *Arrêté* of 3 November 2014 on internal control and Article 7 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms.

[102] BRRD, Article 31(2), implemented under French law by Article L. 613-50.I of the MFC.

[103] Id. Article 32(5), implemented under French law by Article L. 613-49.II of the MFC.

absorbing and recapitalization capacity (hence the requirements for MREL and capital requirements in excess of an institution's Pillar I capital requirements).

Accordingly, in resolving an institution, an EU resolution authority would take action to resolve the institution in such a way as to restructure its business to the extent required and feasible in order to ensure the continuity of critical functions (including by way of transferring parts of such business, as the case may be) and, to the extent debts or transactions would not be transferred or continued, as the case may be, to pay outstanding debts in a reasonably timely manner to the institution's counterparties (and creditors) (to the extent such obligations are not subject to bail-in), protect client funds and assets and protect the underlying market's liquidity.

With that said, if liquidation did occur, EU regulations also protect counterparties and promote continued market liquidity through margin requirements. EU margin requirements require institutions to hold high quality, liquid assets as margin for SBS. Specifically, institutions are required to exchange IM and VM composed of highly liquid assets, which are not exposed to excessive credit, market or foreign exchange risk, such that a non-defaulting counterparty can liquidate the collateral in a sufficiently short time to protect against losses on non-centrally cleared OTC derivative contracts.[104] IM must be segregated from the institution's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the institution's default or insolvency.[105] In addition, while not specifically required to be segregated from the institution's assets, counterparties may elect for VM to also be segregated and placed with a third-party custodian.[106] These requirements help to further protect customers and counterparties in the event an institution experiences financial distress and liquidation.

[104] EMIR Margin RTS, Recital (31) & Article 7.

[105] Id. Articles 19(1)(d)-(e), (3) & (8).

[106] See Id. Article 3(b) (stating that the "exchange of collateral agreement" must address "segregation arrangements").

D. To what extent do the required capital levels for nonbank firms in your jurisdiction reflect regulatory concerns that differ from the concerns that underpin Exchange Act Rule 18a-1? Do any differences in the regulatory concerns that underpin your jurisdiction's required capital levels lead to different regulatory outcomes from those attained under the Exchange Act? If so, are there any conditions that could be applied to substituted compliance to promote comparable regulatory outcomes, notwithstanding differences in the underlying concerns?

The EU Capital Framework and the net liquid assets test under Rule 18a-1 generally reflect similar regulatory concerns. Section 15F(e) provides for the imposition of capital requirements to help ensure the safety and soundness of the SBSD considering the risk associated with activities in non-cleared SBSs.[107] Similarly, the EU Capital Framework stresses the need for institutions to adopt sound structures, with capital requirements that both ensure a firm's solvency and efficient, safe and sound derivatives markets, while balancing capital requirements with the relevant risks addressed.[108] Both are designed to provide protection for counterparties and customers in accordance with the safety and soundness objectives of Section 15F(e). Although the two regimes reflect somewhat different approaches to addressing these objectives in respect of liquidity risks, these approaches are both ultimately designed to address these risks by requiring a firm to have a sufficient amount of liquid assets to satisfy its obligations.

To the extent that the Commission deems these differences significant, however, it is notable that liquidity risks are not as significant for EU SBSDs as standalone U.S. SBSDs because the former are subject to a bank-style resolution regime that is not primarily focused on liquidation. Also, to the extent the EU SBSD can rely on the segregation exemption provided in Exchange Act Rule 18a-4(f), EU SBSDs will generally not be subject to the stockbroker liquidation provisions of the U.S. Bankruptcy Code.

In addition, unlike U.S. nonbank SBSDs, certain EU SBSDs will have access to short-term liquidity through relevant EU member state central banks. For instance, under the amendments to CRD IV and CRR that have been introduced by IFD and IFR, which will apply from June 26, 2021, large investment firms with €30 billion in assets and above that engage in dealing on own account will be required to be re-authorized by the European Central Bank as credit institutions, which will grant them access to Eurosystem standing facilities.[109]

Because the EU Capital Framework resembles the capital, liquidity and resolution regimes for U.S. banks, the approach taken to capital and liquidity for bank

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[107] 15 U.S.C. § 78o–10(e)(3)(A)(i)-(ii).

[108] CRR, Recitals 40, 43 & 87.

[109] See IFD, Recital 7. National central banks may also allow investment firms to make use of intraday credit under TARGET2. See TARGET Guideline (EU/2012/27), Annex III, L 30/67, *available at* https://www.ecb.europa.eu/ecb/legal/pdf/l_03020130130en00010093.pdf .

SBSDs by the U.S. prudential regulators should also prove instructive. In the proposing release for the implementing regulations for U.S. bank SBSDs, the Prudential Regulators noted that existing capital and liquidity standards, which had undergone amendments to align with the Basel III frameworks in 2013 and 2014, were already "sufficient" to offset risks from SBS activities and "ensure the safety and soundness of the covered swap entity."[110] Therefore, the Prudential Regulators did not propose separate capital requirements for bank SBSDs. Rather, the Prudential Regulators reiterated the existing capital requirements imposed on bank SBSDs and required they continue to comply with already applicable risk-based and leverage capital requirements.[111] This is consistent with the approach proposed by the Commodity Futures Trading Commission ("CFTC"), which would permit a swap dealer to choose between a "Bank-Based Capital Approach" based on existing U.S. bank holding company capital rules or the net liquid assets capital approach reflected in Rule 18a-1.[112] Implicitly, the CFTC found that the Bank-Based Capital Approach, which mirrors the EU Capital Framework, meet the statutory objectives of the Commodity Exchange Act § 4s(e) for nonbank swap dealers,[113] which are identical to those in Section 15F(e) for nonbank SBSDs.

Taken together, the EU Capital Framework reflects similar regulatory concerns and leads to comparable regulatory outcomes as the capital requirements under Section 15F(e) and Rule 18a-1. Rather than require EU SBSDs to comply with two different approaches to capital and liquidity, the Commission should grant this application for the EU SBSDs to satisfy their requirements under Section 15F(e) and Rule 18a-1 by continuing to comply with the EU Capital Framework.

However, while we believe that the EU Capital Framework's capital and liquidity requirements sufficiently address concerns about an EU SBSD's ability to meet its obligations to its customers and counterparties in times of financial stress consistent with the regulatory outcomes of Section 15F(e) and Rule 18a-1, to the extent the Commission is concerned about potential inconsistencies with U.S. insolvency law it may consider granting the requested comparability determination on the condition that a EU SBSD qualify for and rely on Exchange Act Rule 18a-4(f)'s exemption to the Commission's segregation requirements.

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[110] See Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348, 57382 (Sept. 24, 2014).

[111] Id. The final rule adopted this same approach. Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74847 (Nov. 30, 2015).

[112] See Capital Requirements of Swap Dealers and Major Swap Participants, 84 Fed. Reg. 69,664, 69,665 (Dec. 19, 2019).

[113] 7 U.S.C. § 6s(e).

February 28, 2020

ALLEN & OVERY

Comparability Assessment of Certain Securities and Exchange Commission and EU Requirements Applicable to Security-Based Swap Dealers pursuant to SEC Staff Guidance on Substituted Compliance Applications

2. Category: Recordkeeping and Reporting Requirements[1]

a. Executive Summary

The recordkeeping and reporting requirements provide for records, reports and notices to facilitate the SEC's oversight of registrants, by enabling SEC access to key information in connection with the SEC's obligation to protect the integrity of the security-based swap market and to protect market participants. The recordkeeping and reporting requirements also include quarterly securities count practices intended to help guard against deficiencies in firms' internal controls.

When considering substituted compliance in connection with recordkeeping and reporting requirements, the SEC intends to consider whether "the foreign financial regulatory system's required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports" are comparable to applicable Exchange Act provisions and underlying rules, as well as whether the foreign regulatory system "would permit the [SEC] to examine and inspect regulated firms' compliance with the applicable securities laws." Exchange Act rule 3a71-6(d)(6) [17 CFR 240.3a71-6(d)(6)].[2]

b. Subcategory: Record Creation

Registered firms must keep applicable books and records in the form and manner, and for the period, prescribed by the SEC, and keep those books and records open to inspection and examination by SEC representatives. Exchange Act section 15F(f)(1)(B), (C) [15 U.S.C. 78o-10(f)(1)(B), (C)];[3] and Exchange Act Release No. 87005 (Sep. 19, 2019) (**Books and Records Adopting Release**).[4]

The record creation requirements vary depending on whether the firm at issue has a prudential regulator.[5] For firms that have a prudential regulator, the recordkeeping requirements specifically apply to the firm's business as a dealer. Exchange Act section 15F(f)(1)(B) [15 U.S.C. 78o-10(f)(1)(B)].[6]

[1] To date, the SEC has not yet issued guidance regarding substituted compliance determinations concerning trade reporting and public dissemination. We further note that the SEC has issued limited four-year no-action relief when complying with certain CFTC reporting and dissemination requirements. The working group will monitor the situation in light of these factors, and may support a substituted compliance determination on these topics at a later time.

[2] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

[3] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

[4] http://www.cecouncil.org/media/266640/sec-release-no-34-87005.pdf

[5] Commodity Exchange Act section 1a(39) [7 U.S.C. 1a(39)] defines "prudential regulator", and is incorporated by reference by Exchange Act section 3(a)(74) [15 U.S.C. 78c(a)(74)].

[6] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
Recordkeeping Firms must maintain daily trading records (including records of each counterparty) of security-based swaps, and related records and recorded communications. Firms must maintain a complete audit trail for trade reconstructions. Exchange Act section 15F(g) [15 U.S.C. 78o-10(g)].[7] Records to be created include:	**Recordkeeping** Investment Firms are required to arrange for records to be kept of all services and transactions undertaken which must be sufficient to enable the relevant regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD and MAR, and in particular to ascertain that an Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID.	**Recordkeeping** French transposition of Article 16(6) MiFID is the following: Article L.533-10 II of the Monetary and Financial Code (MFC) provides that "Investment service providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the providers have complied with all professional obligations, including those with respect to clients or potential clients and to the integrity of the market." Article L533-10 III of the MFC provides that "Records shall also include telephone conversations and electronic communications	**<u>Comparability of outcomes:</u>** The EU transaction recordkeeping requirements provide for a comparable regulatory outcome to the SEC transaction recordkeeping requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(g) and MiFID are consistent in that each requires firms to record and maintain a variety of transaction and counterparty records to facilitate regulatory oversight and enforcement. *See* Article 16(6) MiFID (requiring recordkeeping to enable regulatory supervision and enforcement). While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[7] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
		that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services. These records shall be provided to the client involved upon request. They shall be kept for a period of five years and, where requested by the Autorité des marches financiers, for a period of up to seven years."	requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways:
Trade blotters: Blotters or other records of original entry containing an itemized daily record of purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash and other	**Trade blotters**: Investment Firms are required to keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg.	**Trade blotters**: French transposition of Article 16(7) MiFID is the following: Article L533-10 III of the MFC provides that "Records shall also include telephone conversations and electronic communications	**Trade blotters**: The trade information that must be recorded in accordance with Articles 74 and 75 MiFID Org Reg. and Annex IV MiFID Org Reg. is comparable to the trade information that must be

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
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debits and credits, as well as additional information such as account-related information and information regarding security-based swaps (e.g., type, reference security, unique transaction identifier, and counterparty identifier). **Exchange Act rule 18a-5(a)(1) [17 CFR 240.18a-5(a)(1)]**[8] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(1) [17 CFR 240.18a-5(b)(1)]*[9] *(with a prudential regulator)*;	Investment Firms are required to retain, and make accessible to regulators, precise information in relation to client orders, decisions to deal, transactions and order processing. Records cover matters such as the name and designation of the client or any person acting on the client's behalf, instrument identification, and a broad range of transaction detail (date and time, quantity, price, currency, order type etc.). These are granular information requirements which allow the regulator to reconstitute each key stage of processing a transaction. Annex IV MiFID Org Reg. Investment Firms are required to keep the relevant data relating to all transactions in financial instruments which they have carried out, whether on their	that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services."	recorded pursuant to Exchange Act rules 18a-5(a)(1) and 18a-5(b)(1).

[8] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[9] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	own account or on behalf of a client. Article 25(1) MiFIR. Investment Firms are required to record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). Article 16(7) MiFID and Article 76 MiFID Org Reg.		
Trade confirmations: Copies of purchase and sale confirmations for securities other than security-based swaps, and copies of trade acknowledgments and verifications for security-based swaps. **Exchange Act rule 18a-5(a)(6) [17 CFR 240.18a-5(a)(6)]**[10] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(6) [17 CFR 240.18a-*	**Trade confirmations**: An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the	**Trade confirmations:** French transposition of Article 25(6) MiFID is the following: French transposition of Article 25(6) MiFID is the following: Article L 533-15 of the MFC provides that "I. Investment service providers other than asset management companies shall provide their clients with a report on the services provided in a	**Trade confirmations**: The record retention schedules under Article 9(2) of EMIR specify how long counterparties must keep a record of any derivative contract they have concluded and any modification thereto. Article 25(1) MiFIR requires Investment Firms to keep the relevant data relating to all transactions in financial instruments which they have

[10] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
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1. What records are firms required to make with regard to their transactions and other activities?			
5(b)(6)][11] *(with a prudential regulator)*; and	order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. Article 25(6) MiFID and Article 59 MiFID Org Reg. The information provided forms part of the records that must be kept in order to satisfy an Investment Firm's general recordkeeping obligations. Article 16(6) MiFID. FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a). Counterparties (including FCs and NFCs) must keep a record of any derivative contract they have concluded and any modification. Article 9(2) EMIR.	durable medium. The report shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client." For your information, Article 59 MiFID Org Reg (which is directly applicable and does not require any transposition into French law), provides that : "1. Investment firms having carried out an order on behalf of a client, other than for portfolio management, shall, in respect of that order:	carried out, whether on their own account or on behalf of a client. Article 25(5) MiFID requires an Investment Firm to establish a record that includes the document or documents agreed between the firm and the client that set out the rights and obligations of the parties. These requirements are comparable to the requirements in relation to confirmations in Exchange Act rules 18a-5(a)(6) and 18a-5(b)(6).

[11] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
	Investment Firms are required to establish a record that includes the document or documents agreed between an Investment Firm and a client that set out the rights and obligations of the parties, and the other terms on which an Investment Firm will provide services to a client. Article 25(5) MiFID.	(a) promptly provide the client, in a durable medium, with the essential information concerning the execution of that order; (b) send a notice to the client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party. Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the client by another person.[…].” French transposition of Article 16(6) MiFID is the following: Article L.533-10 II of the MFC provides that “Investment service	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
		providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the providers have complied with all professional obligations, including those with respect to clients or potential clients and to the integrity of the market." French transposition of Article 25(5) MiFID is the following: Article L.533-14 of the MFC provides that "Investment service providers other than asset management companies shall establish a record that includes the document or documents agreed between the investment firm and the client that set out the rights and obligations of the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
1. What records are firms required to make with regard to their transactions and other activities?			
		parties, and the other terms on which the investment firm will provide services to the client."	
Counterparty information: For each security-based swap account, a record of the counterparty's unique identification code, name and address, and of the authorization for each person with authority to transact on behalf of the counterparty. **Exchange Act rule 18a-5(a)(7) [17 CFR 240.18a-5(a)(7)]**[12] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(7) [17 CFR 240.18a-5(b)(7)]*[13] *(with a prudential regulator)*.	**Counterparty information**: For transactions carried out on behalf of clients, the records must contain all the information and details of the identity of the client, and the information required under the laws on the prevention of the use of the financial system for the purpose of money laundering. Article 25(1) MiFIR. Various types of counterparty information must be collected as part of a CRR Firm's customer due diligence including, for example, with regards to the customer's identity, its beneficial owner and the purpose and intended nature of the business	**Counterparty information:** French transposition of Article 25(2) MiFID is the following: Article L533-13 of the MFC provides that " When providing the services mentioned in Article L.321-1 4° and 5° [investment advice and portfolio management], investment services providers other than asset management companies shall obtain the necessary information regarding their clients' or potential clients' knowledge and experience in the investment field relevant to the specific type of product or service, their financial situation including their ability to bear losses, and	**Counterparty information**: Article 25(1) MiFIR requires that the records must contain all the information and details of the identity of the client. This is comparable to the counterparty information requirements of Exchange Act rules 18a-5(a)(7) and 18a-5(b)(7).

[12] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[13] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
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	relationship. Article 11 and Article 13 MLD4. It must be verified that any person purporting to act on behalf of the customer is duly authorised and identify and verify the identity of that person. Article 13(1) MLD4. Investment Firms must collect a variety of information regarding their clients. Examples include information regarding customers in order to conduct suitability (for investment advice) and appropriateness (for product types) assessments, where relevant. This includes information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service and that person's financial situation including his ability to bear losses. Article 25(2) MiFID. (Investment Firms are entitled to assume that these criteria are	their investment objectives including their risk tolerance so as to enable the investment service provider to recommend them the investment services and financial instruments that are suitable for them and are in accordance with their risk tolerance and ability to bear losses."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
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	met for professional clients in relation to appropriateness and for certain types of professional clients in relation to suitability).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
Records to be created: **Ledgers**: • **Ledgers or other records reflecting assets and liabilities, income and expense and capital accounts. Exchange Act rule 18a-5(a)(2) [17 CFR 240.18a-5(a)(2)]**;[14] **Securities records or ledgers**: • For securities other than security-based swaps, this includes information regarding long or short positions, location-related information and account-related information. For security-based swaps, this includes information such as the reference security, transaction and counterparty identifiers, whether the position is bought or sold,	An Investment Firm must arrange for records to be kept of all services and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD, MAR, and in particular to ascertain that the Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID. The provisions referenced below in response to this question and in response to the question set forth in section 2.b.1 above apply to transactions in securities, security-based swaps and options positions, whether verified or not.	French transposition of Article 16(6) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the providers have complied with all professional obligations, including those with respect to clients or potential clients and to the integrity of the market." French transposition of Article 2 MiFID Delegated Directive is the following: With regards to funds:	**Comparability of outcomes**: The EU position and liability recordkeeping requirements provide for a comparable regulatory outcome to the SEC position and liability recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of records about positions and financial liabilities to facilitate regulatory oversight and enforcement and to promote the integrity of the market. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[14] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
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and clearing-related information. For dealers with a prudential regulator, the requirement extends only to security-based swaps and securities positions related to the firm's business as a dealer**. Exchange Act rule 18a-5(a)(4) [17 CFR 240.18a-5(a)(4)][15] (without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(3) [17 CFR 240.18a-5(b)(3)][16] (with a prudential regulator)*; **Trial balances**: • **A record of the proof of money balances of all ledger accounts in the form of trial balances and certain records relating to the computation of aggregate indebtedness and net capital under the net capital rule. This requirement applies only to**	**Ledgers**: • Investment Firms must assess their internal capital adequacy to ensure that they have in place sound, effective and comprehensive strategies and processes to assess and maintain, on an on-going basis, the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. Article 73 CRD IV. In practice, this will require the maintenance of full records of the Investment Firm's assets, liabilities, income and expense and capital accounts to be maintained on an on-going basis.	Article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms] shall comply with the following requirements : 1° They must keep records and accounts enabling them at any time and without delay to distinguish funds held for one client from funds held for any other client and from their own funds; 2° They must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the funds held for clients and that they may as an audit trail; 3° They must conduct, on a regular basis, reconciliations	**Comparability of specific requirements:** The EU requirements are comparable to analogous SEC requirements in that both require firms to record and maintain information on securities identifiers, positions and counterparties, etc. We note that the two regimes are different in the following way: • **Trial balances**. The US regime requires maintaining records of trial balances under Exchange Act rule 18a-5(a)(9). The EU regime does not have this specific requirement. It does, however, in practice require firms to maintain records of the inputs for their capital calculations, and therefore

[15] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[16] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
dealers without a prudential regulator. Exchange Act rule 18a-5(a)(9) [17 CFR 240.18a-5(a)(9)];[17] **Current exposure calculation**: • **A record of daily calculations of current exposure and the initial margin amount for each account, consistent with the relevant capital rule. This provision applies only to dealers without a prudential regulator. Exchange Act rule 18a-5(a)(12) [17 CFR 240.18a-5(a)(12)]**;[18] **Non-verified security-based swaps**: • Records of each security-based swap that has not been verified, including transaction and counterparty identifiers. **Exchange Act rule**	• Investment Firms must: (a) ensure the segregation of client money and assets from those of the Investment Firm; (b) maintain detailed, up-to-date and accurate accounts and records distinguishing client money and assets from those of the Investment Firm (these accounts and records must be sufficient to establish an audit trail); and (c) conduct regular reconciliations between their accounts and records and those accounts and records of any third-parties with whom client money or assets may be held. Article 2 MiFID Delegated Directive. • An Investment Firm must keep separate records and accounts that enable it to distinguish both in accounts	between their internal accounts and records and those of any third parties by whom those funds are held […]." With regards to financial instruments: Article 312-6 of the General Regulation of the Autorité des marché financiers provides that "The investment service provider shall, in order to safeguard its clients' rights on the financial instruments they own, comply with the following obligations: 1° It shall all keep records and accounts necessary to enable at any time and without delay to distinguish the financial instruments held for one particular client from those held for any other client and from its own financial instruments;	these requirements are comparable in outcome.

[17] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[18] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
18a-5(a)(15) [17 CFR 240.18a-5(a)(15)][19] (without a prudential regulator); and *Exchange Act rule 18a-5(b)(11) [17 CFR 240.18a-5(b)(11)][20] (with a prudential regulator)*; and **Records of options positions**: • **A record of all options in which the firm has a direct or indirect interest or that the firm has granted or guaranteed, containing at least the security identification and the number of units involved. This requirement applies only to dealers without a prudential regulator. Exchange Act rule 18a-5(a)(8) [17 CFR 240.18a-5(a)(8)].[21]**	held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. Article 39(4) EMIR. **Securities records or ledgers**: • CRR Firms must monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. In practice, this will require that CRR Firms have a record of their long and short positions to enable these to be monitored. • Please also refer to the provisions referenced in response to the question set forth in section 2.b.1 above, which also enable firms to	2° It shall maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments held for clients and that they may use as an audit trail; 3° It shall conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those financial instruments are held […].”	

[19] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[20] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[21] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
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2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
	establish records of their positions. **Trial balances**: • Please refer to the response above in this section 2.b.2 in respect of Ledgers. **Current exposure calculation**: • Investment Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must set and monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. • Investment Firms must revalue their trading book positions at least daily. Article 105(3) CRR. • Investment Firms revaluation of trading book positions must account for valuation adjustments, including close-		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French law provisions	Comparability Assessment
b. Subcategory: Record Creation			
2. What records are firms required to make with regard to their positions and other potential financial liabilities?			
	out costs and early termination. Article 105(10) CRR. • Segregated regulatory initial margin will be treated as client money (cash collateral) or client assets (non-cash collateral) and so will be recorded in the client money and client asset records referenced above in respect of "Trial balances".		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
Records to be created: A questionnaire[22] or employment application for each associated natural person who effects or is	The following requirements entail the creation of information and records in relation to a CRR Firm's staff:	French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an	**<u>Comparability of outcomes</u>**: The EU personnel recordkeeping requirements provide for a comparable regulatory outcome

[22] There may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to certain information that needs to be recorded pursuant to the questionnaire requirement. Therefore, the SEC has proposed additional provisions in Rule 18a-5 to address those situations. *See* Proposed Cross-Border Swap Requirements, *available at* https://www.sec.gov/rules/proposed/2019/34-85823.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
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involved in effecting security-based swaps on the firm's behalf, containing identifying and background information (e.g., information regarding disciplinary actions, and arrests and indictments). The firm must also make a record that lists the offices associated with each associated person of the firm. **Exchange Act rule 18a-5(a)(10) [17 CFR 240.18a-5(a)(10)]**[23] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(8) [17 CFR 240.18a-5(b)(8)]*[24] *(with a prudential regulator)*.	CRR Firms must record information including, among other items, disclosure of criminal records, investigations, enforcement proceedings and dismissals, which may need to be provided to the regulators in order to enable them to assess the suitability of the management body. Guidelines 74-75, 172 and Annex III EBA/ESMA Guidelines on Management Suitability. The due diligence requirements for members of a CRR Firm's management body are an example of an area where member states may introduce similar or additional requirements applicable to other types of employees of the firm. Records must be maintained by CRR Firms in order to be able to comply with governance	investment firm, the following shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties: 1° The members of the Board of Directors, the Supervisory Board and the Management Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of	to the SEC personnel recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of personnel information to ensure that personnel are qualified to perform their duties. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below EU requirements are comparable to analogous SEC requirements in the following ways:

[23] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[24] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
	requirements imposed on their management body, such as: • Each member of the management body of a CRR Firm must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. Article 91(1) CRD IV. member state laws will, in many cases, expand the scope of these requirements to include other relevant staff of a CRR Firm. • Members of the management body must act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Article 9(1) MiFID and Article 91(8) CRD	Article L. 533-29, and who are likely to report directly on the performance of their duties to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the supervisory board or any other body exercising equivalent functions shall be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs.	• **Associated offices**. The US regime requires records of offices associated with each associated person of the firm. The EU regime requires the identification and recording of conflicts of interest, which will include the disclosure and recording of associated offices.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
	IV. member state laws will, in many cases, expand the scope of these requirements to include other relevant staff of a CRR Firm.Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21(1)(a) MiFID Org Reg. • A CRR Firm's management body must define, oversee and be accountable for the implementation of the governance arrangements including, among other matters, ensuring the prevention of conflicts of interest. Article 9(1) MiFID and Article 88 CRD IV. • This will include managing conflicts with associated offices. Investment Firms must maintain a record of all	The members of the board of directors or the supervisory board, on the one hand, and the members of the management board or any person who effectively manages the business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the company's activities, including the main risks to which it is exposed." French transposition of Article 16(3) MiFID is the following : Article L.533-10 II 3° of the MFC provides that "Investment service providers other than asset management companies […] Shall maintain and operate effective organisational and administrative arrangements, in order to take all reasonable measures to prevent conflicts of interests from adversely affecting the interest of their clients."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?			
	conflicts of interest. Article 16(3) MiFID and Article 35 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
Records to be created: **Transaction information**: • Ledger accounts or other records to itemize separately, as to each account, information such as purchases and sales, receipts and deliveries of securities and commodities, and other debits and credits, along with additional information regarding security-based swaps. **Exchange Act rule 18a-5(a)(3) [17 CFR 240.18a-5(a)(3)]**[25] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(2) [17 CFR 240.18a-5(b)(2)]* [26] *(with a prudential regulator)*; and **Compliance records**: • Records of compliance with the possession or control	**Transaction information and compliance records**: When holding financial instruments belonging to clients, Investment Firms must make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the Investment Firm's insolvency, and to prevent the use of a client's financial instruments on own account except with the client's express consent. Article 16(8) MiFID. An Investment Firm, when holding funds belonging to clients, must make adequate arrangements to safeguard the rights of clients and, except in the case of Credit Institutions, prevent the use of client funds for its own account. Article 16(9) MiFID.To this end, Investment	**Transaction information and compliance records**: French transposition of Article 16(8) MiFID is the following: Article L533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 7° Shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard the ownership rights of the clients on these financial instruments and to prevent the use of a client's financial instruments on own account except with the client's express consent." French transposition of Article 16(9) MiFID is the following: Article L533-10 II of the MFC provides that "Investment service	**<u>Comparability of outcomes</u>**: The EU control of customer funds and securities recordkeeping requirements provide for a comparable regulatory outcome to the SEC control of customer funds and securities recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of information about client funds to ensure the segregation between firm funds and client funds and protect the safety of client funds. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[25] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[26] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
requirement under the applicable segregation rule, and of the reserve computation required under the segregation rule. **Exchange Act rule 18a-5(a)(13), (14) [17 CFR 240.18a-5(a)(13), (14)]**[27] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(9), (10) [17 CFR 240.18a-5(b)(9), (10)]*[28] *(with a prudential regulator)*.	Firms must: keep records and accounts enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets; maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients and that they may be used as an audit trail; conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third-parties by whom those assets are held; take the necessary steps to ensure that any client financial instruments deposited with a third-party are identifiable separately from the financial instruments belonging to the Investment Firm and from financial instruments belonging	providers other than asset management companies […] 8° Shall, when holding funds belonging to clients, make adequate arrangements to safeguard the rights of clients on these funds, especially in the event of the investment firm's insolvency. Investment firms may not in any case use client funds for their own accounts[...]." French transposition of Article 2 MiFID Delegated Directive is the following: With regards to funds: Article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms]	**<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Transaction information**. The transaction information required under Article 2 MiFID Delegated Directive and Articles 72, 74 and 75 MiFID Org Reg. is comparable to that required by Exchange Act rules 18a-5(a)(3) and 18a-5(b)(2). • **Compliance records**. Articles 16(8) and (9) MiFID require that Investment Firms make adequate arrangements to protect client funds, including, as set out by Article 2 MiFID Delegated

[27] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[28] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
	to that third-party, by means of differently titled accounts on the books of the third-party or other equivalent measures that achieve the same level of protection; take the necessary steps to ensure that client funds deposited in a central bank, a Credit Institution or a bank authorised in a non-EEA jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the Investment Firm; and introduce adequate organizational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence. Article 2 MiFID Delegated Directive.Investment Firms must keep detailed records in relation	shall comply with the following requirements : 1° They must keep records and accounts enabling them at any time and without delay to distinguish funds held for one client from funds held for any other client and from their own funds; 2° They must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the funds held for clients and that they may as an audit trail; 3° They must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those funds are held; 4° They must take the necessary steps to ensure that any client funds deposited […] in a central	Directive maintaining records of client money and client assets possessed or controlled (such money and assets also being subject to a segregation requirement) which is analogous to the requirements in relation to compliance records under Exchange Act rules 18a-5(a)(13), (14) and 18a-5(b)(9), (10)

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
	to every client order and decision to deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. Records must be retained in a medium allowing, among other things, the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing the regulator to access them readily and reconstitute each key stage of processing each transaction. Article 72(1) MiFID Org Reg. An Investment Firm must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. Article 39(4) EMIR.	bank, a Credit Institution or a bank authorised in a non-EEA jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firms themselves; 5° They must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client funds, or of rights in connection with those funds, as a result of misuse of the funds, fraud, poor administration, inadequate record-keeping or negligence." With regards to financial instruments: Article 312-6 of the General Regulation of the Autorité des marché financiers provides that "The investment service provider shall, in order to safeguard its clients' rights on the financial	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
		instruments they own, comply with the following obligations: 1° It shall all keep records and accounts necessary to enable at any time and without delay to distinguish the financial instruments held for one particular client from those held for any other client and from its own financial instruments; 2° It shall maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments held for clients and that they may use as an audit trail; 3° It shall conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those financial instruments are held […].” 4° It shall take the necessary steps to ensure that any client financial	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
		instruments deposited with a third party are identifiable separately from the financial instruments belonging to the investment service provider and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection; Where the law applicable in the territory in which the third party holds the financial instruments prevents it from complying with the above paragraph, it shall inform the clients concerned that they do not benefit from this protection. 5° It shall introduce adequate organisational arrangements to minimise the risk of the loss or diminution of the value of the client financial instruments , or of rights in connection with those financial instruments, as a result	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
4. What records are firms required to make regarding the control of customer funds and securities?			
		of misuse of the financial instruments , fraud, poor administration, inadequate record-keeping or negligence."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
Records to be created: **Compliance with business conduct standards***:* • Records regarding compliance with business conduct standards that address, among other respects: verification related to counterparty status; certain disclosures related to the daily mark and its calculation; disclosures regarding material incentives, conflicts of	An Investment Firm must arrange for records to be kept of all services, activities and transactions undertaken by it which must be sufficient to enable the regulator fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD, MAR, and in particular to ascertain that the Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID.	French transposition of Article 16(6) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the providers have complied with all professional obligations,	**Comparability of outcomes**: The EU business conduct recordkeeping requirements provide for a comparable regulatory outcome to the SEC business conduct recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of information about transactions and compliance with business conduct standards to facilitate regulatory supervision and enforcement, protect clients

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
interest, material risks and characteristics of the security-based swap, and certain clearing rights; certain "know your counterparty" and suitability obligations; supervisory requirements, including written policies and procedures; certain requirements regarding interactions with special entities; provisions intended to prevent dealers from engaging in certain "pay to play" activities; and certain minimum requirements relating to CCOs. ***Exchange Act rules 18a-5(a)(16), (17) [17 CFR 240.18a-5(a)(16), (17)][29] (without a prudential regulator)***; and *Exchange Act rules 18a-5(b)(12), (13) [17 CFR 240.18a-5(b)(12), (13)][30] (with a prudential regulator*.	**Compliance with business conduct standards**: • Investment Firms must retain all records in relation to communications with clients in respect of the reception, transmission and execution of orders. Article 16(7) MiFID and Article 76(8)(b) MiFID Org Reg. • Records setting out the rights and obligations of the Investment Firm/client under the service agreement, or the terms of service, must also be retained. Article 73 MiFID Org Reg. • The minimum records Investment Firms must keep include: the information and communications provided to clients on the services provided, the Investment Firm itself, costs and charges	<u>including those with respect to clients or potential clients and to the integrity of the market."</u> **Compliance with business conduct standards**: French transposition of Article 16 (7) MiFID is the following: Article L533-10 III of the MFC provides that "Records […] include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders."	and promote the integrity of the market While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following way: • **Compliance with business conduct standards**: The information required under Article 16(7) MiFID and Article 76(8)(b) is comparable to the information required under Exchange Act rules

[29] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[30] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
	and marketing; client agreements; suitability and appropriateness assessments; client order and order-handling (i.e. order aggregation) records; assets and instruments held by the Investment Firm or third-parties for the client and their use by the Investment Firm; investment advice to retail clients; investment research; reports and records on business and internal organization, compliance; conflicts, inducements, risk management, internal audit, complaints-handling and personal transaction. Article 72 and Annex I MIFID Org Reg. • Investment Firms must retain records in relation to communications with clients in respect of clearing rights and, in particular, regarding the choice between omnibus		18a-5(a)(16), (17), 18a-5(b)(12), (13). We note that, while there are certain limited respects where the EU compliance obligations differ from the US ones (for example, no 'pay to play' restrictions or related recordkeeping obligations apply in the EU), the information required under Article 72 and Annex I MIFID Org Reg. (including suitability and appropriateness assessments, compliance, conflicts, inducements, risk management, internal audit, and complaints-handling) is comparable to the information regarding compliance with business conduct standards required under Exchange Act rules 18a-5(a)(16), (17), 18a-5(b)(12), (13).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
5. What records are firms required to make regarding business conduct practices?			
	client segregation and individual client segregation. Clients must be informed of the costs and level of protection associated with each option and the client must confirm its choice in writing. Article 39(5) EMIR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
Dealers without a prudential regulator are required to perform a securities count each quarter. The count may be performed on a certain date or on a cyclical basis, must cover the entire list of securities, and be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper	Investment Firms must: keep records and accounts enabling them at any time and without delay to distinguish assets held for one client from assets held for any other client and from their own assets; maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial	French transposition of Article 2 MiFID Delegated Directive is the following: With regards to funds: Article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms]	**<u>Comparability of outcomes</u>**: The EU periodic securities count requirements provide for a comparable regulatory outcome to the SEC periodic securities count requirements. In particular, both regulatory regimes require firms to make periodic securities counts, in

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
care and protection of the securities or the making or preservation[31] of the subject records. To meet this requirement, a firm generally will need to account for or verify its open security-based swap transactions, and that the method to do this could involve steps to confirm open transactions reflected in the firm's books and records with securities clearing agencies or counterparties. Exchange Act rule 18a-9 [17 CFR 240.18a-9].[32]	instruments and funds held for clients and that they may be used as an audit trail; conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third-parties by whom those assets are held; take the necessary steps to ensure that any client financial instruments deposited with a third-party are identifiable separately from the financial instruments belonging to the Investment Firm and from financial instruments belonging to that third-party, by means of differently titled accounts on the books of the third-party or other equivalent measures that achieve the same level of protection; take the necessary steps to ensure that client funds deposited in a central bank, a Credit Institution or a bank authorised in a non-EEA	shall comply with the following requirements : 1° They must keep records and accounts enabling them at any time and without delay to distinguish funds held for one client from funds held for any other client and from their own funds; 2° They must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the funds held for clients and that they may as an audit trail; 3° They must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those funds are held;	order to ensure the proper care and protection of assets. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The specific requirements under the EU regimes are at least as stringent as those under the US regime. While the US regime only requires that securities counts be performed quarterly under Exchange Act rule 18a-9, the EU regime requires that firms make similar information available and accessible at any

[31] In adopting this requirement the SEC acknowledged that security-based swaps are not held in depositories or at other types of custodians.
[32] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_69

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
	jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the Investment Firm; and introduce adequate organizational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence. Article 2 MiFID Delegated Directive.An external auditor must report at least annually to an Investment Firm's regulator on the adequacy of an Investment Firm's client money and client asset arrangements. Article 8 MiFID Delegated Directive. Investment Firms must keep detailed records in relation to every client order and decision to	4° They must take the necessary steps to ensure that any client funds deposited […] in a central bank, a Credit Institution or a bank authorised in a non-EEA jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firms themselves; 5° They must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client funds, or of rights in connection with those funds, as a result of misuse of the funds, fraud, poor administration, inadequate record-keeping or negligence." With regards to financial instruments: Article 312-6 of the General Regulation of the Autorité des	time under Article 2 MiFID Delegated Directive.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
	deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. With regards to the verification of open transactions, timely confirmations and portfolio reconciliation requirements apply: (i) FCs and NFCs to an OTC derivative contract not cleared by a CCP are required to establish formalised processes which are robust, resilient and auditable in order to reconcile portfolios. EMIR, Article 11(1)(b); and (ii) to comply with the timely confirmation obligation, counterparties must reach a legally binding agreement as to all the terms of an OTC derivative contract. ESMA Q&A on EMIR, OTC Answer 4(a).	marché financiers provides that "The investment service provider shall, in order to safeguard its clients' rights on the financial instruments they own, comply with the following obligations: 1° It shall all keep records and accounts necessary to enable at any time and without delay to distinguish the financial instruments held for one particular client from those held for any other client and from its own financial instruments; 2° It shall maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments held for clients and that they may use as an audit trail; 3° It shall conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
		whom those financial instruments are held […]." 4° It shall take the necessary steps to ensure that any client financial instruments deposited with a third party are identifiable separately from the financial instruments belonging to the investment service provider and from financial instruments belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection; Where the law applicable in the territory in which the third party holds the financial instruments prevents it from complying with the above paragraph, it shall inform the clients concerned that they do not benefit from this protection.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
		5° It shall introduce adequate organisational arrangements to minimise the risk of the loss or diminution of the value of the client financial instruments , or of rights in connection with those financial instruments, as a result of misuse of the financial instruments , fraud, poor administration, inadequate record-keeping or negligence." French transposition of Article 8 MiFID Delegated Directive is the following: With regards to funds: Article 10 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms] shall ensure that their external auditors report at least annually to the Autorité de contrôle prudentiel et de résolution on the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?			
		adequacy of their arrangements under this decree." With regards to assets: Article 312-7 of the General Regulation of the Autorité des marches financiers provides that "The investment service provider shall ensure that its external auditor reports at least annually to the Autorité des marchés financiers on the adequacy of the arrangements implemented by the investment service provider, under Article L533-10 II 7° and 9° of the MFC and under this section."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?			
There may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to information regarding associated natural persons that needs to be recorded pursuant to the questionnaire requirement. The SEC has proposed additional provisions in Rule 18a-5 to address those situations. *See* Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206, 24242-44, 24294 (May 24, 2019) (**Proposed Cross-Border Swap Requirements**).[33]	Recordkeeping and creation requirements must be followed in a manner that is consistent with privacy laws (including the GDPR) that Investment Firms are subject to in respect of personal data (i.e. relating to identified or identifiable natural persons). Among the records listed by the SEC Guidance, some could contain personal data. Although record creation and compliance with GDPR should be considered on a case-by-case basis, having regard to the relevant personal data and the purpose for which that data will be processed, it is generally possible for Credit Institutions and Investment Firms to collect and process the type of personal data that the records listed may entail in a manner that is compliant with GDPR. For instance, data collected in establishing a client relationship		**<u>Comparability of outcomes</u>**: The EU restrictions on firm record creation provide for a comparable regulatory outcome to the SEC restrictions on firm record creation. In particular, while the EU GDPR could result in situations where personal data cannot be collected or processed, these situations are narrow, and should not broadly alter the ability of Investment Firms to retain the records at issue here.

[33] https://www.sec.gov/rules/proposed/2019/34-85823.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?			
	could be processed further within the Credit Institution or the Investment Firm if the "controller" has a legitimate interest that is not overridden by the rights or freedoms of the affected data subjects. Accordingly, it is reasonable to assume that creation and maintenance of records for the purpose of complying with its obligations as a swap dealer would be capable of being accommodated under GDPR. Moreover, much of the information that is required to be recorded by Credit Institutions and Investment Firms pursuant to the provisions of EU law referenced in the responses to the questions set forth in sections 2.b.1-2.b.6 above may not fall within the definition of personal data (to the extent that it is information that does not relate to an identified or identifiable natural person).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?			
	This answer does not address the sharing of such information outside of the Credit Institution or the Investment Firm, for which please see the response in Part B to the question set forth in section 2.b.7 below.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?			
	In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators). Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between EU		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Record Creation			
7. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?			
	member state authorities and the SEC each of which, in itself, should give the SEC the assurance that, even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.		

c. Subcategory: Record Preservation

The preservation of records requirements – regarding firms' financial status, positions, activities and compliance with applicable requirements – promote effective SEC oversight.

Registered firms must keep applicable books and records in the form and manner, and for the period, prescribed by the SEC, and keep those books and records open to inspection and examination by SEC representatives. Exchange Act sections 15F(f)(1)(B), (C) [15 U.S.C. 78o-10(f)(1)(B), (C)].[34] For firms that have a prudential regulator, the recordkeeping requirements specifically apply to the firm's business as a dealer. 15F(f)(1)(B) [15 U.S.C. 78o-10(f)(1)(B)].[35]

Firms must maintain daily trading records (including records of each counterparty) of security-based swaps, and related records and recorded communications, for the period prescribed by the SEC. Firms must maintain a complete audit trail for trade reconstructions. Exchange Act section 15F(g) [15 U.S.C. 78o-10(g)].[36]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
c. Subcategory: Record Preservation			
1. What are the general provisions regarding the preservation period and accessibility?			
SEC rules incorporate a number of elements regarding how long particular records must be preserved, accessibility of records, and related matters. *See* below for details.	MiFID contains extensive recordkeeping requirements, including with respect to how long particular records must be preserved, accessibility of records, and related matters. *See* below for details.		**<u>Comparability of outcomes</u>**: The EU record preservation and accessibility requirements provide for a comparable regulatory outcome to the SEC record preservation and accessibility requirements. In particular, both regulatory regimes contain detailed, comprehensive requirements on record preservation to promote

[34] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[35] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[36] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
1. What are the general provisions regarding the preservation period and accessibility?			
			information accessibility for market participants and facilitate regulatory supervision.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Firms are required to maintain a variety of records:	**General recordkeeping requirement:** An Investment Firm must arrange for records to be kept of all services and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD and MAR. Article 16(6) MiFID. Records must be retained in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner	**General recordkeeping requirement:** French transposition of Article 16(6) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the providers have complied with all	**<u>Comparability of outcomes</u>**: The EU record preservation requirements provide for a comparable regulatory outcome to the SEC record preservation requirements. In particular, both regulatory regimes contain detailed requirements for different types of information about firms and transactions, in order to promote information accessibility for market participants and facilitate regulatory supervision and enforcement. *See* Article 16(6)

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	allowing (i) the regulator to access them readily and reconstitute each key stage of processing each transaction; (ii) corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; (iii) it must not be possible for the records otherwise to be manipulated or altered; and (iv) IT or any other sufficient exploitation when the analysis of the data cannot easily be carried out due to the volume and nature of the data. Article 72(1) MiFID Org Reg.	professional obligations, including those with respect to clients or potential clients and to the integrity of the market."	MiFID and Article 72(1) MiFID Org Reg. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways:
Ledgers and transaction information: Records related to trade blotters, ledgers, ledger accounts and security records/ledgers for at least six years, the first two years in an easily accessible place.	**Ledgers and transaction information**: Please refer to the responses to question set forth in sections 2.b.1 at "Trade blotters", 2.b.2 at "Ledgers" and "Securities records or ledgers", and 2.b.4 at "Ledger accounts and compliance		**Ledgers and transaction information**: Requirements on transaction records under Articles 16(6), 16(7) and 69(2) MiFID, Articles 74-76 and Annex IV MiFID Org Reg. and Article 25(1) MiFIR are

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Exchange Act rule 18a-6(a)(1) [17 CFR 240.18a-6(a)(1)][37] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(a)(2) [17 CFR 240.18a-6(a)(2)]*[38] *(with a prudential regulator*); Information required to be made pursuant to rule 18a-5, including records related to the above information regarding brokerage orders/instructions, security-based swap transactions for the firm account, confirmations and trade acknowledgments/verifications, security-based swap counterparty information, options positions, trial balances, current exposure calculations, segregation, non-verified security-based swaps, and business conduct compliance for at least three years, the first two years in an easily accessible	records" regarding the records that must be preserved, as well as the "General recordkeeping requirement" noted above in this response. Additionally, Investment Firms must keep at the disposal of the regulator, for five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client. For transactions carried out on behalf of clients, the records must contain all the information and details of the identity of the client, and the information required under the laws on the prevention of the use of the financial system for the purpose of money laundering. Article 25(1) MiFIR.		comparable to those under Exchange Act rules 18a-6(a)(1), (2) and 18a-6(b)(1), (2).

[37] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[38] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
place. This portion of the record preservation requirement does not address the record-making requirement related to associated persons. **Exchange Act rule 18a-6(b)(1)(i) [17 CFR 240.18a-6(b)(1)(i)]**[39] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(i) [17 CFR 240.18a-6(b)(2)(i)]*[40] *(with a prudential regulator)*;	Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract. Article 9(2) EMIR.		
Trade instructions, confirmations and positions: Originals of communications received and copies of communications sent (and approvals of communications sent), including inter-office memoranda and communications, as well as sales scripts and recordings of telephone calls required to be maintained pursuant to Exchange	**Trade instructions, confirmations and positions**: Please refer to the responses to the questions set forth in sections 2.b.1 at "Trade confirmations" and "Counterparty information", 2.b.2 at "Ledgers" and "Securities records or ledgers", and 2.b.5 at "Compliance with business conduct standards" regarding the records that must be preserved		**Trade instructions, confirmations and positions**: Requirements on client communication records under Articles 25(5) and 25(6) MiFID, Article 59 MiFID Org Reg., and Articles 9(2) and 11(1)(a) EMIR are comparable to those set forth in Exchange Act rules 18a-6(b)(1)(iv) and 18a-6(b)(2)(ii).

[39] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[40] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Act section 15F(g)(1) (related to daily trading records) for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(iv) [17 CFR 240.18a-6(b)(1)(iv)]**[41] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(ii) [17 CFR 240.18a-6(b)(2)(ii)]*[42] *(with a prudential regulator)*;	as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.		
Cash-related records: **Certain cash-related records and bills, including (i) check books, bank statements, cancelled checks and cash reconciliations; and (ii) information regarding bills receivable and payable, related to the business of the firm as such for at least three years, the first two years in an easily accessible place. These requirements apply only to firms**	**Cash-related records**: Please refer to the responses to the question set forth in section 2.b.2 at "Ledgers" as well as the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.		**Cash-related records**: Requirements under Article 73 CRD IV, Article 2 MiFID Delegated Directive, and Article 16(6) MiFID are comparable to those under Exchange Act rules 18a-6(b)(1)(ii), (iii).

[41] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[42] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
without a prudential regulator. ***See*** **Exchange Act rules 18a-6(b)(1)(ii), (iii) [17 CFR 240.18a-6(b)(1)(ii), (iii)]**;[43]			
Communication records: Originals of communications received and copies of communications sent (and approvals of communications sent), including inter-office memoranda and communications, as well as sales scripts and recordings of telephone calls required to be maintained pursuant to Exchange Act section 15F(g)(1) (related to daily trading records) for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(iv) [17 CFR 240.18a-6(b)(1)(iv)][44] (without a prudential regulator)**; and *Exchange Act rule 18a-*	**Communication records**: Investment Firms must retain records in relation to communications with clients in respect of the reception, transmission and execution of orders for five years or, where requested by its regulator, up to seven years. Article 16(7) MiFID and Article 76(8)(b) MiFID Org Reg. Investment Firms must record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). Article	**Communication records:** French transposition of Article 16(7) MiFID is the following: Article L533-10 III of the MFC provides that "Records […] include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders. […] These records shall be provided to the client involved upon request. They shall be kept for a period of	**Communication records**: Requirements under Article 16(7) MiFID and Article 76(8)(b) MiFID Org Reg. are comparable to those under Exchange Act rules 18a-6(b)(1)(iv) and 18a-6(b)(2)(ii).

[43] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[44] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
6(b)(2)(ii) [17 CFR 240.18a-6(b)(2)(ii)][45] *(with a prudential regulator)*;	16(7) MiFID and Article 76 MiFID Org Reg. Please refer to the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	five years and, where requested by the Autorité des marches financiers, for a period of up to seven years." French transposition of Article 16(7) MiFID is the following: Article L533-10 III of the MFC provides that "Records shall also include telephone conversations and electronic communications that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services."	
Capital information:	**Capital information**:		**Capital information**:

[45] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Net capital-related information, including trial balances, computations of net capital and tangible net worth (and related working papers), financial statements, branch office reconciliations, and internal audit working papers relating to the business of the firm as such for at least three years, the first two years in an easily accessible place. This requirement applies only to firms without a prudential regulator. Exchange Act rule 18a-6(b)(1)(v) [17 CFR 240.18a-6(b)(1)(v)];[46]	CRR requires the financial/capital reports to be submitted by CRR Firms on the following matters (among others): capital/own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS), accounting information (Article 99 CRR and Annexes III, IV and V CRR Reporting ITS), counterparty credit risk (Article 99 CRR), large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS), liquidity coverage and stable funding (Part Six: Title II & Title III CRR and Annexes XII and XIII CRR Reporting ITS), and leverage ratios (Article 430 CRR and Annexes X and XI CRR Reporting ITS). Information on capital and large exposures must be reported semi-annually, liquidity coverage must be reported monthly, and stable funding and leverage must		Requirements under the Articles 99, 394 and 430 and Part Six: Title II & Title III CRR and the CRR Reporting ITS are comparable to those under Exchange Act rule 18a-6(b)(1)(v).

[46] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	be reported quarterly. Articles 99, 294 and 415 CRR and Article 14 CRR Reporting ITS. Regulators also have the power to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions. Article 104(1)(j) CRR.		
Account documents: Account documents, including guarantees of accounts and powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, as well as copies of resolutions empowering an agent to act on behalf of a corporation for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(vi) [17 CFR 240.18a-6(b)(1)(vi)]**[47] **(without a**	**Account documents**: An Investment Firm must establish a record that includes the documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. Article 25(5) MiFID. Records setting out the rights and obligations of the firm/client	**Account documents:** French transposition of Article 25(5) MiFID is the following: Article L.533-14 of the MFC provides that "Investment service providers other than asset management companies shall establish a record that includes the document or documents agreed between the investment firm and the client that set out the rights and obligations of the parties, and the other terms on	**Account documents**: Requirements under the Articles 16(6) and 25(5) MiFID and Article 73 MiFID Org Reg. are comparable to those under Exchange Act rules 18a-6(b)(1)(vi) and 18a-6(b)(2)(iii).

[47] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
prudential regulator); and *Exchange Act rule 18a-6(b)(2)(iii) [17 CFR 240.18a-6(b)(2)(iii)]*[48] *(with a prudential regulator)*;	under the service agreement, or the terms of service, must be retained for at least the duration of the client relationship. Article 73 MiFID Org Reg. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.	which the investment firm will provide services to the client."	
Written agreements: Written agreements (or copies) relating to the firm's business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or noncustomer – including governing documents or any document establishing the terms and conditions of the security-based swaps – must be maintained with the account	**Written agreements**: Please refer to the section on "2(e) Account documents" noted above in this response regarding the records that must be preserved and the preservation of such records. Please also refer to the response to the question set forth in section 2.b.1 at "Trade confirmations" regarding the records that must be preserved		**Written agreements**: Requirements on maintaining records of written agreements with clients under Articles 16(6) and 25(5), 25(6) MiFID, Articles 59 and 73 MiFID Org Reg. and Articles 9(2) and 11(1)(a) EMIR are comparable to those under Exchange Act rules 18a-6(b)(1)(vii) and 18a-6(b)(2)(iv).

[48] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
records of the customer or non-customer for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(vii) [17 CFR 240.18a-6(b)(1)(vii)]**[49] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(iv) [17 CFR 240.18a-6(b)(2)(iv)]*[50] *(with a prudential regulator)*;	as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.		
Financial statements: Information supporting financial statements including information supporting amounts included in FOCUS reports and in required financial statements, including money balances, positions in securities, futures, commodities and options, and records relating to margin and segregation for at least three years, the first two years in an easily accessible place. This requirement applies	**Financial statements:** Please refer to the section on "2(d) Capital information" noted above in this response regarding the records that must be preserved and the preservation of such records.		**Financial statements**: Requirements under Articles 99, 394 and 430 and Part Six: Title II & Title III CRR and the CRR Reporting ITS are comparable to those under Exchange Act rules 18a-6(b)(1)(viii) and 18a-6(b)(2)(v).

[49] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[50] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
only to firms without a prudential regulator, except for the segregation-related possession or control information. **Exchange Act rule 18a-6(b)(1)(viii) [17 CFR 240.18a-6(b)(1)(viii)]**[51] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(v) [17 CFR 240.18a-6(b)(2)(v)]*[52] *(with a prudential regulator)*;			
Risk management: **Risk management records, including records and results of periodic reviews associated with risk management requirements for at least three years, the first two years in an easily accessible place. This requirement applies only to firms without a prudential regulator. Exchange Act rule 18a-6(b)(1)(ix) [17 CFR 240.18a-6(b)(1)(ix)]**;[53]	**Risk management:** Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 16(5) MiFID. Investment Firms must establish, implement and maintain	**Risk management:** French transposition of Article 16(5) MiFID is the following: Article L533-2 of the MFC provides that "Investment service providers other than asset management companies shall have sound administrative procedures, internal control mechanisms, effective procedures for risk assessment,	**Risk management**: Requirements under CRR, CRD IV, MiFID, the MiFID Org Reg. and EMIR are comparable to those under Exchange Act rule 18a-6(b)(1)(ix).

[51] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[52] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[53] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 23 MiFID Org Reg. The requirement encompasses the monitoring of the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. MiFID requires the maintenance of a range of risk management records, including: compliance reports (Article 16(2) MiFID and Article 22(3)(c) MiFID Org Reg.),	effective control and safeguard arrangements for information processing systems […]". Article L. 533-10, II, of the MFC provides that : "Investment service providers other than asset management companies: 1° Shall establish policies and procedures to ensure compliance of the firm including its managers, employees and tied agents with its obligations […] ; 3° Shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients; […] Article L. 533-2 of the MFC provides that : "Investment service providers other than asset management companies shall	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	conflict of interest records (Article 16(3) MiFID and Article 35 MiFID Org Reg.), inducements (Article 24(9) MiFID and Article 11 Delegated Directive 2017/593), risk management reports (Article 16(5) MiFID and Articles 23(1)(b) and 25(2) MiFID Org Reg.), internal audit (Article 16(5) MiFID and Articles 24 and 25(2) MiFID Org Reg.), complaints-handling records (Article 16(2) MiFID and Article 26 MiFID Org Reg.), and personal transaction records (Article 16(2) MiFID and Articles 29(2)(c) MiFID Org Reg.). CRR Firms are subject to enhanced risk management requirements, especially, for CRR Firms using internal models, in relation to CCR exposures arising from derivatives trading activities. In particular, a CRR Firm is required to establish and maintain a CCR management framework. Article 286 CRR. Daily	have sound administrative procedures, internal control mechanisms, effective procedures for risk assessment, effective control and safeguard arrangements for information processing systems […]". Any documentation that is related to the compliance of the above provisions must be recorded according to Article 72 MiFID Delegated Regulation. French transposition of Article 11 MiFID Delegated Directive is the following: Article 314-16 of the General Regulation of the Autorité des marches financiers provides that "The investment services provider shall hold evidence that any fees, commissions or non-monetary benefits paid or received by it are designed to enhance the quality	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	reports on a CRR Firm's exposures to CCR must be prepared and then reviewed by a level of management with sufficient seniority and authority to enforce both reductions of positions taken by individual credit managers or traders and reductions in the entity's overall CCR exposure. Article 293(1)(d) CRR. The management body of a CRR Firm must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV. The risk management arrangements, policies and procedures required to be	of the relevant service to the client: 1° by keeping an internal list of all fees, commissions and non-monetary benefits received from a third party in relation to theprovision of investment or ancillary services; and 2° by recording: a) how the fees, commissions and non-monetary benefits paid or received by it, or that it intends to use, enhance the quality of the services provided to the relevant clients; and b) the steps taken in order to comply with its duty to act honestly, fairly and professionally in accordance with the best interests of the client.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	implemented under this broad CRD IV framework cover: internal capital; remuneration of staff; treatment of risks; use of, and supervisory approaches to, capital models; credit and counterparty risk; residual risk; concentration risk; securitisation risk; market risk; interest rate risk; operational risk; liquidity risk; and risk of excessive leverage. Articles 73, 75-87 CRD IV. A CRR Firm is required to establish and maintain a CCR management framework, consisting of: policies, processes and systems to ensure the identification, measurement, management, approval and internal reporting of CCR; and procedures for ensuring that those policies, processes and systems are complied with. Article 286 CRR.	Article 314-17 of the General Regulation of the autorité des marches financiers provides that "As regards any payment or benefit received from or paid or provided to third parties, the investment services provider shall disclose the following information to the client: 1° Prior to the provision of the relevant investment or ancillary service, it shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article L. 533-12-4 of the Monetary and Financial Code. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits provided or received in connection with the investment service provided to the client shall be priced and disclosed separately.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	FCs and NFCs are generally required to comply with risk mitigation obligations, which include having formalised processes which are robust, resilient and auditable to measure, monitor and mitigate operational risk and counterparty credit risk, including but not limited to: 1. timely confirmation of OTC derivative contracts; 2. portfolio reconciliation (agreement to be reached before the counterparties enter into the derivative contract); 3. portfolio compression; and 4. identifying and resolving disputes. Article 11 EMIR and RTS 149/2013.	2° Prior to the provision of an investment or ancillary service to a client, where it has been unable to ascertain the amount of any payment or benefit to be received or paid, it shall disclose to the client the method for calculating that amount. In this case, after providing the service, it shall provide its client with information on the exact amount of the abovementioned payment or benefit received or paid; and 3° At least once a year, as long as ongoing fees, commissions or benefits are received by it in relation to the investment or ancillary services provided to the relevant clients, it shall inform its clients on an individual basis about the actual amount of payments or benefits received, paid or provided.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
		Minor non-monetary benefits may be described in a generic way."	
Credit assessments: **Records regarding the basis for the firm's internal credit assessments of counterparties for purposes of the credit risk charges it must take as part of its net capital computation for at least three years, the first two years in an easily accessible place. This provision applies only to firms without a prudential regulator. Exchange Act rule 18a-6(b)(1)(x) [17 CFR 240.18a-6(b)(1)(x)];**[54]	**Credit assessments**: Investment Firms must assess their internal capital adequacy to ensure that they have in place sound, effective and comprehensive strategies and processes to assess and maintain, on an on-going basis, the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. Article 73 CRD IV. In practice, this will require the maintenance of full records of the Investment Firm's assets, liabilities, income and expense		**Credit assessments**: Requirements under Article 73 CRD IV and Article 16(6) MiFID are comparable to those under Exchange Act rule 18a-6(b)(1)(x).

[54] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
	and capital accounts to be maintained on an on-going basis. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.		
Submission of information to a repository: Information the firm is required to submit to a repository pursuant to Regulation SBSR. For firms without a prudential regulator, this information includes documentation of internal risk management systems, periodic reviews of such systems conducted by internal audit staff and annual reviews of such systems conducted by independent certified public accountants for at least three years, the first two years in an easily accessible place. For firms with prudential regulators, this	**Submission of information to a repository**: Counterparties must ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. Article 9(1) EMIR. Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of that contract. Article 9(2) EMIR.		**Submission of information to a repository**: Article 9(1) requires counterparties to ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. Article 9(2) of EMIR requires counterparties to keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of that contract. Exchange Act rules 18a-6(b)(1)(xi) and 6(b)(2)(vi).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
information includes counterparty and transaction information, secondary trade information, life cycle events, and the identity of parent and affiliated entities. **Exchange Act rule 18a-6(b)(1)(xi) [17 CFR 240.18a-6(b)(1)(xi)]**[55] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(vi) [17 CFR 240.18a-6(b)(2)(vi)]*[56] *(with a prudential regulator)*; and			
Due diligence information: Documents related to applicable business conduct standards, and documents used to make certain determinations with respect to special entities, including information relating to financial status, tax status and the investment or financing objectives of the special entity for at least three years, the first	**Due diligence information:** Various types of counterparty information must be collected as part of customer due diligence including, for example, with regards to the customer's identity, its beneficial owner and the purpose and intended nature of the business relationship. Articles 11 and 13 MLD4.		**Due diligence information**: Requirements under Articles 11 and 13 MLD4 are comparable to those under Exchange Act rules 18a-6(b)(1)(xii), (xiii) and 18a-6(b)(2)(vii), (viii).

[55] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[56] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(xii), (xiii) [17 CFR 240.18a-6(b)(1)(xii), (xiii)]**[57] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(vii), (viii) [17 CFR 240.18a-6(b)(2)(vii), (viii)]*[58] *(with a prudential regulator)*;	Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.		
Registration documents: Records such as partnership articles, articles of incorporation, minute books and stock certificate books (depending on the form of the legal entity); and copies of the applicable firm registration forms (forms SBSE, SBSE-A, SBSE-C or SBSE-W), as well as amendments to those forms and other documentation showing the firm's registration with securities regulatory authorities or the CFTC for the	**Registration documents:** The forms and supporting documents required for an Investment Firm to become authorized in an EU member state in order to be able to provide investment services are set out in individual member state rules and regulations. In practice, any such application for authorization to a regulator broadly requires the submission by the Investment Firm of documentation including: articles		**Registration documents**: Investment Firms must preserve relevant types of records on an ongoing basis that are relevant to their regulatory status and their general recordkeeping obligations. This is comparable to the requirements of Exchange Act rule 18a-6(c).

[57] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[58] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
life of the enterprise and any successor enterprise. Exchange Act rule 18a-6(c) [17 CFR 240.18a-6(c)];[59]	of association and related constitutional documentation, supporting documentation regarding its senior management (including their skills and expertise, criminal background, etc.), accounting documents and related financial and operational information and certain policies and procedures. The information requirements are member state-specific and may vary from jurisdiction to jurisdiction. Once authorized, Investment Firms will have general record-keeping obligations which, in practice, means that they would need to have a record of many of the items mentioned above.		
Associated persons: Information regarding associated persons in an easily accessible place. Exchange Act rule 18a-	**Associated persons:** Please refer to the response to the question set forth in 2.b.3 regarding the records that must be preserved as well as the "General recordkeeping		**Associated persons**: Requirements under Guidelines 74-75, 172 and Annex III EBA/ESMA Guidelines on Management Suitability are

[59] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
6(d)(1) [17 CFR 240.18a-6(d)(1)];[60]	requirement" noted above in this response regarding the preservation of such records.		comparable to those under Exchange Act rule 18a-6(d)(1).
Settlement: Records related to orders or settlement, including reports that a securities regulatory authority or the CFTC (or a prudential regulator, if applicable) has required the firm to make and furnish pursuant to an order or settlement, and related examinations reports until three years after the date of the report in an easily accessible place. **Exchange Act rule 18a-6(d)(2)(i) [17 CFR 240.18a-6(d)(2)(i)]**[61] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(d)(2)(ii) [17 CFR 240.18a-6(d)(2)(ii)]*[62] *(with a prudential regulator)*;	**Settlement:** Regulators are able to require Investment Firms to hold any additional records beyond those required to be retained under normal circumstances. Article 72(3) MiFID Org Reg.		**Settlement**: Requirements under Article 72(3) MiFID Org Reg. are analogous to those under Exchange Act rules 18a-6(d)(2)(i), (ii).

[60] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[61] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[62] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Compliance manuals: Compliance, supervisory and procedures manuals related to compliance with applicable requirements and the supervision of associated natural persons, until three years after termination of the use of the manual in an easily accessible place. For firms with a prudential regulator, this requirement relates to compliance with laws and rules relating to security-based swap activities. **Exchange Act rule 18a-6(d)(3)(i) [17 CFR 240.18a-6(d)(3)(i)]**[63] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(d)(3)(ii) [17 CFR 240.18a-6(d)(3)(ii)]*[64] *(with a prudential regulator)*; and	**Compliance manuals:** MiFID requires the maintenance of a range of compliance policies and procedures in respect of the Investment Firm's, and its managers, employees and tied agents, compliance with MiFID obligations. Article 16(2) MiFID. Please also refer to the response to the question set forth in section 2.b.5 at "Compliance with business conduct standards" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	**Compliance manuals:** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons."	**Compliance manuals**: Requirements under Articles 16(2), 16(6) and 16(7) MiFID, Articles 72, 73 and 76(8)(b) and Annex I MiFID Org Reg. are comparable to those under Exchange Act rules 18a-6(d)(3)(i), (ii).
Post-relationship documentation:	**Post-relationship documentation:**	**Post-relationship documentation:**	**Post-relationship documentation**:

[63] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[64] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
Written policies and procedures required under the risk mitigation requirements until three years after their termination, written portfolio reconciliation agreements until three years after the termination of the agreement and related transactions, trading relationship documentation until three years after the termination of the documentation and related transactions, and audit results related to trading relationship documentation until three years after the conclusion of the audit in an easily accessible place. Exchange Act rule 18a-6(d) [17 CFR 240.18a-6(d)].[65]	Please refer to the section on "2(e) Account documents" noted above in this response regarding the records that must be preserved and the preservation of such records. MiFID requires the maintenance of a range of risk management records, including internal audit reports which must be submitted to the Investment Firm's management body at least annually. Article 16(5) MiFID and Articles 24 and 25(2) MiFID Org Reg.	French transposition of Article 16(5) MiFID are the following: Article L533-2 of the MFC provides that "Investment service providers other than asset management companies shall have sound administrative procedures, internal control mechanisms, effective procedures for risk assessment, effective control and safeguard arrangements for information processing systems […]". Article L533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 5° shall have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information	Requirements under the Articles 16(2), 16(5), 16(6) and 25(5) MiFID and Articles 24, 25(2) and 73 MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(d).

[65] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?			
		leakage maintaining the confidentiality of the data at all times."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
3. To what extent are firms required to preserve specific information regarding associated persons?			
This provision requires preservation of the above information related to associated persons, in an easily accessible place until at least three years after the termination of the associated person's employment or other connection with the firm. Exchange Act rule 18a-6(d)(1) [17 CFR 240.18a-6(d)(1)].[66]	A CRR Firm must prepare and retain the records related to the requirements applicable to a CRR Firm's staff, as set out in response to the question set forth in section 2.b.3 above. These requirements apply at all times. Article 91(1) CRD IV. In addition, CRR Firms should keep records of all external professional and political positions held by the members of the management body. Such		**Comparability of outcomes**: The EU relevant employees/personnel record preservation requirements provide for a comparable regulatory outcome to the SEC associated person record preservation requirements. In particular, both regulatory regimes contain detailed requirements on preservation of information about associated persons, in order to ensure the

[66] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
3. To what extent are firms required to preserve specific information regarding associated persons?			
	records must be updated whenever a member notifies the CRR Firm of a change and when such changes come otherwise to the attention of the CRR Firm. Guideline 48 EBA/ESMA Guidelines on Management Suitability. An Investment Firm must retain records in relation to all its services, activities and transactions in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing the regulator to access them readily. Article 72(1) MiFID Org Reg.		associated persons' qualification, promote information accessibility for market participants and facilitate regulatory supervision and enforcement.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
Comparability of outcomes:			

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>EU Requirement and/or Policy Goal Summary</th><th>French provisions</th><th>Comparability Assessment</th></tr>
<tr><td colspan="4">c. Subcategory: Record Preservation</td></tr>
<tr><td colspan="4">4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?</td></tr>
<tr><td colspan="4">The EU electronic storage and third-party record preservation requirements provide for a comparable regulatory outcome to the SEC electronic storage and third-party record preservation requirements. In particular, both regulatory regimes stipulate requirements on electronic storage and third-party contractors as record keepers, in order to promote easier access to information and ensure information safety.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements:</u>

The below EU requirements are comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Electronic storage:

The records required to be maintained and preserved may be produced by means of an electronic storage system, subject to a number of conditions including the capacity to readily download into the readable format the indexes and records preserved in the system, the use of duplicate records stored separately, an audit system, and undertakings by senior officers.</td><td>Electronic storage:

An Investment Firm can make use of electronic storage systems as long as it complies with the following requirements:

• an Investment Firm must retain records in relation to all its services, activities and transactions in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner</td><td>Electronic storage:

French transposition of Article 16(6) MiFID is the following:

Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the</td><td>Electronic storage:

Requirements on the accessibility of storage systems under Article 72(1) MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(e).</td></tr>
</table>

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
See Exchange Act rule 18a-6(e) [17 CFR 240.18a-6(e)].[67]	allowing (i) the regulator to access them readily and reconstitute each key stage of processing each transaction; (ii) corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; (iii) it must not be possible for the records otherwise to be manipulated or altered; and (iv) IT or any other sufficient exploitation when the analysis of the data cannot easily be carried out due to the volume and nature of the data. Article 72(1) MiFID Org Reg. Investment Firms are required to arrange for records to be kept of all services and transactions undertaken which must be sufficient to enable the relevant regulator to fulfil its	providers have complied with all professional obligations, including those with respect to clients or potential clients and to the integrity of the market." French transposition of Article 25(5) MiFID is the following: Article L.533-14 of the MFC provides that "Investment service providers other than asset management companies shall establish a record that includes the document or documents agreed between the investment firm and the client that set out the rights and obligations of the parties, and the other terms on which the investment firm will provide services to the client." French transposition of Article 16(5) MiFID are the following: Article L533-2 of the MFC provides that "Investment service	

[67] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	supervisory tasks and to perform enforcement actions under MiFID, MiFIR, CSMAD and MAR, and in particular to ascertain that an Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. Article 16(6) MiFID. • an Investment Firm must retain records of any policies and procedures required to be maintained under MiFID, MiFIR, CSMAD and MAR must be maintained in writing. Article 72(3) MiFID Org Reg. • an Investment Firm must establish in writing and on paper or another durable medium a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the	providers other than asset management companies shall have sound administrative procedures, internal control mechanisms, effective procedures for risk assessment, effective control and safeguard arrangements for information processing systems […]". Article L533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 5° shall have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	parties, and the other terms on which the Investment Firm will provide services to the client. Article 25(5) MiFID and Article 58 MiFID Org Reg. • Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems, and to have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimize the risk of data corruption and unauthorized access and to prevent information leakage maintaining the confidentiality of the data at all times. Article 16(5) MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	• Investment Firms must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question. Article 21(2) MiFID Org Reg.		
Third-party contractors: If a firm uses a third-party to prepare or maintain records, the rule requires the third-party to file an undertaking with the SEC stating, among other things, that the records are the property of the firm and will be promptly furnished to the SEC or its designee. *See* Exchange Act rule 18a-6(f) [17 CFR 240.18a-6(f)].[68]	**Third-party contractors**: MiFID treats third-party contractors brought into the firm to work alongside other staff in the same way as an Investment Firm's employees (both are captured within policies and procedures relating to "staff"). Accordingly, the provisions noted above will apply. Where an Investment Firm uses an external third-party	**Third-party contractors:** French transposition of Article 16(5) MiFID is the following: Article L533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 4° Shall take reasonable steps, using appropriate and proportionate systems, resources and procedures, to ensure the continuity, regularity and	**Third-party contractors**: Requirements under Article 16(5) MiFID on qualifications of third-party contractors as record keepers are comparable to those under Exchange Act rule 18a-6(f).

[68] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	contractor, outsourcing requirements may be applicable. Where an Investment Firm outsources critical or important operational functions, it will remain fully responsible for discharging all of its MiFID obligations. Article 31(1) MiFID Org Reg. An Investment Firm must ensure, when relying on an outsourced service provider for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the regulator to monitor the Investment Firm's compliance	satisfactory nature of the provision of investment services, in particular when relying on a third-party for the performance of critical or important functions or other operational tasks. In that case, they shall take reasonable steps to avoid undue additional operational risk."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?			
	with all obligations. Article 16(5) MiFID.CRR Firms are required to ensure that its regulators have access to the information held by, and premises of, and rights to audit critical or important outsourced functions. Section 13.3 EBA Guidelines on Outsourcing.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?			
The SEC Guidance recognizes that there may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to information regarding associated natural persons that needs to be	All recordkeeping and creation requirements are subject to data privacy and confidentiality laws, where applicable, as further described in response to the question set forth in section 2.b.7 above.		**<u>Comparability of outcomes</u>**: The EU restrictions on preservation of certain records provide for a comparable regulatory outcome to the SEC restrictions on preservation of certain records. In particular, both regulatory regimes contemplate situations where

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?			
recorded pursuant to the questionnaire requirement. The SEC has adopted Rule 18a-5(b)(8)(iii) to address those situations. Specifically, as exceptions to the general rule to make and keep current the AP questionnaires: (1) an SBS Entity would not need to make or keep current such questionnaires or employment applications if the entity is excluded from the statutory disqualification prohibition in Exchange Act 15F(b)(6) with respect to the associated person; and, (2) A questionnaire or application for employment executed by an associated person who is not a U.S. resident need not include the information described in paragraphs (b)(8)(i)(A) through (H) of Rule 18a-5, unless the SBS Entity (a) is required to obtain			firms are not allowed to maintain certain information. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The specific requirements under the EU regime are more detailed than the US regime. The EU regime stipulates specific situations where firms are subject to additional confidentiality requirements and are prevented from collecting certain information (e.g., under the GDPR). In contrast, the US regime only broadly contemplates that firms may be subject to non-US law and

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?			
such information under local law in the jurisdiction in which the associated person is employed or located, or (b) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.			therefore restricted in information collection.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
5. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?			
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators).			

Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between EU member state authorities and the SEC each of which, in itself, should give the SEC the assurance that even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
c. Subcategory: Record Preservation			
6. Are firms required to furnish records promptly to regulators upon request?			
Upon request, firms must furnish promptly to a representative of the SEC legible, true, complete, and current copies of records that the firm is required to make or preserve. *See* Exchange Act rule 18a-6(g) [17 CFR 240.18a-6(g)].[69]	Regulators are given very broad information-access powers under MiFID, including with regards to access to information upon request. Article 69(2) MiFID. Regulators have powers to: have access to any document or other data in any form which the regulator considers could be relevant for the performance of its duties and receive or take a copy of it; to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining	French transposition of Article 69(2) MiFID is the following: Article L. 621-8-4 of the MFC provides that: "The Autorité des marchés financiers may get access from the persons mentioned in article L. 621-9 II (regulated entities) to any document or other data in any form, which are relevant for the performance of its duties." Article L. 621-9, I of the MFC provides that : "In order to fulfil its mission, the Autorité des marchés financiers can carry out on-site	**Comparability of outcomes**: The EU requirements to furnish records to EU regulators provide for a comparable regulatory outcome to the SEC requirements to furnish records to the SEC. In particular, both regulatory regimes allow the SEC/EU regulators (as applicable) to have prompt access to information upon request.

[69] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Record Preservation			
6. Are firms required to furnish records promptly to regulators upon request?			
	information; to carry out on-site inspections or investigations; and to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an Investment Firm, a Credit Institution, or any other entity regulated by MiFID or MiFIR. Article 69(2) MiFID.	inspections or investigations. […]" Article L. 621-10 of the MFC provides that: "For the purposes of an investigation or on-site inspection, investigators and inspectors may get access to any document in any form. […]"	

d. Subcategory: Reports and Notifications

The reports and notices that firms must provide regarding their financial condition and regarding operational issues and deficiencies are necessary to provide for effective SEC oversight of registered entities.

Registered firms must make reports that the SEC requires regarding transactions, positions and financial condition. Exchange Act section 15F(f)(1)(A) [15 U.S.C. 78o-10(f)(1)(A)].[70]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
<u>Comparability of outcomes</u>: The EU requirements to make reports provide for a comparable regulatory outcome to the SEC requirements to make reports. In particular, both regulatory regimes require that firms provide periodic, detailed information on their financials, operations, trading, and communication with clients, in order to improve information availability to market participants and facilitate regulatory oversight and enforcement. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways:			
Firms are required to make a number of reports: **Financial/capital reports**:	Firms are required to make a number of reports, and in addition to the following, regulators have the power to impose additional or more		Firms are required to make a number of reports: **Financial/capital reports**:

[70] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
Firms must file FOCUS reports to provide the SEC with, *inter alia*, unaudited reports about their financial and operational condition. **Exchange Act rule 18a-7(a)(1) [17 CFR 240.18a-7(a)(1)][71] (without a prudential regulator)**; and *Exchange Act rule 18a-7(a)(2) [17 CFR 240.18a-7(a)(2)][72] (with a prudential regulator)*;	frequent reporting requirements, including reporting on capital and liquidity positions. Article 104(1)(j) CRR. **Financial/capital reports**: Reports must be submitted by CRR Firms on the following matters (among others): capital/own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS), accounting information (Article 99 CRR and Annexes III, IV and V CRR Reporting ITS), counterparty credit risk (Article 99 CRR), large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS), liquidity coverage and stable funding (Part Six: Title II & Title III CRR and Annexes XII and XIII CRR Reporting ITS), and leverage ratios (Article 430 CRR		Financial and capital information required under CRR and CRR Reporting ITS is comparable to that required under Exchange Act rules 18a-7(a)(1) and 18a-7(a)(2).

[71] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[72] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
	and Annexes X and XI CRR Reporting ITS).		
Internal models: **Dealers that have been authorized to use internal models to calculate net capital are required to file additional reports on a monthly or quarterly basis. Exchange Act rule 18a-7(a)(3) [17 CFR 240.18a-7(a)(3)]**;[73]	**Internal models**: CRR Firms are required to report on their use of internal models, as further described in response to the question set forth in section 2.d.3 below.		**Internal models**: The EU requirements are comparable to the requirements under Exchange Act rule 18a-7(a)(3) in that firms that use internal models must submit additional reports to regulators. Although the EU regime does not specify the monthly or quarterly frequency, it imposes more detailed requirements on what information to report. Please see section 2.d.2 below for more details.
Financial statements: **Firms without a prudential regulator are required to disclose on their websites an audited statement of financial condition, and more recent**	**Financial statements**: Please see the response to question set forth in section 2.d.3 below for details		**Financial statements**: Financial and operational information required under CRR and Article 26 MiFIR is comparable to that required under Exchange Act rules 18a-

[73] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
unaudited statements. Exchange Act rules 18a-7(b)(1)(i), (2) [17 CFR 240.18a-7(b)(1)(i), (2)].[74] Dealers for which there is no prudential regulator also must disclose information regarding net capital, and if applicable, regarding material weaknesses identified by an accountant. Exchange Act rules 18a-7(b)(1)(ii), (iii) [17 CFR 240.18a-7(b)(1)(ii), (iii)];[75]			7(b)(1)(i), (ii), (iii), 18a-7(b)(2), 18a-7(c)(1)(i)(A) and 18a-7(c)(2).
Annual reports: **Firms without a prudential regulator annually must file a financial report with the SEC. Exchange Act rule 18a-7(c)(1)(i)(A) [17 CFR 240.18a-7(c)(1)(i)(A)];[76] *see* also Exchange Act rule 18a-7(c)(2) [17 CFR 240.18a-7(c)(2)][77] (addressing**	**Annual reports**: CRR Firms must publish their financial statements and management report annually. Article 30 Accounting Directive.		**Annual reports**: Financial and operational information required under CRR and Article 26 MiFIR is comparable to that required under Exchange Act rules 18a-7(b)(1)(i), (ii), (iii), 18a-7(b)(2), 18a-7(c)(1)(i)(A) and 18a-7(c)(2).

[74] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[75] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[76] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[77] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
required contents of the financial report);			
Segregation reports: **Dealers are required to file, as applicable, a report addressing the firm's compliance with or exemption from segregation requirements. Exchange Act rule 18a-7(c)(1)(i)(B) [17 CFR 240.18a-7(c)(1)(i)(B)];[78] *see* also Exchange Act rules 18a-7(c)(3), (4) [17 CFR 240.18a-7(c)(3), (4)][79] (addressing required contents of compliance and exemption reports)**; and	**Segregation reports**: Investment Firms must: (a) ensure the segregation of client money and assets from those of the Investment Firm, (b) maintain detailed, up to date and accurate accounts and records distinguishing client money and assets from those of the Investment Firm (these accounts and records must be sufficient to establish an audit trail), and (c) conduct regular reconciliations between their accounts and records and those accounts and records of any third-parties with whom client money or assets may be held. Article 2 MiFID Delegated Directive.Investment firms shall	**Segregation reports:** French transposition of Article 2 MiFID Delegated Directive is the following: With regards to funds: Article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms] shall comply with the following requirements : 1° They must keep records and accounts enabling them at any time and without delay to distinguish funds held for one client from funds held for any	**Segregation reports**: iInformation about trading details required under Article 2 MiFID Delegated Directive is comparable to information required under Exchange Act rules 18a-7(c)(1)(i)(B) and 18a-7(c)(3), (4) in order to ensure funds segregation. In addition, MiFID Delegated Regulation specifically requires investment firms to keep records on safeguarding of client assets held by them.

[78] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[79] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
	keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities. Article 72(2) MiFID Delegated Regulation. The minimum list of records to be kept by investment firms includes, with regard to safeguarding of client assets, records relating to client financial instruments held by an investment firm and client funds held by an investment firm. Annex I of MiFID Delegate Regulation An external auditor must report at least annually to an Investment Firm's regulator on the adequacy of an Investment Firm's client money and client asset arrangements. Article 8 MiFID Delegated Directive.	other client and from their own funds; 2° They must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the funds held for clients and that they may as an audit trail; 3° They must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those funds are held […]." With regards to financial instruments: Article 312-6 of the General Regulation of the Autorité des marché financiers provides that "The investment service provider shall, in order to safeguard its clients' rights on the financial	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
		instruments they own, comply with the following obligations: 1° It shall all keep records and accounts necessary to enable at any time and without delay to distinguish the financial instruments held for one particular client from those held for any other client and from its own financial instruments; 2° It shall maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments held for clients and that they may use as an audit trail; 3° It shall conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those financial instruments are held […]."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
		French transposition of Article 8 MiFID Delegated Directive is the following: With regards to funds: Article 10 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms] shall ensure that their external auditors report at least annually to the Autorité de contrôle prudentiel et de résolution on the adequacy of their arrangements under this decree." With regards to assets: Article 312-7 of the General Regulation of the Autorité des marches financiers provides that "The investment service provider shall ensure that its external	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
		auditor reports at least annually to the Autorité des marchés financiers on the adequacy of the arrangements implemented by the investment service provider, under Article L533-10 II 7° and 9° of the MFC and under this section."	
Accountant reports: **Firms are required to file reports of an independent public accountant addressing the financial report and the segregation-related report. Exchange Act rule 18a-7(c)(1)(i)(C) [17 CFR 240.18a-7(c)(1)(i)(C)].[80] The rule contains additional provisions regarding, *inter alia*, the nature and form of reports, accountant qualifications and engagement, and notifications of non-**	**Accountant Reports**: Please see the response to the question set forth in section 2.d.5 below for details.		**Accountant Reports**: Both regulatory regimes require firms to submit reports by independent auditors addressing the firms' financial and operational information. Please see section 2.d.5 below for details However, the US regime requires unaudited reports of financial and operational information (to be submitted in FOCUS reports under Exchange Act rules 18a-

[80] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?			
compliance or material weakness. Exchange Act rules 18a-7(d)-(g) [17 CFR 240.18a-7(d)-(g)].[81]			7(a)(1), (2)), which the EU regime does not.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
2. To what extent does your jurisdiction require reports that address the use of internal models for purposes of calculating net capital?			
Dealers that have been authorized to use internal models to calculate net capital are required to file additional reports on a monthly or quarterly basis. Exchange Act rule 18a-7(a)(3) [17 CFR 240.18a-7(a)(3)].[82]	CRR Firms must submit financial/capital reports that expressly include a range of data in relation to their use of models. More broadly, CRR Firms must submit reports on the following matters (among others) which can be directly or indirectly affected by the use of capital models: own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS),		**<u>Comparability of outcomes</u>**: The EU requirements that the use of internal models to calculate net capital be addressed in reports provide for a comparable regulatory outcome to the SEC requirements that the use of internal models to calculate net capital be addressed in reports.

[81] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[82] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
2. To what extent does your jurisdiction require reports that address the use of internal models for purposes of calculating net capital?			
	counterparty credit risk (Article 99 CRR), and large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS). Regulators also have the power to impose additional or more frequent reporting requirements, including reporting on capital positions. Article 104(1)(j) CRR. CRR Firms are also required to make 'Pillar III' public disclosures at least annually in conjunction with the publication of their financial statements. Articles 431 and 433 CRR. These disclosures include information on the use of capital models. Articles 452, 454 and 455 CRR. This information includes matters such as, for credit risk, the exposure values by class of exposures subject to evaluation using models and internal controls on the development and use of models. CRR Firms have discretion to determine where and how this information is made public.		In particular, both regulatory regimes impose additional reporting obligations if firms use internal models of net capital calculation. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The EU requirements are comparable to the US requirements under Exchange Act rule 18a-7(a)(3) in that firms that use internal models must submit additional reports to regulators. Although the EU regime does not specify the monthly or quarterly frequency,

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
2. To what extent does your jurisdiction require reports that address the use of internal models for purposes of calculating net capital?			
	Article 434 CRR. CRR Firms are not required to disclose information which is immaterial, proprietary or confidential. Articles 432 CRR.		it imposes more detailed requirements on what information to report.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
3. Does your jurisdiction require firms to make financial and capital information publicly available online? If so, what are the contents of the required disclosures?			
Firms without a prudential regulator are required to disclose on their websites an audited statement of financial condition, and more recent unaudited statements. Exchange Act rules 18a-7(b)(1)(i), (2) [17 CFR 240.18a-7(b)(1)(i), (2)].[83] Dealers for which there is no prudential regulator also must disclose information regarding net capital, and if applicable, regarding material weaknesses	CRR Firms are required to make 'Pillar III' public disclosures at least annually in conjunction with the publication of their audited corporate financial statements. Articles 431 to 455 CRR. These disclosures cover (among other matters): capital resources and capital requirements, exposure to CCR, capital buffers (amounts required to be held above minimum capital, such as		**<u>Comparability of outcomes</u>**: The EU public disclosure requirements provide for a comparable regulatory outcome to the SEC public disclosure requirements. In particular, both regulatory regimes require firms to disclose financial and capital information in order to promote easier access to information and to protect market participants.

[83] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
3. Does your jurisdiction require firms to make financial and capital information publicly available online? If so, what are the contents of the required disclosures?			
identified by an accountant. Exchange Act rules 18a-7(b)(1)(ii), (iii) [17 CFR 240.18a-7(b)(1)(ii), (iii)].[84]	the countercyclical capital buffer); credit risk adjustments; unencumbered assets; use of rating agencies; exposure to market risk; operational risk; non-trading book equity and interest rate exposures; exposures to securitization positions; remuneration policy; the leverage ratio; use of capital models; and use of credit risk mitigation. Articles 437 to 440, 442, 443, 445 to 449 and 451 to 455 CRR. CRR Firms have discretion to determine where and how this information is made public. Article 434 CRR. In practice, websites are used. Credit Institutions and certain Investment Firms (depending on their size)[85] must have their financial statements audited. Article 34 Accounting Directive.		While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The EU requirements are comparable to analogous SEC requirements. The requirements on disclosure of financial and capital information under Articles 431 to 455 CRR are comparable to those under Exchange Act rules 18a-7(b)(1)(i), (ii) and (iii) and 18a-7(b) (2). Although the EU regime does not specifically require that firms

[84] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

[85] This requirement applies to Investment Firms that meet two of the following three criteria: balance sheet total of at least €4m; net turnover of at least €8m; or at least fifty average number of employees during the financial year.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
3. Does your jurisdiction require firms to make financial and capital information publicly available online? If so, what are the contents of the required disclosures?			
	CRR Firms must publish their financial statements and management report annually. Article 30 Accounting Directive.		disclose the information on their websites, firms must make the information public and, in practice, websites are widely used.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
Firms must provide notices regarding: 1. **Capital deficiencies: Dealers without a prudential regulator must notify the SEC if the dealer's net capital falls below the minimum amount required. Exchange Act rule 18a-8(a)(1) [17 CFR 240.18a-8(a)(1)].[86] Notice must be provided promptly, but within twenty-four**	Breach reporting requirements apply to CRR Firms. The detail of breach reporting requirements is reserved to the local law of each EU member state. Regulators must establish effective and reliable mechanisms to encourage reporting to regulators of potential or actual breaches of CRR and MiFIR and national provisions transposing CRD IV	French transposition of Article 73 MiFID is the following: Article L. 634-1 of the MFC provides that : "The Autorité des marchés and the Autorité de contrôle prudentiel et de résolution establish procedures to enable reporting of infringements of European regulations' provisions and this provisions of this Code […] or the Autorité des marchés financiers's General	**<u>Comparability of outcomes</u>**: The EU notice requirements provide for a comparable regulatory outcome to the SEC notice requirements. In particular, both regulatory regimes aim to establish reporting mechanisms so that the regulators will be promptly notified of these events, in order to facilitate regulatory oversight

[86] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
hours, based on a number of triggering events. Exchange Act rule 18a-8(b) [17 CFR 240.18a-8(b)];[87] 2. *Bank dealers' capital category adjustments: Dealers with a prudential regulator are required to give notice to the SEC when they file an adjustment of reported capital category with a prudential regulator. Exchange Act rule 18a-8(c) [17 CFR 240.18a-8(c)]*;[88] 3. Failures regarding books and records: Firms that fail to make and keep current the required books and records must notify the SEC on the day that the failure arises, and, within forty-eight hours of the original notice, provide a report stating what the firm	and MiFID. Article 73 MiFID and Article 71 CRD IV.	Regulation via secure communication channels which ensure the protection of the identity of persons who report such infringements […]." Article L. 634-2 of the MFC provides that: "The following persons shall establish appropriate procedures to enable their staff to report any infringement referred to in article L. 634-1 via secure communication channels which ensure the protection of the identity who report any information for this purpose : 1° persons referred to in article L. 621-9, II, 1° through 8° [including investment firms] and 10° through 18° ; […]."	and enforcement and protect market participants. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The specific EU requirements are different from the specific US requirements. The US regime specifies how firms must notify the regulators of these events (including timing, content, etc.). By contrast, these detailed reporting requirements are reserved to the local law of each EU member state, not at the EU

[87] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68
[88] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
has done or is doing to correct the situation. Exchange Act rule 18a-8(d) [17 CFR 240.18a-8(d)];[89] 4. **Material weaknesses: Firms without prudential regulators that discover a material weakness, or are notified by an independent public accountant of a material weakness, must notify the SEC within twenty-four hours, and transmit a report within forty-eight hours of the notice stating what they have done or are doing to correct the situation. Exchange Act rule 18a-8(e) [17 CFR 240.18a-8(e)]**;[90] and 5. Failures to make required reserve account deposits: Dealers must give notice to			level. The EU regime specifies requirements of how member states must establish the reporting mechanism.

[89] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68
[90] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Reports and Notifications			
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?			
the SEC if they fail to make a deposit into their customer reserve account, as required by the segregation rule. Exchange Act rule 18a-8(g) [17 CFR 240.18a-8(g)].[91]			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
As described above, firms without a prudential regulator annually must file a financial report with the SEC, and dealers are further required to file, as applicable, a report addressing the firm's compliance with or exemption from segregation requirements. Firms are required to file reports of an independent public accountant	**Accountant reports**: Certain Investment Firms (depending on their size)[94] must have their financial statements audited. Article 34 Accounting Directive. Investment Firms must ensure that their external auditors report at least annually to the	French transposition of Article 16 (8)-(10) MiFID is the following: Article L533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 7° Shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard the ownership	**<u>Comparability of outcomes</u>**: The EU report review requirements provide for a comparable regulatory outcome to the SEC report review requirements. In particular, both regulatory regimes require firms to submit reports by independent auditors on the firms' financial and operational

[91] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

[94] This requirement applies to Investment Firms that meet two of the following three criteria: balance sheet total of at least €4m; net turnover of at least €8m; or at least fifty average number of employees during the financial year.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
addressing the financial report and the segregation-related report, as applicable. Exchange Act rule 18a-7(c)(1)(i)(C) [17 CFR 240.18a-7(c)(1)(i)(C)].[92] **The rule contains additional provisions regarding, *inter alia*, the nature and form of reports, accountant qualifications and engagement, and notifications of non-compliance or material weakness. Exchange Act rule 18a-7(d)-(g) [17 CFR 240.18a-7(d)-(g)].**[93]	regulators on the adequacy of the Investment Firms' arrangements regarding client money and client assets under Article 16(8)-(10) MiFID. Article 8 MiFID Delegated Directive.An Investment Firm may include interim or year-end profits in Common Equity Tier 1 capital before the Investment Firm has taken a formal decision confirming the final profit or loss of the Investment Firm for the year only with the prior permission of the regulator, which must require that those profits have been verified by persons independent of the Investment Firm that are responsible for the auditing of the accounts of that Investment Firm. Article 26(2) CRR. Investment Firms must engage an external auditor to confirm the accuracy of their calculation	rights of the clients on these financial instruments and to prevent the use of a client's financial instruments on own account except with the client's express consent. 8° Shall, when holding funds belonging to clients, make adequate arrangements to safeguard the rights of clients on these funds, especially in the event of the investment firm's insolvency. Investment firms may not in any case use client funds for their own accounts[...]. 9° Shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients."	information, in order to ensure accuracy of information and protect market participants. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below EU requirements are comparable to analogous SEC requirements in the following ways: • **Information to be audited**. Information to be audited under Articles 132(5) and 154 CRR and Article 89 CRD IV is comparable to that under

[92] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[93] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
	regarding an average risk weight for its exposures in the form of a unit or share in a collective investment undertaking (i.e. a fund), where the Investment Firm is not aware of the underlying exposures of the fund. Article 132(5) and 154 CRR. Where an Investment Firm uses internal models to calculate its credit risk requirement, the Investment Firm's internal audit department, or another comparable independent auditing unit must review, at least annually, the Investment Firm's rating systems and its operations, including the operations of the credit function and the estimation of probability of default, loss given default, expected losses and conversion factors. Article 191 CRR. An Investment Firm which uses internal models must calculate its operational risk capital requirement to subject its	French transposition of Article 8 MiFID Delegated Directive is the following: With regards to funds: Article 10 of Decree of 6 September 2017 on the segregation of client funds of investment firms provides that "the companies subject to the regulation [investment firms] shall ensure that their external auditors report at least annually to the Autorité de contrôle prudentiel et de résolution on the adequacy of their arrangements under this decree." With regards to assets: Article 312-7 of the General Regulation of the Autorité des marches financiers provides that "The investment service provider shall ensure that its external auditor reports at least annually to the Autorité des marchés	Exchange Act rules 18a-7(c)(1)(i)(C) and 18a-7(d)-(g). • **Independence of auditors**. The EU regime requires independent auditing teams from both inside and outside the firm, which is comparable to the requirements under Exchange Act rule 18a-7(c)(1)(i)(C).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
	operational risk management processes and measurement systems to regular reviews performed by internal or external auditors. Article 321 CRR. An Investment Firm that uses an internal risk-measurement model for market risk purposes must conduct an independent review of this (these) model(s), either as part of its regular internal auditing process, or by mandating a third-party undertaking that provides auditing or consulting services and that has staff who have sufficient skills in the area of market risk in trading activities to conduct that review, which must be conducted to the satisfaction of the Investment Firm's regulators. Article 325bi CRR. An Investment Firm which relies on a depository or management company of a collective investment undertaking must calculate and report own funds	financiers on the adequacy of the arrangements implemented by the investment service provider, under Article L533-10 II 7° and 9° of the MFC and under this section."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
	requirements for position risk for positions in, or foreign exchange positions in, collective investment undertakings and must confirm the accuracy of these calculations with an external auditor. Articles 350 and 353 CRR. An Investment Firm which uses the internal models approach to calculate its market risk capital requirement must conduct, as part of its regular internal auditing process, an independent review of its internal models. Article 368 CRR. An Investment Firm which relies on a depository or management company of a collective investment undertaking must calculate and report own funds requirements for the market value and haircuts for shares or units in collective investment undertakings and must confirm the accuracy of these calculations		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary		Comparability Assessment
d. Subcategory: Reports and Notifications			
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?			
	with an external auditor. Article 418 CRR. Investment Firms must have certain information audited in accordance with EU law on statutory audits of accounts. Such information includes: (a) name(s), nature of activities and geographical location; (b) turnover; (c) number of employees on a full time equivalent basis; (d) profit or loss before tax; (e) tax on profit or loss; and (f) public subsidies received. Article 89 CRD IV.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
6. Are there potentially any restrictions or prohibitions on the ability of the SEC to access reports or notices made pursuant to the requirements of your jurisdiction?		
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
6. Are there potentially any restrictions or prohibitions on the ability of the SEC to access reports or notices made pursuant to the requirements of your jurisdiction?		
Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between EU member state authorities and the SEC each of which, in itself, should give the SEC the assurance that even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.		

March 4, 2020

ALLEN & OVERY

Comparability Assessment of Certain Securities and Exchange Commission and EU Requirements Applicable to Security-Based Swap Dealers pursuant to SEC Staff Guidance on Substituted Compliance Applications

3. Category: Supervision and Chief Compliance Officer Requirements

a. Executive Summary

The supervision and CCO requirements promote registered entities' use of structures, processes and responsible personnel reasonably designed to promote compliance with applicable law and to identify and cure instances of non-compliance, in part through the designation of an individual with responsibility and authority over compliance matters.

b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors

Firms are required to have internal supervision systems with qualified supervisory personnel. When making a substituted compliance determination with regard to supervision requirements, the SEC will consider whether "the mandates for supervisory systems under the requirements of the foreign financial regulatory system, and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[1]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
<u>Comparability of outcomes</u>: The EU requirements to establish internal supervisory systems provide a comparable regulatory outcome to the SEC internal supervisory system requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(1) and MiFID and CRD IV are consistent in that each requires firms to establish internal supervisory systems designed to ensure compliance with applicable laws, and each provide for mechanisms to assess the effectiveness of those systems. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**:			

[1] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Supervisory systems to prevent violations Firms are required to conform with rules that the SEC prescribes with regard to diligent supervision of the firm's business. Exchange Act section 15F(h)(1)(B) [15 U.S.C. 78o-10(h)(1)(B)].[2] Under SEC rules, each firm is required to "establish and maintain a system to supervise, and shall diligently supervise," its business and the activities of its associated persons relating to security-based swaps. The system must "be reasonably designed to prevent violations of the provisions of applicable	**Supervisory systems to prevent violations** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID.MiFID also contains extensive requirements regarding the supervisory measures that must be taken by Investment Firms in order to supervise their business and their staff, and to prevent violations of applicable rules and regulations. Examples include:	**Supervisory systems to prevent violations** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons."	**Supervisory systems to prevent violations** Article 21 MiFID Org Reg. requires Investment Firms to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities and maintain internal compliance and reporting mechanisms. Article 25 MiFID Org Reg. requires Investment Firms to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 16(2) MiFID requires an Investment Firm to establish adequate policies and procedures sufficient to ensure compliance of

[2] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
federal securities laws and the rules and regulations thereunder" relating to the firm's business. Exchange Act rule 15Fh-3(h)(1) [17 CFR 240.15Fh-3(h)(1)].[3]	• Investment Firms must ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities; establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm; and establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg. • Investment Firms must ensure that their senior management, and, where		the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Articles 27, 28 and 29 MiFID Org Reg. provide various requirements to ensure that an Investment Firm's staff complies with their regulatory obligations regarding remuneration and personal transactions matters. Article 88 CRD IV and Article 9(1) MiFID require the management body to ensure the integrity of the accounting and financial reporting systems, including financial and operational controls, and compliance with the law and relevant standards. These requirements are comparable to the supervisory system requirements prescribed by Exchange Act rule 15Fh-3(h).

[3] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
	appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 25 MiFID Org Reg. MiFID imposes a range of requirements, including in relation to remuneration and personal transactions, to ensure that an Investment Firm's staff comply with their obligations. Articles 27, 28 and 29 MiFID Org Reg.		
System assessments Firms are required to conform to rules that the SEC prescribes with regard to diligent supervision of the firm's business. Exchange Act	**System assessments** Investment Firms must establish and maintain a permanent and effective compliance function which operates independently and has responsibilities including: monitoring and assessing the adequacy and effectiveness of	French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an investment firm, the following shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties:	**System assessments** Article 22 MiFID Org Reg. requires firms to maintain an independent compliance function that assesses the adequacy and effectiveness of procedures and systems in place to ensure compliance with MiFID. The management body must ensure the integrity of the accounting and

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
section 15F(h)(1)(B) [15 U.S.C. 78o-10(h)(1)(B)].[4] Under SEC rules, each firm is required to "establish and maintain a system to supervise, and shall diligently supervise," its business and the activities of its associated persons relating to security-based swaps. The system must "be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's business. Exchange Act rule 15Fh-3(h)(1) [17 CFR 240.15Fh-3(h)(1)].[5]	measures, policies and procedures to detect a failure in the Investment Firm's obligations under MiFID; advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID; reporting to the management body on the implementation and effectiveness of the overall control environment, identified risks and remedial actions; and monitoring the complaints-handling process. Article 22 of MiFID Org Reg. The management body must define, oversee and be accountable for matters including the implementation of the governance arrangements	1° The members of the Board of Directors, the Supervisory Board and the Management Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report directly on the performance of their duties to the board of directors, the supervisory board or	financial reporting systems, including financial and operational controls and compliance with the law and relevant standards. These requirements are analogous to the system assessment requirement set forth in Exchange Act rule 15Fh-3(h).

[4] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

[5] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
	that ensure effective and prudent management. Among other requirements, the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards Article 9(1) MiFID and Article 88 CRD IV.	any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the supervisory board or any other body exercising equivalent functions shall be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs. The members of the board of directors or the supervisory board, on the one hand, and the members of the management board or any person who effectively manages the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
1. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?			
		business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the company's activities, including the main risks to which it is exposed." Further requirements are provided in : - ESMA Guidelines on certain aspects of the MiFID II compliance function requirements;[6] andJoint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body[7].	

[6] https://www.esma.europa.eu/sites/default/files/library/esma35-36-1946_final_report_guidelines_on_certain_aspects_of_the_mifid_ii_compliance_function.pdf

[7] https://eba.europa.eu/documents/10180/1972984/Joint+ESMA+and+EBA+Guidelines+on+the+assessment+of+suitability+of+members+of+the+management+body+and+key+function+holders+%28EBA-GL-2017-12%29.pdf/43592777-a543-4a42-8d39-530dd4401832

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
<u>Comparability of outcomes</u>: The EU requirements regarding the designation, responsibility and capacity of supervisory personnel provide a comparable regulatory outcome to the SEC requirements regarding the designation, responsibility and capacity of supervisory personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2) and MiFID are consistent in that each requires firms to designate qualified supervisory personnel responsible for ensuring compliance with applicable laws. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Authority and responsibility Firms must designate at least one qualified person with authority to carry out supervisory responsibilities. The designation requirement applies to each type of business for which registration is required. Exchange Act rule 15Fh-3(h)(2)(i) [17 CFR 240.15Fh-3(h)(2)(i)].[8]	**Authority and responsibility** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. An Investment Firm must ensure that senior	**Authority and responsibility** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf	**Authority and responsibility** Article 22(3) MiFID requires Investment Firms to appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by MiFID. Additionally, Article 22(3) MiFID Org Reg. requires that persons involved in the compliance function must not be involved in the performance of services or activities they monitor

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 25 MiFID Org Reg. An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting concerning compliance matters required by MiFID. The persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 22(3) MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business	with the provisions applicable to investment service providers themselves and to such persons."	and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 25 MiFID Org Reg. requires an Investment Firm to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Where appropriate, Articles 23 and 24 MiFID Org Reg. require Investment Firms to establish an independent risk management function and an internal audit function, which will assist the Investment Firm in ensuring that it complies with its obligations under MiFID. These requirement are analogous to the designation requirement set forth in Exchange Act rule 15Fh-3(h)(2).

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently. This function must be responsible for the implementation of relevant policies and procedures and the provision of reports and advice to senior management. Article 23 MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment		

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
	Firm. The responsibilities of this function must include to: establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Investment Firm's systems, internal control mechanisms and arrangements; issue recommendations based on the result of this work and verify compliance with those recommendations; and report to senior management in relation to internal audit matters. Article 24 MiFID Org Reg.		
Capacity Firms must designate at least one qualified person with authority to carry out supervisory responsibilities. The designation requirement applies to each type of business for which registration is required. Exchange Act rule	**Capacity** Investment firms (among other obligations) must: employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple		**Capacity** The Article 21 MiFID Org Reg. requirements regarding skills, knowledge and expertise are comparable to the supervisory personnel requirements set forth in Exchange Act rule 15Fh-3(h)(2).

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
2. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?			
15Fh-3(h)(2)(i) [17 CFR 240.15Fh-3(h)(2)(i)].[9]	functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Article 21 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
3. What requirements govern the qualification of supervisory personnel?			
Comparability of outcomes: The EU requirements regarding the qualification of supervisory personnel provide a comparable regulatory outcome to the SEC requirements regarding the qualification of supervisory personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(ii) and MiFID are consistent in that each requires firms to ensure that supervisory personnel are qualified to carry out their responsibilities. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**:			

[9] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
3. What requirements govern the qualification of supervisory personnel?			
The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Qualification Firms must make use of supervisors that are qualified to carry out their responsibilities. Qualification may be established via experience or training. Exchange Act rule 15Fh-3(h)(2)(ii) [17 CFR 240.15Fh-3(h)(2)(ii)].[10]	**Qualification** MiFID imposes general qualification requirements on an Investment Firm's relevant staff and internal functions with regards to their knowledge, skills and expertise. These include: • Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21 MiFID Org Reg. • The compliance function must have, among other things, the necessary expertise in order to be able to discharge its responsibilities properly	**Qualification** French transposition of Article 9(3) MiFID is the following : Article L533-29 II of the MFC provides that the management body of an investment firm shall approve and oversee "1° the organisation of the firm for the provision of investment services and activities and ancillary services , including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with." French transposition of Article 9(4) MiFID is the following:	**Qualification** Article 21 MiFID Org Reg. requires firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Article 9(3) MiFID requires a firm's management body to define, approve and oversee the skills, knowledge and expertise required by personnel. Additionally, Article 22 MiFID Org Reg. requires that persons involved in the compliance function must have appropriate expertise. These requirements are analogous to the supervisory personnel qualification

[10] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
3. What requirements govern the qualification of supervisory personnel?			
	and independently. Article 22(3) MiFID Org Reg. An Investment Firm's management body must define, approve and oversee the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the Investment Firm has to comply with. Article 9(3) MiFID.Regulators must (under MiFID) and may (under CRD IV) refuse authorization if they are not satisfied that the members of the management body are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions, or if there are objective and demonstrable grounds for	Article L. 532-2, 11th paragraph of the MFC provides that : "The Autorité de contrôle prudentiel et de resolution refuses authorization if articles L. 533-25 and L. 533-26 [i.e. good repute, sufficient knowledge, skills and experience, etc.] are not complied with or if there are objective and demonstrable grounds for believing that the persons referred to in article L. 533-25, 1° and 2° [i.e. the management body] may pose a threat to effective, sound and prudent management and to the adequate consideration of the interest of clients and the integrity of the market."	requirements set forth in Exchange Act rule 15Fh-3(h)(2)(ii).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors			
3. What requirements govern the qualification of supervisory personnel?			
	believing that the management body may pose a threat to effective, sound and prudent management and to the adequate consideration of the interest of clients and the integrity of the market. Article 9(4) MiFID and Article 23 CRD IV.		

c. Subcategory: Supervisory System Policies and Procedures

Firms are required to establish, maintain and enforce written supervisory policies and procedures that are reasonably designed to prevent violations of applicable law. When making a substituted compliance determination with regard to supervision requirements, the SEC will consider whether "the mandates for supervisory systems under the requirements of the foreign financial regulatory system, and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[11]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
Comparability of outcomes: The EU requirements to establish and enforce written supervisory policies and procedures provide a comparable regulatory outcome to the SEC requirements to establish and enforce supervisory policies and procedures. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii) and MiFID and CRD IV are consistent in that each requires firms to establish a variety of policies and procedures meant to ensure that effective and thorough supervisory systems are in place to mitigate risk. MiFID requires the establishment of a 'three lines of defence' model in relation to governance, risk and compliance oversight by Investment Firms. The first line of defence comprises the front office, as directed by the policies and procedures (including in respect of conflicts of interest) that the Investment Firm is obliged to establish and front office staff are required to follow. The second line of defence comprises the compliance and risk management teams – these teams conduct supervision of the front office. The third line of defence comprises the internal/external audit team, which ensures the effectiveness of the compliance and risk management teams. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			

[11] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
Supervisory policies and procedures: **Establishing robust risk management systems** SEC rules require that firms establish, maintain and enforce written policies and procedures that address the firm's security-based swap business, including associated persons. Those policies and procedures must be "reasonably designed to prevent violations" of applicable securities laws and regulations. Exchange Act rule 15Fh-3(h)(2)(iii) [17 CFR 240.15Fh-3(h)(2)(iii)].[12] Under SEC rules, those policies and procedures at a minimum must include certain elements (addressed below). In adopting these requirements, the SEC noted	**Supervisory policies and procedures**: **Establishing robust risk management systems** **MiFID** Investment Firms must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm, including its managers, employees and tied agents, with its obligations under MiFID. Article 16(2) MiFID. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 16(5) MiFID.	**Supervisory policies and procedures**: **Establishing robust risk management systems** **MiFID** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons." French transposition of Article 16(5) MiFID is the following: Article L533-2 of the MFC provides that "Investment service providers	**Supervisory policies and procedures**: **Establishing robust risk management systems** Article 16(5) MiFID requires Investment Firms to have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 23 MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 21(3) MiFID Org Reg. requires that Investment Firms must establish,

[12] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
that the minimum requirements listed in the rule "are not an exhaustive list," and that entities "should keep in mind their overarching obligation . . . to establish and maintain a supervisory system that is reasonably designed to prevent violations of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's security-based swap business. *See* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR at 30005-06 (May 13, 2016) (**Business Conduct Adopting Release**)[13] (suggesting that entities "generally should consider" providing for the supervisory review of recorded oral communications, and consider how to supervise certain disclosures orally communicated).	Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. The requirement encompasses monitoring the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. Article 23 MiFID Org Reg.	other than asset management companies shall have sound administrative procedures, internal control mechanisms, effective procedures for risk assessment, effective control and safeguard arrangements for information processing systems […]". French transposition of Article 16(4) and Article 16(5) MiFID is the following: Article L533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 4° Shall take reasonable steps, using appropriate and proportionate systems, resources and procedures, to ensure the continuity, regularity and satisfactory nature of the provision of investment services, in particular when relying on a third-party for the performance of critical or important functions or other operational tasks. In that case, they	implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities. In practice, these requirements result in written policies and procedures that are comparable to the supervisory system requirements under Exchange Act rule 15Fh-3(h)(2)(iii) Article 74 CRD IV requires CRR Firms to have robust governance arrangements, with adequate internal control mechanisms, including sound administrative and accounting procedures. Article 76(3) CRD IV requires that CRR Firm management must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or

[13] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
The supervisory system must encompass procedures for compliance with duties set forth in Exchange Act section 15F(j). Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[14] Section 15F(j) contains self-executing requirements that, *inter alia*, impose on firms duties related to: Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)];[15] and Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)];[16]	A specific risk management function is required where appropriate and proportionate that must: (i) operate independently, (ii) implement the Investment Firm's risk management policies and procedures, and (iii) provide required reports and advice. Article 23(2) MiFID Org Reg. An Investment Firm must take reasonable steps to ensure continuity and regularity in the performance of its regulated activities. To this end, the Investment Firm must employ appropriate and proportionate systems, resources and procedures, and ensure, when relying on a third-party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients	shall take reasonable steps to avoid undue additional operational risk."	might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV also requires firms of significant size, internal organization, and nature, scope and complexity of their activities to establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. Article 103 CRR requires CRR Firms that carry out trading activities to design and implement trading book policies and procedures which include position limits that must be set and monitored for appropriateness.

[14] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[15] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[16] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Articles 16(4), 16(5) MiFID.Investment Firms must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities. This requires Investment Firms to establish and maintain a business continuity and disaster recovery plan, which must allow for the timely resumption of its investment services and		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	activities and for the preservation of essential data and functions. Article 21(3) MiFID Org Reg. An Investment Firm, where appropriate and proportionate, must have an internal audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms and arrangements; and to issue and oversee the implementation of recommendations based on the plan. Article 24 MiFID Org Reg. **<u>CRD IV</u>** CRR Firms must have robust governance arrangements, with adequate internal control mechanisms, including sound		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	administrative and accounting procedures. Article 74 CRD IV. The management body must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the CRR Firm is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. Article 76(1) CRD IV. CRR Firms that are significant in terms of size, internal organization and nature, scope and complexity of their activities must establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. Article 76(3) CRD IV. **CRR**		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	CRR Firms that carry out trading activities must design and implement trading book policies and procedures which include position limits that must be set and monitored for appropriateness. Article 103 CRR. CRR Firms that have permission to use internal models for calculating their CCR requirements required to establish and maintain a CCR management framework are specifically required to take into account trading and credit limits for the purposes of their CCR risk framework, and are required to include information about appropriate measures taken in terms of position limits in their daily reports on the output of their risk measurement models. Articles 286, 293 and 221 CRR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
Disclosing certain information to regulators Firms must disclose, to the SEC and prudential regulators (as applicable), information concerning: terms and conditions of its security-based swaps; security-based swap trading operations, mechanisms, and practices; financial integrity protections relating to security-based swaps; and other information relevant to the firm's trading in security-based swaps. Exchange Act section 15F(j)(3) [15 U.S.C. 78o-10(j)(3)];[17]	**Disclosing certain information to regulators** Reports to the Investment Firm's regulator must be made in respect of transactions in financial instruments which are (a) admitted to trading, or traded, on a trading venue or for which a request for admission to trading has been made; (b) the underlying is a financial instrument traded on a trading venue; or (c) the underlying is an index or a basket composed of financial instruments traded on a trading venue. For these purposes, "trading venues" include EU regulated markets (i.e. exchanges), multilateral trading facilities and organized trading facilities. Transaction reporting contains very granular trade-by-trade information, including (among others), the parties, the precise trade details (e.g.		**Disclosing certain information to regulators** Article 26 MiFIR requires Investment Firms to make reports to regulators, where relevant, containing granular trade-by-trade information including with respect to parties and precise trade details. These requirements are comparable to the requirements under Exchange Act rule 15F(j)(3) [15 U.S.C. 78o-10(j)(3)].

[17] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
	instrument type, position taken, price, quantity, etc.) and the decision makers (e.g. the natural person executing the trade) (the Transaction Reporting RTS sets out the full fields to be addressed in these reports). Article 26 MiFIR.		
Obtaining necessary information Firms must establish and enforce internal systems and procedures to obtain information needed to perform functions required by law or regulation, and to provide the information to the SEC and prudential regulators on request. Substituted compliance similarly is not available in connection with the information provision part of that duty. *See* Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)][18] (further	**Obtaining necessary information** Please see "**Establishing robust risk management systems**" above in response to the question set forth in this section 3.c.1 in relation to robust operations, mechanisms and practices. An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with	**Obtaining necessary information** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons."	**Obtaining necessary information** Article 21(1) MiFID Org Reg. requires an Investment Firm to establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 21 (1) MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm. Article 69(2) MiFID and Article 65 CRD IV provide

[18] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
excluding section 15F(j)(4)(B) from the availability of substituted compliance. Exchange Act section 15F(j)(4) [15 U.S.C. 78o-10(j)(4)]);[19]	its obligations under MiFID. Article 16(2) MiFID. Investment Firms must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm. Article 21(1) MiFID Org Reg. Regulators have broad information-gathering powers. This means that, in practice, CRR Firms must have the relevant systems and procedures to enable them to comply with such requests. Article 69(2) MiFID and Article 65 CRD IV.	French transposition of Article 69(2) MiFID is the following: Article L. 621-8-4 of the MFC provides that: "The Autorité des marchés financiers may get access from the persons mentioned in article L. 621-9 II (regulated entities) to any document or other data in any form, which are relevant for the performance of its duties." Article L. 621-9, I of the MFC provides that : "In order to fulfil its mission, the Autorité des marchés financiers can carry out on-site inspections or investigations. […]" Article L. 621-10 of the MFC provides that: "For the purposes of an investigation or on-site inspection, investigators and inspectors may get access to any document in any form. […]"	applicable regulators with broad information-gathering powers. This means that, in practice, CRR Firms must have the relevant systems and procedures to enable them to comply with such requests. These requirements are comparable to the requirements under Exchange Act section 15F(j)(4) [15 U.S.C. 78o-10(j)(4)].

[19] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
Implementing conflict of interest systems and procedures Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)];[20] and	**Implementing conflict of interest systems and procedures** An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 16(3) MIFID.The management body must define, oversee and is accountable for the implementation of the governance arrangements that ensure effective and prudent management, including the segregation of duties in the organization and the prevention of conflicts of interest. Article 88 CRD IV and Article 9(1) MiFID.	**Implementing conflict of interest systems and procedures** French transposition of Article 16(3) MiFID is the following : Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 3° Shall maintain and operate effective organisational and administrative arrangements, in order to take all reasonable measures to prevent conflicts of interests from adversely affecting the interest of their clients." French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an investment firm, the following shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties:	**Implementing conflict of interest systems and procedures** Article 16(3) MIFID requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 88 CRD IV and Article 9(1) MiFID require the management body to define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management, including the segregation of duties in the organization and the prevention of conflicts of interest. These requirements are comparable to the requirements addressing conflicts of interest under Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)].

[20] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
		1° The members of the Board of Directors, the Supervisory Board and the Management Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report directly on the performance of their duties to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
		supervisory board or any other body exercising equivalent functions shall be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs. The members of the board of directors or the supervisory board, on the one hand, and the members of the management board or any person who effectively manages the business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
1. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?			
		company's activities, including the main risks to which it is exposed."	
Addressing antitrust considerations Exchange Act section 15F(j)(6) [15 U.S.C. 78o-10(j)(6)].[21]	**Addressing antitrust considerations** Under the EU antitrust regime, EU regulated firms including CRR Firms are required to comply with EU antitrust laws.		**Addressing antitrust considerations** Because the EU antitrust regime requires CRR Firms to comply with antitrust laws, the ultimate regulatory outcome of the EU antitrust regime is comparable to that set forth in Exchange Act section 15F(j)(6).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			
Comparability of outcomes:			

[21] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>EU Requirement and/or Policy Goal Summary</th><th>French provisions</th><th>Comparability Assessment</th></tr>
<tr><td colspan="4">c. Subcategory: Supervisory System Policies and Procedures</td></tr>
<tr><td colspan="4">2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?</td></tr>
<tr><td colspan="4">The EU requirements for supervisory review of transactions provide a comparable regulatory outcome to the SEC requirements for supervisory review of transactions. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(A) and MiFID are consistent in that each requires that firms establish procedures through which qualified supervisors review transactions.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Review of transactions

Firms are required to have procedures for supervisory review of transactions for which registration as a dealer is required. Exchange Act rule 15Fh-3(h)(2)(iii)(A) [17 CFR 240.15Fh-3(h)(2)(iii)(A)].[22]</td><td>Review of transactions

An Investment Firm must establish adequate policies and procedures sufficient to ensure its compliance with its obligations under MiFID. Article 16(2) MiFID.

These policies will need to address the monitoring of the transactions entered into by the Investment Firm, including security-based swap transactions.</td><td>Review of transactions

French transposition of Article 16(2) MiFID is the following:

Article L.533-10 II of the FMFC provides that “Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons.”</td><td>Review of transactions

Article 16(2) MiFID requires Investment Firms to have policies and procedures that address the monitoring of all the Investment Firm’s activities, including its transactions in security-based swaps. Article 103 CRR requires CRR Firms that carry out trading activities to design and implement trading book policies and procedures which include position limits that must be set and monitored for appropriateness. Article 27 MiFID also requires</td></tr>
</table>

[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			
	CRR Firms that carry out trading activities must design and implement trading book policies and procedures which include position limits that must be set and monitored for appropriateness. Article 103 CRR. CRR Firms that have a permission to use internal models for calculating their CCR requirements are required to establish and maintain a CCR management framework, are specifically required to take into account trading and credit limits for the purposes of their CCR risk framework, and are required to include information about appropriate measures taken in terms of position limits in their daily reports on the output of their risk measurement models. Articles 286, 293 and 221 CRR. Investment Firms must take all sufficient steps to obtain, when	French transposition of Article 27(1) MiFID is the following: Article L.533-18 I of the MFC provides that "Investment service providers other than asset management companies shall take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order." French transposition of Article 27(4) MiFID is the following : Article L.533-18 II of the MFC provides that "Investment service providers other than asset management companies shall establish and implement effective arrangements for complying with paragraph I. They shall establish and implement an order execution policy to allow them to obtain, for their clients' orders, the best	review of client orders and transactions to monitor the effectiveness of order execution policies, as applicable. This requirement is comparable to that set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(A).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			
	executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature and any other consideration relevant to the execution of the order. Article 27(1) MiFID. To this end, Investment Firms must establish and implement effective arrangements and, in particular, Investment Firms must establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result. Article 27(4) MiFID. Investment Firms who execute client orders must monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. Article 27(7) MiFID.	possible result in accordance with paragraph I." French transposition of Article 27(7) MiFID is the following: Article L.533-18-2 of the MFC provides that "Investment service providers other than asset management companies who execute clients' orders shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
2. In what ways are firms required to have supervisory policies and procedures for the review of transactions?			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			

Comparability of outcomes:

The EU requirements to supervise communications provide for a comparable regulatory outcome to the SEC requirements to supervise communications. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(B) and MiFID are consistent in that each requires that firms establish procedures to supervise all types of external and internal communications in order to mitigate risk.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

Supervised communications	Supervised communications	Supervised communications	Supervised communications
Supervisory policies and procedures at a minimum must include elements regarding:	Investment Firms must establish, implement and maintain effective internal reporting and communication of information at all relevant	French transposition of Article 16(6) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service	Article 21 MiFID Org Reg. requires Investment Firms to establish, implement and maintain effective internal reporting and communication of information at

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			
Correspondence and internal communication review: Firms are required to have procedures for supervisory review of incoming and outgoing written – including electronic – correspondence with counterparties or potential counterparties, and of internal written communications relating to the firm's security-based swap business. Exchange Act rule 15Fh-3(h)(2)(iii)(B) [17 CFR 240.15Fh-3(h)(2)(iii)(B)].[23]	levels of the Investment Firm. Article 21 MiFID Org Reg. An Investment Firm must arrange for records to be kept of all services, activities and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to enforce MiFID, MiFIR, MAR and CSMAD, and in particular to ascertain that the Investment Firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market. Article 16(6) MiFID.To this end, Investment Firms must record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service).	providers other than asset management companies" […] 6° Shall arrange for records to be kept of all services they provide and transactions they undertake which shall be sufficient to enable the Autorité des marches financiers to fulfil its supervisory tasks and to ascertain that the providers have complied with all professional obligations, including those with respect to clients or potential clients and to the integrity of the market." French transposition of Article 16(7) MiFID is the following: Article L533-10 III of the MFC provides that "Investment service providers other than asset management companies […] 1° Shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent	all relevant levels of the Investment Firm. Article 16(7) MiFID and Article 76 MiFID Org Reg. require Investment Firms to record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). These requirements are comparable, and even more onerous with regards to supervision of oral communications, to the supervisory requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(B).

[23] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
3. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?			
	Investment Firms must notify new and existing clients that telephone communications or conversations between the Investment Firms and clients that result or may result in transactions, will be recorded. Investment Firms must not provide, by phone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders. Article 16(7) MiFID and Article 76 MiFID Org Reg.	from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the investment service provider; […] 3°Shall notify their clients that telephone communications or conversations between the investment firm and its clients that result or may result in transactions will be recorded. […] 4° Shall not provide, by telephone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?			
<u>Comparability of outcomes</u>: The EU periodic supervisory review requirements provide a comparable regulatory outcome to the SEC periodic supervisory review requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(C) and MiFID are consistent in that each requires that firms establish procedures to periodically review their compliance with applicable laws. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Periodic Review Firms are required to have procedures for periodic review, at least annually, of the firm's security-based swap business that are "reasonably designed to assist in detecting and preventing violations" of applicable requirements. Exchange Act rule 15Fh-3(h)(2)(iii)(C) [17 CFR 240.15Fh-3(h)(2)(iii)(C)].[24]	**Periodic Review** Senior management must receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The		**Periodic review** Article 25 MiFID Org Reg. requires that an Investment Firm's senior management receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory

[24] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?			
	supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg. Investment Firms must establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Investment Firm to comply with its obligations under MiFID, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the regulators to exercise their powers effectively under MiFID. Article 22 MiFID Org Reg. The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance		function, if any, must receive on a regular basis written reports on the same matters. Article 22 MiFID Org Reg. requires the compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article 24 MiFID Org Reg. imposes a similar requirement in relation to Investment Firms' internal audit function. Article 23 MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate risk management policies and procedures that identify the risks related to the Investment Firms' activities processes and systems. These requirements are comparable to those set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(C).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?			
	with its obligations under MiFID. Article 22 MiFID Org Reg. Investment Firms are obligated to establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firms' activities, processes and systems (please see the response to the question set forth in section 3.c.1 above). Article 23 MiFID Org Reg. Investment Firms are obligated to have, where appropriate and proportionate, an internal audit function responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms (please see the response to the question set forth in section 3.b.2		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
4. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?			
	above). Article 24 MiFID Org Reg. The compliance risk assessment should be performed regularly to ensure that the focus and the scope of compliance monitoring and advisory activities remain valid. Guideline 1 para. 14 ESMA Guidelines on compliance function.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
<u>Comparability of outcomes</u>: The EU requirements to investigate personnel provide a comparable regulatory outcome to the SEC requirements to investigate personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(D) and MiFID are consistent in that each requires that firms establish procedures to ensure that personnel associated with the firm are sufficiently qualified and of good character. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
Comparability of specific requirements: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Investigation of personnel Firms are required to have procedures for investigation of "the good character, business repute, qualifications, and experience" of persons prior to their association with the firm. Exchange Act rule 15Fh-3(h)(2)(iii)(D) [17 CFR 240.15Fh-3(h)(2)(iii)(D)].[25]	**Investigation of personnel** Each member of the management body of CRR Firms must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties and to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Article 9(1) MiFID and Article 91(1) CRD IV. Member state laws will, in many cases, expand the scope of these requirements to include other relevant staff of a CRR	**Investigation of personnel** French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an investment firm, the following shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties: 1° The members of the Board of Directors, the Supervisory Board and the Management Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the	**Investigation of personnel** Article 91(1) CRD IV and Article 9(1) MiFID require each member of the management body of a CRR Firm to be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. Article 91(8) CRD IV requires each member of the management body to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Guideline 172 of the EBA/ESMA Guidelines on Management Suitability requires, *inter alia*, disclosure of criminal records,

[25] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
	Firm.Information including, among other items, disclosure of criminal records, investigations, enforcement proceedings and dismissals, should be provided to regulators in order to enable them to assess the suitability of members of the management body. Guideline 172 of the EBA/ESMA Guidelines on Management Suitability. Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21(1)(a) MiFID Org Reg. Investment Firms must take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and tied agents or any persons directly or indirectly linked to them by	meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report directly on the performance of their duties to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the supervisory board or any other body exercising equivalent functions shall be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive	investigations, enforcement proceedings and dismissals of management body members to regulators for assessment. Article 21(1)(a) MiFID Org Reg. requires Investment Firms employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. These regulations are comparable to the requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(D). We note that Exchange Act rule 15Fh-3(h)(2)(iii)(D) requires personnel considerations to take place prior to the relevant individual's association with the firm. While the EU requirements do not specify that such considerations must be made prior to an individual's association with a CRR Firm, the stated obligations are on-going and therefore apply at the

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
	control and their clients or between one client and another, that arise in the course of providing any investment and ancillary services, or combinations thereof. Article 23(1) MiFID.	throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs. The members of the board of directors or the supervisory board, on the one hand, and the members of the management board or any person who effectively manages the business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the company's activities, including the main risks to which it is exposed." French transposition of Article 23(1) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 3° Shall take all reasonable steps to identify	outset and throughout such association.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
5. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?			
		and to prevent or manage conflicts of interest. These conflicts of interest are those arising between, on the one hand, themselves, persons under their authority or acting on their behalf or any person directly or indirectly linked to them by control and, on the other hand, their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof [...]".	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
<u>Comparability of outcomes</u>: The EU requirements regarding the supervision of associated persons provide a comparable regulatory outcome to the SEC requirements regarding the supervision of associated persons. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(E)			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
and MiFID are consistent in that each requires that firms establish procedures to supervise actions of associated persons and ensure that such actions do not put the firm at risk. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Actions of associated persons Firms are required to have procedures to consider whether associated persons may establish or maintain securities or commodities accounts or trading relationships at other firms, and, if permitted, procedures for the supervision of that outside trading. Exchange Act rule 15Fh-3(h)(2)(iii)(E) [17 CFR 240.15Fh-3(h)(2)(iii)(E)].[26]	**Actions of associated persons** MiFID imposes a range of requirements, including in relation to personal transactions, to ensure that a firm's staff comply with their obligations. Articles 28 and 29 MiFID Org Reg. Investment Firms must establish, implement and maintain adequate arrangements aimed at preventing certain staff from entering into personal transactions, advising or	**Actions of associated persons** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons, including conditions and limits	**Actions of associated persons** Articles 28 and 29 MiFID Org Reg. impose a range of requirements in relation to personal transactions to ensure that an Investment Firm's staff comply with their obligations. Article 29 MiFID Org Reg. requires Investment Firms, among other things, to establish, implement and maintain adequate arrangements aimed at preventing certain staff from entering into personal transactions. Article 37 MiFID Org Reg. imposes specific personal transactions restrictions on

[26] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
	recommending that others enter into transactions, or disclosing information that would or would be likely to result in a person entering into a transaction or advising or recommending that another person enters into a transaction, in each case where doing so would be prohibited under MAR (i.e. contrary to inside information and market abuse restrictions), involve the misuse or improper disclosure of that confidential information, or would conflict or be likely to conflict with an obligation of the investment firm under MiFID. Article 29 MiFID Org Reg. Specific restrictions apply in respect of financial analysts and other staff involved in the production of investment research such that they cannot trade in a personal capacity, for another person (including the relevant Investment Firm) in	governing personal transactions by such persons."	financial analysts and other staff involved in the production of investment research. Article 16(2) MiFID require the maintenance of a range of risk management records, including personal transaction records. These requirements are comparable to the requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(E).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
6. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?			
	financial instruments to which investment research relates, or in any related financial instruments. Article 37 MiFID Org Reg. MiFID requires the maintenance of a range of risk management records, including personal transaction records. Article 16(2) MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
<u>Comparability of outcomes</u>: The EU prohibitions against self-supervision provide a comparable regulatory outcome to the SEC prohibitions against self-supervision. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(G) and MiFID and CRD IV are consistent in that each requires that firms establish procedures to prevent self-supervision and address it where unavoidable in furtherance of risk mitigation efforts. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
<u>Comparability of specific requirements</u>: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Self-supervision Firms must keep records of descriptions of supervisory systems, including titles, qualifications, locations and responsibilities of supervisory persons. Exchange Act rule 15Fh-3(h)(2)(iii)(F) [17 CFR 240.15Fh-3(h)(2)(iii)(F)];[27] and Prohibitions against self-supervision: Firms are required to have procedures prohibiting an associated person who performs a supervisory function from supervising his or her own activities or reporting to, or having his or her compensation or continued employment determined by, a person or	**Self-supervision** **<u>MiFID</u>** MiFID requires the establishment of a 'three lines of defense' model in relation to governance, risk and compliance oversight by Investment Firms. The first line of defense comprises the front office, as directed by the policies and procedures (including in respect of conflicts of interest) that the Investment Firm is obliged to establish and front office staff are required to follow. The second line of defense comprises the compliance and risk management teams – these teams conduct supervision of	**Self supervision** **MiFID** French transposition of Article 16(3) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 3° Shall maintain and operate effective organisational and administrative arrangements, in order to take all reasonable measures to prevent conflicts of interests from adversely affecting the interest of their clients." French translation of Article 23(1) MiFID is the following:	**Self-supervision** Article 22 MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function, ensure that persons involved in the compliance function are not involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 92(2) CRD IV requires senior management and staff engaged in control functions (among others) to be subjected to enhanced remuneration oversight requirements. Staff in control functions must be independent from the business units they oversee, have appropriate

[27] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
persons he or she is supervising. This prohibition does not apply if the firm determines compliance is not possible "because of the firm's size or a supervisory person's position within the firm." In that case the firm must document the factors used to reach that determination, and how the supervisory arrangement with respect to that supervisory personnel otherwise complies with the diligent supervision requirement. Exchange Act rule 15Fh-3(h)(2)(iii)(G) [17 CFR 240.15Fh-3(h)(2)(iii)(G)].[28]	the front office. The third line of defense comprises the internal/external audit team, which ensures the effectiveness of the compliance and risk management teams. Investment Firms must establish and maintain a permanent and effective compliance function which operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID. Article 22 MiFID Org Reg. The persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of	Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 3° Shall take all reasonable steps to identify and to prevent or manage conflicts of interest. These conflicts of interest are those arising between, on the one hand, themselves, persons under their authority or acting on their behalf or any person directly or indirectly linked to them by control and, on the other hand, their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof [...]." French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an investment firm, the following shall at all times be of sufficiently good repute and possess	authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. Article 92(2) CRD IV further requires that remuneration of senior officers in the risk management and compliance functions be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. These requirements are comparable to the requirements to establish procedures to prevent self-supervision set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(G). We note that the EU regulations are generally calibrated such that self-supervision will not arise (per the requirement in Article 22(3) MiFID Org Reg. that staff in the

[28] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 22(3)(d)-(e) MiFID Org Reg. Where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, Investment Firms must also establish an independent function. Article 23 MiFID Org Reg. Together, these provisions ensure the independence of the second line of defense such that front office staff do not self-supervise. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of	sufficient knowledge, skills and experience to perform their duties: 1° The members of the Board of Directors, the Supervisory Board and the Management Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report directly on the performance of their duties to the board of directors, the supervisory board or	compliance function must not be involved in the performance of services or activities they monitor). To the extent that this is unavoidable (which is expected to be very rare), Article 23(1) MiFID regarding the identification, prevention and, where necessary, management of conflicts of interests provides a robust mechanism through which such issues can be resolved.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. Article 24 MiFID Org Reg. This ensures the independence of the third line of defense such that compliance and risk management staff do not self-supervise. Further provisions on conflicts of interest apply across all three lines of defense: (a) An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the	any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the supervisory board or any other body exercising equivalent functions shall be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs. The members of the board of directors or the supervisory board, on the one hand, and the members of the management board or any person who effectively manages the business of the company within the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	interests of its clients. Article 16(3) MiFID (b) Investment Firms must take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and tied agents or any persons directly or indirectly linked to them by control and their clients or between one client and another, that arise in the course of providing any investment and ancillary services, or combinations thereof. Article 23(1) MiFID; and A CRR Firm's management body must define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of the CRR Firm, including the segregation of	meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the company's activities, including the main risks to which it is exposed."	

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c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	duties in the organization and the prevention of conflicts of interest. Article 88 CRD IV and Article 9(1) MiFID.**CRD IV** Provisions under CRD IV are focused on preventing structural conflicts of interest and self-supervision. CRR Firms must have remuneration policies and practices that are consistent with and promote sound and effective risk management. Article 74 CRD IV. Senior management and staff engaged in control functions (among others) must be subjected to enhanced remuneration oversight requirements. Article 92(2) CRD IV. Staff in control functions must be independent from the business units they oversee,		

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c. Subcategory: Supervisory System Policies and Procedures			
7. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?			
	have appropriate authority, and be remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. Article 92(2)(e) CRD IV. The remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. Article 92(2)(f) CRD IV.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
<u>Comparability of outcomes</u>: The EU requirements to prevent conflicts of interest in supervisory systems provide a comparable regulatory outcome to the SEC requirements to prevent conflicts of interest in supervisory systems. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(H) and Exchange Act section 15F(j)(5) and MiFID and CRD IV are consistent in that each requires that firms establish procedures to prevent supervisory systems from being compromised due to conflicts of interest. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The following EU requirements taken together are comparable to those set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(H) and Exchange Act section 15F(j)(5):			
Conflicts of interest policies and procedures: Firms are required to have procedures reasonably designed to prevent the supervisory system from being compromised due to the conflicts of interest with respect to associated persons, including their positions, the revenue they generate, or compensation that the	**Conflicts of interest policies and procedures**: Please refer to the response to the question set forth in section 3.c.7 above with regards to the following requirements: 1. **Independence**. **Segregation of duties**. The persons involved in the compliance function not being involved in the performance of services or activities they	**Conflicts of interest policies and procedures**: French translation of Article 23(1) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 9(1)3° Shall take all reasonable steps to identify and to prevent or manage conflicts of interest. These conflicts of interest are those arising	**Conflicts of interest policies and procedures**: 1. **Independence**. **Segregation of duties**. Article 23(1) MiFID requires Investment Firms to take all reasonable steps to identify and address conflicts of interest that they know or should know between themselves, including their managers, employees and tied agents or any persons directly

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
supervisor may derive from the associated person being supervised. Exchange Act rule 15Fh-3(h)(2)(iii)(H) [17 CFR 240.15Fh-3(h)(2)(iii)(H)].[29] The supervisory system must encompass procedures for compliance with duties set forth in Exchange Act section 15F(j), including implementing conflict of interest systems and procedures. Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)];[30] and Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)].[31]	monitor and the restrictions around their method of determining their remuneration. Article 22(3) MiFID Org Reg. The obligation on Investment Firms to establish and maintain an internal audit function separate and independent from the other functions and activities of the Investment Firm. Article 24 MiFID Org Reg. The obligation on Investment Firms to identify conflicts of interest and related requirements. Article 23(1) MiFID. The obligation on the management body to define, oversee and be	between, on the one hand, themselves, persons under their authority or acting on their behalf or any person directly or indirectly linked to them by control and, on the other hand, their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof [...]". French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an investment firm, the following shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties: 1° The members of the Board of Directors, the Supervisory Board and the Management Board, the	or indirectly linked to them by control and their clients or between one client and another, that arise in the course of providing any investment and ancillary services, or combinations thereof. Article 16(3) MIFID requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 22 MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function and ensure that persons involved in the

[29] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[30] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[31] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	accountable for the implementation of the governance arrangements, including in relation to segregation of duties matters. Article 88 CRD IV and Article 9(1) MiFID. The obligation on an Investment Firm to maintain and operate effective organizational and administrative arrangements to prevent conflicts of interest. Article 16(3) MIFID. 2. **Remuneration**. The obligation on CRR Firms to have remuneration policies and practices consistent with sound and effective risk management. Article 74 CRD IV. The requirement regarding (i) staff in control functions to be independent from the	Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report directly on the performance of their duties to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the supervisory board or any other body exercising equivalent functions shall	compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 24 MiFID Org Reg. requires an Investment Firm to establish and maintain an internal audit function separate and independent from the other functions and activities of the Investment Firm. Article 88 CRD IV and Article 9(1) MiFID require that a CRR Firm's management body oversees and is accountable for the prevention of conflicts of interest. 2. **Remuneration**. Article 74 CRD IV requires CRR Firms to have remuneration policies and practices consistent with sound

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	business units they oversee, have appropriate authority, and be remunerated independently of the performance of the business areas they control. Article 92(2)(e) CRD IV; and (ii) staff and staff engaged in control functions (among others) to be subjected to enhanced remuneration oversight requirements. Article 92(2) CRD IV. The requirement that the remuneration of senior officers in the risk management and compliance functions to be directly overseen by the remuneration committee or by the management body in its supervisory function. Article 92(2)(f) CRD IV. 3. **Conflicts of interest documentation.** Investment Firms must	be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs. The members of the board of directors or the supervisory board, on the one hand, and the members of the management board or any person who effectively manages the business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the company's activities, including the main risks to which it is exposed."	and effective risk management. Article 92(2) CRD IV requires staff in control functions to be remunerated independently of the performance of business areas they control and to be subjected to enhanced remuneration oversight requirements, including (where necessary) through oversight by a remuneration committee or the management body. 3. **Conflicts of interest documentation**. Article 34 MiFID Org Reg. requires Investment Firms to have a written conflicts of interest policy appropriate to the size and organization of the Investment Firm. Under Article 35 MiFID Org Reg., Investment Firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Investment Firm in which a

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	have a written conflicts of interest policy appropriate to the size and organization of the Investment Firm. Where the Investment Firm is in a group, this policy must also take into account the circumstances which may give rise to conflicts of interest arising as a result of the structure and business activities of other members of the group. Article 34 MiFID Org Reg. The conflicts policy must identify the circumstances which might give rise to a conflict entailing a material risk of damage to the interests of one or more client and specify procedures to be followed to manage such conflicts. The procedures must include (as necessary/appropriate): (i) procedures to	French transposition of Article 16(3) MiFID is the following : Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 3° Shall maintain and operate effective organisational and administrative arrangements, in order to take all reasonable measures to prevent conflicts of interests from adversely affecting the interest of their clients."	conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	prevent/control information exchange; (ii) separate supervision of persons who provide services to clients whose interests may conflict (with other clients or with the Investment Firm); (iii) removal of any direct link between the remuneration of persons engaged in one activity and the remuneration of different persons, engaged in a different activity, where there may be a conflict in relation to those activities; (iv) preventing/limiting any person from exercising inappropriate influence over provision of a service; and (v) preventing/controlling the simultaneous/sequential involvement of a person in different activities where such involvement might		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
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8. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?			
	impair management of conflicts of interest. Article 34(3) MiFID Org Reg. Investment Firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Investment Firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise. Article 35 MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
Comparability of outcomes: The EU policy and procedure amendment requirements provide a comparable regulatory outcome to the SEC policy and procedure amendment requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(4) and MiFID are consistent in that each requires that firms establish procedures to review and amend procedures to account for deficiencies, including deficiencies caused by changes to regulations and business conduct. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Amendments Firms must amend their written supervisory procedures to reflect material changes in applicable laws or regulations, or in the firm's business or supervisory system. Material amendments must be promptly communicated to relevant associated persons. Exchange	**Amendments** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID.The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance	**Amendments** French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons under their authority or acting on their behalf with the provisions applicable to	**Amendments** Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. also requires that senior management and the supervisory function must receive

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
Act rule 15Fh-3(h)(4) [17 CFR 240.15Fh-3(h)(4)].[32]	with its obligations under MiFID. Article 22 MiFID Org Reg. Investment Firms must ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities; establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm; and establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg. In practice, this means that changes to policies and procedures reflecting changes in applicable laws or regulations, or in the Investment Firm's business or supervisory system must be	investment service providers themselves and to such persons."	on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. These requirements are comparable to the requirements in Exchange Act rule 15Fh-3(h)(4)(i). We note that the Exchange Act requirements to promptly communicate amendments to supervisory policies to relevant associated persons are not expressly set forth in the EU regulations. However, in practice this obligation applies in order for Investment Firms to meet their obligation under Article 21 MiFID Org Reg. to have effective internal reporting and communication of information at all relevant levels of the Investment Firm and for the

[32] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
	communicated at all levels of the Investment Firm in order to be able to comply with Article 21 MiFID Org Reg. Senior management must receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg. Investment Firms must assess and periodically review, on an at least annual basis, the conflicts of interest policy. Article 35 MiFID Org Reg. requires senior management to		relevant persons to be able to properly discharge their responsibilities.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
9. When are firms required to amend their policies and procedures?			
	receive on a frequent basis, and at least annually, written reports on the client conflicts of interest record. Article 34 MiFID Org Reg. Investment Firms must review their best execution policy and arrangements at least annually. Articles 65 and 66 MiFID Org Reg. CRR Firms' remuneration policies must be reviewed at least on an annual basis. Article 92 CRD IV.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
A firm or its associated personS will not be deemed to	There are a range of supervisory actions that	<u>French transposition of Article 69 MiFID is the following:</u>	**<u>Comparability of outcomes</u>**:

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
have failed to diligently supervise if the firm establishes, maintains and applies written policies and procedures that would reasonably be expected to prevent and detect violations, so long as the firm and its associated persons reasonably have discharged the associated duties and did not have a reasonable basis to believe that the policies and procedures were not being followed. Exchange Act rule 15Fh-3(h)(3) [17 CFR 240.15Fh-3(h)(3)].[33]	regulators can take in response to failures in CRR Firms' implementation of CRD IV and CRR. These include increases in own funds and liquid assets, enhancements to policies and procedures, and enhanced reporting requirements (among others). Article 104 CRD IV and Article 69 MiFID. Regulators have the power to issue public statements of breach, cease and desist orders, and monetary fines of up to 10% annual net turnover (legal persons) or EUR 500,000 (natural persons). Article 66 CRD IV and Article 70 MiFID. The severity of the consequence (e.g. the amount of fines) is determined at the discretion of regulators in	Article L621-14 of the MFC provides that :" II. The Board may, after giving the individual concerned an opportunity to present his explanations, order the cessation, in France and abroad, of all breaches of the obligations imposed by the laws or regulations or by professional rules intended to protect investors from insider dealing, price manipulation and dissemination of false information, and any other breach likely to undermine investor protection or the orderly operation of the market. Such decisions may be disclosed to the public. The Board has powers identical to those referred to in the previous paragraph to deal with any failure to meet the obligations resulting from	The regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(3) and CRD IV are consistent in that each subject firms and/or their personnel to potential liability for failure to supervise or satisfy other compliance obligations. The EU regime is more onerous in this respect, as it does not provide for a safe harbour for compliance with a CRR Firm's policies and procedures, etc.

[33] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
	accordance with member state laws. There is no formal safe harbour established in EU law for compliance with a CRR Firm's policies and procedures, etc. (though these may be established in the laws of member states).	the laws or regulations intended to protect investors and the market from insider trading, price manipulation and dissemination of false information committed on French soil in connection with the financial instruments or assets referred to in paragraph II of Article L. 421-1 admitted to trading on a regulated market of another country which is a Member State of the European Community or party to the European Economic Area Agreement or in respect of which an application for admission to trading on such a market has been submitted. II.The Chairman of the Autorité des Marchés Financiers may ask the court to order the individual responsible for the practice detected to comply with the laws or regulations and end the irregularity or eliminate its effects.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
		Said request shall be brought before the presiding judge of the Regional Court of Paris ruling on a summary basis, whose decision shall be immediately enforceable. He may, even without consultation, take any protective measure and impose a coercive fine payable to the Trésor Public for execution of his order. If criminal proceedings are brought, the coercive fine, if one has been imposed, shall not be applied until a final decision is made on the merits of the public prosecution." French transposition of Article 70 MiFID is the following: Article L 621-15 of the MFC provides that : "II.-Following an adversarial procedure, the Enforcement	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
		Commission may impose sanctions on the following entities: a)Entities referred to in subparagraphs 1 to 8 [including investment firms] and 11 to 21 of paragraph II of Article L. 621-9 for any breach of professional obligations established by European regulations, laws, regulations or conduct of business rules approved by the AMF, without prejudice to the provisions of Article L. 612-39 and L.612-40; b)Individuals under the authority of, or acting on behalf of, an entity referred to in subparagraphs 1 to 8 and 11 to 21 of paragraph II of Article L. 621-9 [investment firms staff] for any breach of professional obligations established by European regulations, laws, regulations or conduct of business rules approved by the AMF, without prejudice to	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
		the provisions of Article L. 612-39 and L.621-40; III. -The sanctions applicable are: a) For the entities referred to in subparagraphs 1 to 8, 11, 12 and 15 to 19 and 21 of paragraph II of Article L. 621-9 [including investment firms], a warning, a reprimand, or a temporary or permanent ban on providing some or all of the services previously provided and removal from the register referred to in Article L. 546-1. In lieu of, or in addition to, said sanctions, the Enforcement Commission may also impose a fine of up to 100 million euros or ten times the amount of any profit made if it can be determined. The money shall be paid into the guarantee fund to which the sanctioned entity is affiliated or, failing that, to the Trésor Public;	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
		b)For individuals acting under the authority or on behalf of an entity referred to in subparagraphs 1 to 8, 11, 12 and 15 to 21 of paragraph II of Article L. 621-9 [investment firms' staff] or performing management function as defined in Article L.533-25, a warning, a reprimand, a temporary suspension or withdrawal of their professional license, a temporary or permanent ban on trading on own account, and a temporary or permanent ban on conducting some or all of their business activities or performance of management functions within an entity referred to in subparagraphs an entity referred to in subparagraphs 1 to 8 and 11, 12 and 15 to 18 of paragraph II of Article L. 621-9 In lieu of, or in addition to, said sanctions, the Enforcement Commission may also impose a fine of up to 15 million euros or ten	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures			
10. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?			
		times the amount of any profit made if it canbe determined, in the case of the practices referred to in paragraph II. The money shall be paid into the guarantee fund to which the entity on whose authority or behalf the sanctioned individual was acting is affiliated; failing that, the money shall be paid to the Trésor Public; […] Monetary penalties imposed pursuant to paragraph II may be increased, up to a limit of 10% of the amount, to be borne by the person penalized and which are intended to finance victims' support."	

d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security

The supervision and CCO requirements in part address the need for firms to designate individuals with responsibility and adequate authority over compliance matters. In making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[34]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
1. Are firms required to establish a chief compliance officer or similar function?			
CCO appointment The Exchange Act requires firms to designate an individual to serve as a CCO. Exchange Act section 15F(k)(1) [15 U.S.C. 78o-10(k)(1)];[35] *see* also Exchange Act rule 15Fk-1(a) [17 CFR 240.15Fk-1(a)].[36]	**CCO appointment** An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting as to compliance. Article 22(3) MiFID Org Reg.		**<u>Comparability of outcomes and specific requirements</u>**: While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **CCO appointment** Exchange Act section 15F(k)(1) and Exchange Act rule 15Fk-1(a) and MiFID are consistent in that each requires that firms appoint a CCO. *See* Article 22(3) MiFID Org Reg., which requires that Investment

[34] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[35] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[36] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
1. Are firms required to establish a chief compliance officer or similar function?			
			Firms appoint a compliance officer responsible for the compliance function and for any reporting as to compliance.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
2. How do the requirements of your jurisdiction address lines of reporting for the chief compliance officer or similar function? How do those requirements otherwise help ensure that those persons have necessary authority and resources?			
CCO reporting line The CCO must report "directly to the board of directors or to the senior officer" of the firm. Exchange Act section 15F(k)(2)(A) [15 U.S.C. 78o-10(k)(2)(A)];[37] *see also* Exchange Act rule 15Fk-1(b)(1) [17 CFR 240.15Fk-1(b)(1)].[38]	**CCO reporting line** The compliance officer may only be appointed and replaced by the management body. Article 22(3) MiFID Org Reg. The compliance officer must submit reports directly to senior management, frequently, and at least annually, and directly to the management body. Articles 22(2)(c) and 25(2) MiFID Org Reg. In practice, these requirements dictate that the		**<u>Comparability of outcomes</u>**: The EU requirements for compliance officer reporting, authority and resources provide a comparable regulatory outcome to the SEC requirements for compliance officer reporting, authority and resources. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2)(A) and Exchange Act rule 15Fk-1(b)(1) and MiFID are consistent in that each ultimately

[37] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[38] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
2. How do the requirements of your jurisdiction address lines of reporting for the chief compliance officer or similar function? How do those requirements otherwise help ensure that those persons have necessary authority and resources?			
	compliance officer will be a senior member of staff.		requires that the CCO has a reporting line to the management body. *See* also Article 22(3) MiFID Org Reg., which provides that the CCO may only be appointed and replaced by the management body.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?			
CCO removal, compensation and sanctioning A majority of a firm's board of directors must approve the compensation and removal of a CCO. Exchange Act rule 15Fk-1(d) [17 CFR 240.15Fk-1(d)].[39]	**CCO removal, compensation and sanctioning** The remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the		**<u>Comparability of outcomes</u>**: The EU requirements regarding the removal, compensation and sanctioning of compliance officers provide a comparable regulatory outcome to the SEC requirements regarding the removal, compensation and sanctioning of compliance officers. In particular,

[39] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?			
	management body in its supervisory function. Article 92 CRD IV. The method for determining the remuneration of staff in the compliance function, which will include the CCO, must not compromise their objectivity or be likely to do so. Article 22(3)(e) MiFID Org Reg. An Investment Firm that can demonstrate that, due to the nature, scale and complexity of its business and the nature and range of the investment services and activities that it conducts, is not obliged to meet this requirement so long as its compliance function continues to be effective. This effectiveness must be assessed on a regular basis). Investment Firms must establish and maintain a		the regulatory outcomes pursued under Exchange Act rule 15Fk-1(d) and MiFID and CRD IV are consistent in that, although MiFID and CRD IV do not specifically address CCO compensation and removal requirements, each require management to oversee and decide upon such matters. *See* Article 92 CRD IV, which provides that remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. *See also* Article 22(3) MiFID Org Reg., which provides that the CCO may only be appointed and replaced by the management body.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security			
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?			
	permanent and effective compliance function which operates independently. Article 22(2) MiFID Org Reg. In addition, Article 22(3) MiFID Org Reg. provides that the CCO may only be appointed and replaced by the management body.		

e. Subcategory: Chief Compliance Officer Policies and Procedures

CCOs must ensure that firms establish, follow and update appropriate compliance policies and procedures. When making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[40]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
1. Is the chief compliance officer or similar function required periodically to review the firm's compliance with applicable requirements? Is a written assessment required?			
Comparability of outcomes: The EU requirements regarding periodic compliance review provide a similar regulatory outcome to the SEC requirements regarding periodic compliance review. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fk-1(b)(2)(i) and MiFID are consistent in that each requires that the CCO or a similar function periodically reviews a firm's policies and procedures to ensure compliance with applicable laws. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Periodic review CCOs must "review the compliance" of a firm. Exchange Act section	**Periodic review** Senior management must receive on a frequent basis, and at least annually, written reports on compliance, risk		**Periodic review** Article 25 MiFID Org Reg. requires that senior management must receive on a frequent basis, and at least annually, written reports on

[40] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
1. Is the chief compliance officer or similar function required periodically to review the firm's compliance with applicable requirements? Is a written assessment required?			
15F(k)(2)(B) [15 U.S.C. 78o-10(k)(2)(B)].[41] CCOs must review a firm's compliance with respect to requirements under Exchange Act section 15F and underlying rules and regulations, "where the review shall involve preparing the registrant's annual assessment of its written policies and procedures reasonably designed to achieve compliance with" the statute and the rules by a firm. Exchange Act rule 15Fk-1(b)(2)(i) [17 CFR 240.15Fk-1(b)(2)(i)].[42]	management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg.		compliance, risk management and internal audit indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. This requirement is comparable to the requirement set forth in Exchange Act rule 15Fk-1(b)(2)(i).

[41] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[42] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?			
Comparability of outcomes: The EU requirements to ensure compliance and identify noncompliance provide a comparable regulatory outcome to the SEC requirements to ensure compliance and identify noncompliance. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2) and Exchange Act rule 15Fk-1(b) and MiFID are consistent in that each requires that the CCO or a similar function ensure that firms implement policies and procedures to identify and remediate noncompliance. In practice it is likely that the CCO will head the compliance function and will ensure the implementation of changes recommended by the audit function. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Ensure compliance CCOs must "ensure compliance". Exchange Act section 15F(k)(2)(E) [15 U.S.C. 78o-10(k)(2)(E)].[43] CCOs must take "reasonable steps" to ensure that: A firm "establishes, maintains and reviews written policies and procedures reasonably	**Ensure compliance** An Investment Firm must establish a compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. The compliance function must report to senior management on the		**Ensure compliance** Article 22 MiFID Org Reg. requires the compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID. Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically

[43] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?			
designed to achieve compliance with" the Exchange Act and underlying rules and regulations relating to its business as a dealer. Exchange Act rule 15Fk-1(b)(2) [17 CFR 240.15Fk-1(b)(2)];[44] The registrant establishes and follows procedures for the "handling, management response, remediation, retesting, and resolution" of non-compliance issues. Exchange Act rule 15Fk-1(b)(2)(iii) [17 CFR 240.15Fk-1(b)(2)(iii)];[45] and Exchange Act section 15F(k)(2)(G) [15 U.S.C. 78o-10(k)(2)(G)];[46] and	implementation and effectiveness of the overall control environment. Article 22 MiFID Org Reg. Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg.		review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Taken as a whole, these requirements are comparable to those set forth in Exchange Act section 15F(k)(2) and Exchange Act rule 15Fk-1(b).
Identify noncompliance A firm "establishes, maintains and reviews" policies and procedures to remediate	**Identify noncompliance** Where appropriate and proportionate, an Investment Firm must have an internal		**Identify noncompliance** Article 24 MiFID Org Reg. requires, where appropriate and proportionate, an Investment Firm

[44] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[45] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[46] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?			
noncompliance issues that have been identified by means such as compliance office review, look-back, internal or external audit finding, self-reporting, and validated complaints. Exchange Act rule 15Fk-1(b)(2)(ii) [17 CFR 240.15Fk-1(b)(2)(ii)];[47] and Exchange Act section 15F(k)(2)(F) [15 U.S.C. 78o-10(k)(2)(F)].[48]	audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy of the Investment Firm's systems and internal control mechanisms, issuing and overseeing the implementation of recommendations based on the plan and reporting to senior management in relation to internal audit matters. Article 24 MiFID Org Reg. Non-compliance matters should be addressed in the written compliance reports to senior management, where relevant, including: (a) a summary of major findings of the review of the policies and procedures;		to have an internal audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy of the Investment Firm's systems and internal control mechanisms, and to issue and oversee the implementation of recommendations based on the plan. These requirements are comparable to those set forth in Exchange Act rule 15Fk-1(b)(2)(ii) and Exchange Act section 15F(k)(2)(F).

[47] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[48] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
2. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?			
	(b) a summary of on-site inspections or desk-based reviews performed by the compliance function including breaches and deficiencies in the Investment Firm's organization and compliance processes that have been discovered and appropriate measures taken as a result; (c) other significant compliance issues that have occurred since the last report; and (d) material correspondence with competent authorities (where senior management has not previously been made aware of these through other channels). Guideline 3 para. 29 ESMA Guidelines on compliance function.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
Comparability of outcomes: The EU requirements for compliance officers and management to resolve conflicts of interest provide a similar regulatory outcome to the SEC requirements for compliance officers and management to resolve conflicts of interest. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3) and MiFID and CRD IV are consistent in that each requires the CCO or a similar function to resolve conflicts of interest. Moreover, although the onus under MiFID is on the Investment Firm, given the obligation to appoint a CCO and to establish, implement and maintain an effective conflicts of interest policy, these duties will, in practice, fall to the CCO. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Conflicts of interest resolution CCOs, in consultation with the board of directors or the senior officer of the firm, must "take reasonable steps to resolve any material conflicts of interest that may arise." Exchange Act rule 15Fk-1(b)(3) [17 CFR 240.15Fk-1(b)(3)];[49] and Exchange Act section	**Conflicts of interest resolution** Investment Firms must take all reasonable steps to identify conflicts of interest, as explained in response to the question set forth in section 3.c.5 above. Article 23(1) MiFID. An Investment Firm must maintain and operate effective organizational and	**Conflicts of interest resolution** French transposition of Article 23(1) MiFID is the following: Article L.533-10 II of the MFC provides that "Investment service providers other than asset management companies […] 3° Shall take all reasonable steps to identify and to prevent or manage conflicts of interest. These conflicts of	**Conflicts of interest resolution** Article 23(1) MiFID requires Investment Firms to take all reasonable steps to identify conflicts and address conflicts of which they are or should be aware. Article 16(3) MIFID requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable

[49] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
15F(k)(2)(C) [15 U.S.C. 78o-10(k)(2)(C)].[50]	administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 16(3) MIFID. As mentioned above in response to the question set forth in section 3.e.2, an Investment Firm must have a compliance function and, where appropriate, an audit function required, among other things, to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under MiFID (i.e., including with regards to conflicts of interest matters). Articles 22 and 24 MiFID Org Reg.	interest are those arising between, on the one hand, themselves, persons under their authority or acting on their behalf or any person directly or indirectly linked to them by control and, on the other hand, their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof […].” French transposition of Article 16(3) MiFID is the following : Article L.533-10 II of the MFC provides that “Investment service providers other than asset management companies […] 3° Shall maintain and operate effective organisational and administrative arrangements, in order to take all reasonable measures to prevent conflicts of interests from adversely	steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Taken as a whole, these requirements are comparable to those set forth in Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3).

[50] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
	Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. Record-keeping requirements regarding conflicts of interest also apply, as fully described in response to the question set forth in section 3.c.8 above. Article 35 MiFID Org Reg.	affecting the interest of their clients."	
Senior management involvement CCOs, in consultation with the board of directors or the senior officer of the firm, must "take reasonable steps to resolve any material conflicts of interest that may arise." Exchange Act rule 15Fk-1(b)(3)	**Senior management involvement** The management body must define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of the CRR Firm,	**Senior management involvement** French transposition of Article 9(1) MiFID is the following: Article L533-25 of the MFC provides that "Within an investment firm, the following shall at all times be of sufficiently good repute and possess	**Senior management involvement** Article 88 CRD IV and Article 9(1) MiFID require that management bodies oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management, including with regards to the prevention of

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
[17 CFR 240.15Fk-1(b)(3)];[51] and Exchange Act section 15F(k)(2)(C) [15 U.S.C. 78o-10(k)(2)(C)].[52]	including the segregation of duties in the organization and the prevention of conflicts of interest. Article 9(1) MiFID Article 88 CRD IV.	sufficient knowledge, skills and experience to perform their duties: 1° The members of the Board of Directors, the Supervisory Board and the Management Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions; 2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1° ; 3° All persons responsible for the procedures, systems and policies mentioned in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report	conflicts of interest. Article 35 MiFID Org Reg. requires senior management to receive on a frequent basis, and at least annually, written reports on the client conflicts of interest record. These requirements are comparable to those set forth in Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3).

[51] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[52] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
		directly on the performance of their duties to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions. The competence of the members of the board of directors, the supervisory board or any other body exercising equivalent functions shall be assessed on the basis of their training and experience, with regard to their duties. Where offices have previously been held, competence shall be presumed on the basis of experience. In the case of new members, account shall be taken of the training they may receive throughout their term of office. In the assessment of each person, account shall also be taken of the competence and powers of the other members of the body to which he or she belongs. The members of the board of directors or the supervisory board,	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
3. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?			
		on the one hand, and the members of the management board or any person who effectively manages the business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience required to understand all of the company's activities, including the main risks to which it is exposed."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
4. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?			
<u>Comparability of outcomes</u>: The EU compliance officer requirements provide a comparable regulatory outcome to the SEC compliance officer requirements. While administrative responsibilities are slightly different under MiFID (responsibility rests with senior management, rather than with the CCO, to ensure that they assess and periodically review the effectiveness of the Investment Firm's policies, procedures and arrangements), in practice, the CCO of an Investment Firm will (i) head the compliance function and (ii) ensure that reports on that function are made to senior management. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.			

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
4. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?			
<u>Comparability of specific requirements</u>: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Required policies and procedures CCOs must administer each policy and procedure that is required to be established. Exchange Act rule 15Fk-1(b)(4) [17 CFR 240.15Fk-1(b)(4)];[53] and Exchange Act section 15F(k)(2)(D) [15 U.S.C. 78o-10(k)(2)(D)].[54]	**Required policies and procedures** Investment Firms must establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID. Article 22(2) MiFID Org Reg. An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by		**Required policies and procedures** Article 22(2) MiFID Org Reg. requires Investment Firms to establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out activities to comply with the Investment Firm's obligations under MiFID. Article 25 MiFID Org Reg. requires an Investment Firm to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Taken as

[53] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[54] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
4. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?			
	Article 22(2) MiFID Org Reg. Article 22(3) MiFID Org Reg. An Investment Firm must ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under MiFID. Article 25 MiFID Org Reg.		a whole, these requirements are comparable to the requirements in Exchange Act section 15F(k)(2)(D) and Exchange Act rule 15Fk-1(b)(4).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures			
5. Are firms permitted to rely on another corporate officer to perform a similar function to a chief compliance officer? If so, to what extent is that job function similar the chief compliance officer job function described by Exchange Act requirements?			
Performance of the CCO function Firms must appoint a CCO. *See* Exchange Act rule 15Fk-1 [17 CFR 240.15Fk-1];[55] and	**Performance of the CCO function** As explained above in response to the questions set forth in sections 3.d.2 and 3.b.2, respectively, Investment Firms		**<u>Comparability of outcomes</u>**: The EU requirements to establish a compliance framework and officer provide a comparable regulatory outcome to the SEC requirements to establish a compliance

[55] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

Exchange Act section 15F(k) [15 U.S.C. 78o-10(k)].[56]	must establish and maintain a permanent and effective compliance function and must also appoint a compliance officer responsible for the compliance function. Articles 22(2) and 22(3) MiFID Org Reg.		framework and officer. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 and MiFID are consistent in that each requires the CCO and, from the EU perspective, a similar function to ensure a firm's policies and procedures are compliant with applicable regulations. *See* Article 22(2) of MiFID Org Reg., which requires Investment Firms to establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons, such as a CCO, responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under MiFID. *See also* Article 22(3) MiFID Org Reg., which requires Investment Firms to appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by Article 22(2) MiFID Org Reg.

[56] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

f. Subcategory: Chief Compliance Officer Reports

The supervision and CCO requirements address the need for CCOs (or similar functions) to be responsible for appropriate periodic reports addressing compliance matters. When making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[57]

The 2013 CFTC Comparability Determination for the European Union: Certain Entity-Level Requirements (**CFTC Entity-Level Guidance**) found substituted compliance to be applicable because the compliance officer requirements under MiFID, including compliance officer report requirements, are "generally identical in intent" and "comparable to and as comprehensive as" the CFTC requirements. Moreover, the CFTC Entity-Level Guidance recognized that substituted compliance is applicable despite no requirement to provide compliance reports to regulators so long as firms certify and furnish the annual compliance report to the CFTC. CFTC Entity-Level Guidance at 78928.[58]

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
1. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?			
Comparability of outcomes: The EU Requirement and Policy Goal Summary provide for similar outcomes as the SEC Requirement and Policy Goal Summary. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and MiFID are consistent in that each requires the CCO or a similar function to produce compliance reports at least annually. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below EU requirements are, when taken together, comparable to analogous SEC requirements in the following ways:			
Compliance report	**Compliance report**		**Compliance report**

[57] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[58] https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
1. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?			
CCOs must prepare and sign a compliance report annually. Exchange Act section 15F(k)(3)(A) [15 U.S.C. 78o-10(k)(3)(A)].[59]	Senior management must receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.), indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg. These reports must be submitted to senior management by the compliance officer, the risk management department, and the internal (or external) audit department, respectively. Articles 22(3), 23(2) and 24(c) MiFID Org Reg.		Article 25 MiFID Org Reg. requires that an Investment Firm's senior management receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. These reports must be submitted to senior management by the compliance officer, the risk management department, and the internal (or external) audit department, respectively. Articles 22(3), 23(2) and 24(c) MiFID Org Reg. These requirements are comparable to the requirements in Exchange Act section 15F(k)(3)(A).

[59] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
Compliance report contents The compliance report must include: 1. Description of the firm's written compliance policies and procedures, including the code of ethics and conflict of interest policies. Exchange Act section 15F(k)(3)(A) [15 U.S.C. 78o-10(k)(3)(A)];[60] 2. Self-assessment of the effectiveness of the compliance policies and procedures. Exchange Act rule 15Fk-1(c)(2)(i)(A) [17 CFR 240.15Fk-1(c)(2)(i)(A)];[61] 3. Material changes to the firm's policies and	**Compliance report contents** The compliance report submitted to senior management must address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. Article 22(2) MiFID Org Reg. This compliance report (and any ad hoc reports, where necessary) must address any significant risk of failure by the Investment Firm to comply with its obligations under MiFID. Article 22(3)(c) MiFID Org Reg. The following matters should be addressed in the written		**<u>Comparability of outcomes and specific requirements</u>**: The EU compliance report content requirements provide a comparable regulatory outcome to the SEC compliance report content requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and Exchange Act rule 15Fk-1(c)(2) and MiFID are consistent as to the contents of compliance reports in that each requires a description of a firm's compliance procedures, assessment of such procedures, implementation of changes, areas of improvement, material non-compliance and deficiencies. *See* Article 22(2) MiFID Org Reg., which requires the compliance report submitted to senior management to address the implementation and effectiveness of the overall control environment for investment

[60] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[61] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
procedures. Exchange Act rule 15Fk-1(c)(2)(i)(B) [17 CFR 240.15Fk-1(c)(2)(i)(B)];[62] 4. Areas for improvement. Exchange Act rule 15Fk-1(c)(2)(i)(C) [17 CFR 240.15Fk-1(c)(2)(i)(C)];[63] 5. Material non-compliance matters identified. Exchange Act rule 15Fk-1(c)(2)(i)(D) [17 CFR 240.15Fk-1(c)(2)(i)(D)];[64] and 6. Compliance resources and deficiencies. Exchange Act rule 15Fk-1(c)(2)(i)(E) [17	compliance reports, where relevant: 1. a description of the implementation and effectiveness of the overall control environment for investment services and activities; 2. a summary of major findings of the review of the policies and procedures; 3. a summary of on-site inspections or desk-based reviews performed by the compliance function including breaches and deficiencies in the Investment Firm's organization and compliance processes that have been discovered and		services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. As this report must address compliance with all obligations under MiFID, it must include identification of risks that may arise from any lack of resources or other deficiencies in the compliance department.

[62] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[63] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[64] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
CFR 240.15Fk-1(c)(2)(i)(E)].[65]	appropriate measures taken as a result; 4. risks identified in the scope of the compliance function's monitoring activities; 5. relevant changes and developments in regulatory requirements over the period covered by the report and the measures taken and to be taken to ensure compliance with the changed requirements (where senior management has not previously been made aware of these through other channels); 6. other significant compliance issues that have occurred since the last report; and 7. material correspondence with competent authorities		

[65] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
2. What are the required contents of the compliance reports?			
	(where senior management has not previously been made aware of these through other channels). Guideline 3 para. 29 ESMA Guidelines on compliance function. The compliance function must have the necessary authority, resources, expertise and access to all relevant information. Article 22(3)(a) MiFID Org Reg.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
3. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?			
Compliance report disclosures The compliance report must include: 1. Material non-compliance matters identified. Exchange Act rule 15Fk-	**Compliance report disclosures** The compliance report submitted to senior management must address the implementation and effectiveness of the overall control environment for		**<u>Comparability of outcomes and specific requirements</u>**: The EU compliance report disclosure requirements provide a comparable regulatory outcome to the SEC compliance report disclosure requirements. In

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
3. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?			
1(c)(2)(i)(D) [17 CFR 240.15Fk-1(c)(2)(i)(D)];[66] and 2. Compliance resources and deficiencies. Exchange Act rule 15Fk-1(c)(2)(i)(E) [17 CFR 240.15Fk-1(c)(2)(i)(E)].[67]	investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. Article 22(2) MiFID Org Reg. This compliance report (and any ad hoc reports, where necessary) must address any significant risk of failure by the Investment Firm to comply with its obligations under MiFID. Article 22(3)(c) MiFID Org Reg. The compliance function must have the necessary authority, resources, expertise and access to all relevant information. Article 22(3)(a) MiFID Org Reg.		particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and Exchange Act rule 15Fk-1(c)(2) and MiFID are consistent as to the contents of compliance reports in that each requires a description of a firm's compliance procedures, assessment of such procedures, implementation of changes, areas of improvement, material non-compliance and deficiencies. *See* Article 22(2) MiFID Org Reg., which requires the compliance report submitted to senior management to address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. As this report must address compliance with all obligations under MiFID, it must include identification of risks that

[66] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[67] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
3. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?			
			may arise from any lack of resources or other deficiencies in the compliance department.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
A compliance report must accompany each appropriate financial report that the firm is required to furnish to the SEC, and include a certification that, under penalty of law, the report is accurate and complete. Exchange Act section 15F(k)(3)(B) [15 U.S.C. 78o-10(k)(3)(B)].[68] **Internal review of compliance reports** Compliance reports must be submitted to the firm's directors and audit committee	**Internal review of compliance reports** Any compliance-related monitoring and reporting is subject to internal review by various functions or senior management within the Investment Firm. This includes the following requirements: • The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's		**<u>Comparability of outcomes and specific requirements</u>**: The EU compliance report requirements provide a comparable regulatory outcome to the SEC compliance report requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(B) and Exchange Act rule 15Fk-1(c)(2) and MiFID are consistent as compliance reports are subject to internal review requirements. *See* Article 25 MiFID Org Reg., which requires that an

[68] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
(or equivalent bodies) and senior officer prior to submission to the SEC. Exchange Act rule 15Fk-1(c)(2)(ii)(B) [17 CFR 240.15Fk-1(c)(2)(ii)(B)].[69] Compliance reports and obligations must be discussed in one or more meetings conducted by the senior officer with the CCO in the preceding twelve months. Exchange Act rule 15Fk-1(c)(2)(ii)(C) [17 CFR 240.15Fk-1(c)(2)(ii)(C)].[70] Compliance reports must include a certification by the CCO or senior officer that, "to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all	compliance with its obligations under MiFID. Article 22 MiFID Org Reg. The Investment Firm's audit function, where one is required, must be separate and independent from the other functions and responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy of the Investment Firm's systems and internal control mechanisms. Article 24 MiFID Org Reg. • Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under MiFID,		Investment Firm's senior management receives on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 (compliance, risk management and internal audit) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. We note that, although the EU regulatory framework does not require certification of a compliance report, Article 21 MiFID Org Reg. requires Investment Firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their

[69] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[70] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
material respects." Exchange Act rule 15Fk-1(c)(2)(ii)(D) [17 CFR 240.15Fk-1(c)(2)(ii)(A)].[71]	and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. Investment Firms must (i) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and (ii) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Article 21 MiFID Org Reg. The compliance function must have, among other things, the necessary expertise in order to be able to discharge its responsibilities properly and		relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. The CFTC Entity-Level Guidance specifically addresses this, finding that substituted compliance is generally applicable despite no requirement to certify compliance reports so long as firms certify and furnish the certified annual CCO report to the CFTC. CFTC Entity-Level Guidance at 78928.

[71] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
4. Are compliance reports subject to certification and internal review requirements? If so, how?			
	independently. Article 22(3) MiFID Org Reg. Regulators must take into account compliance with these requirements during an Investment Firm's authorisation process and as part of their ongoing supervision of the Investment Firm. In some member states there is an obligation for the recipient of the compliance report to be expressly identified.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
5. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?			
Compliance reports must be submitted to the SEC within thirty days[72] following the deadline for filing the firm's	There is no requirement to report to a regulator.	French transposition of Article 69(2) MiFID is the following:	**<u>Comparability of outcomes</u>** We note that, although the EU regulatory framework does not

[72] Subject to extensions pursuant to Exchange Act rule 15Fk1(c)(2)(iii) [17 CFR 240.15Fk-1(c)(2)(iii)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
5. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?			
annual financial report. Exchange Act rule 15Fk-1(c)(2)(ii)(A) [17 CFR 240.15Fk-1(c)(2)(ii)(A)].[73] Specific rules address amendment of reports that have material errors or omissions, and incorporation by reference. Exchange Act rule 15Fk-1(c)(2)(iv), (v) [17 CFR 240.15Fk-1(c)(2)(iv), (v)].[74]	Regulators have very broad information-gathering powers to (among other actions): have access to any document or other data in any form which the regulator considers could be relevant for the performance of its duties and receive or take a copy of it; to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information; to carry out on-site inspections or investigations; and to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an Investment Firm, a Credit Institution, or any other entity regulated by MiFID or MiFIR. Article 69(2) MiFID.	Article L. 621-8-4 of the MFC provides that: "The Autorité des marchés financiers may get access from the persons mentioned in article L. 621-9 II (regulated entities) to any document or other data in any form, which are relevant for the performance of its duties." Article L. 621-9, I of the MFC provides that : "In order to fulfil its mission, the Autorité des marchés financiers can carry out on-site inspections or investigations. […]" Article L. 621-10 of the MFC provides that: "For the purposes of an investigation or on-site inspection, investigators and inspectors may get access to any document in any form. […]"	require submission of a compliance report to a regulator, regulators have very broad information-gathering powers to require the provision of such information by Investment Firms when they consider this to be necessary. The CFTC Entity-Level Guidance specifically addresses this, finding that substituted compliance is generally applicable despite no requirement to provide CCO reports so long as firms certify and furnish the annual CCO report to the CFTC. CFTC Entity-Level Guidance at 78928.

[73] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[74] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports			
5. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?			
	Regulators must have all information gathering and investigatory powers that are necessary for the exercise of their functions. Article 65 CRD IV.		

March 12, 2020

ALLEN & OVERY

Comparability Assessment of Certain Securities and Exchange Commission and EU Requirements Applicable to Security-Based Swap Dealers pursuant to SEC Staff Guidance on Substituted Compliance Applications

4. Category: Counterparty Protection Requirements

a. Executive Summary

The counterparty protection requirements are intended to bring professional conduct to, and increase transparency in, the security-based swap market and to require registered entities to treat parties to these transactions fairly. The SEC Guidance notes that the counterparty protection requirements set forth below generally only apply to a non-US firm's activities involving US counterparties (unless the transaction is arranged, negotiated or executed in the United States). The primary focus of the cross-border application of the counterparty protection requirements is on protecting counterparties by requiring security-based swap dealers to, among other things, provide certain disclosures to counterparties, [and] adhere to certain standards of business conduct".[1]

The comparability analysis will consider whether the foreign jurisdiction addresses the Exchange Act section 15F counterparty protection requirements of fair and balanced communications; disclosure of certain risks, characteristics, incentives and conflicts; and disclosure of daily marks. Specifically, the SEC will consider whether "the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, the counterparty protections under the requirements of the foreign financial regulatory system, . . . and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[2]

b. Subcategory: Fair and Balanced Communications[3]

The counterparty protection requirements in part address the need to promote complete and honest communications as part of firms' security-based swap businesses to promote investor protection and prohibit firms "from overstating the benefits or understating the risks to inappropriately influence counterparties' investment decisions." *See* Business Conduct Adopting Release, 81 FR at 30001-02.[4]

[1] Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968, 31010 (May 23, 2013), *available at* https://www.sec.gov/rules/proposed/2013/34-69490.pdf.
[2] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[3] Mandated by Exchange Act Section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[4] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
The SEC must adopt rules providing that firms communicate with counterparties "in a fair and balanced manner based on principles of fair dealing and good faith." Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)];[5] and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[6]	Member States shall require that when providing investment services or, where appropriate, ancillary services to clients, an Investment Firm must act honestly, fairly and professionally in accordance with the best interests of its clients. Article 24(1) MiFID.All information, including marketing communications, addressed by an Investment Firm to clients or potential clients (retail clients, professional clients and MiFID ECPs) must be fair, clear and not misleading. Marketing communications must be clearly identifiable as such. Articles 24(3) and 30(1) MiFID. All information addressed or disseminated to retail or professional clients (but not ECPs) or potential clients must satisfy certain conditions, including:	French transposition of Article 24(1) MiFID is the following: Article L533-11 of the MFC provides that "When providing investment services and ancillary services to clients, investment service providers other than asset management companies act honestly, fairly and professionally, in accordance with the best interests of its clients". French transposition of Article 24(3) is the following: Article L.533-12 I of the MFC provides that "All information, including marketing communications, addressed by investment service provider other than an asset management company to clients or potential clients shall be fair, clear and not misleading. Marketing	**<u>Comparability of outcomes</u>**: The EU's prohibitions on engaging in misleading communications provide a comparable regulatory outcome to the SEC prohibitions against misleading communications. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(C) and MiFID are consistent in that each requires that Investment Firms communicate with counterparties truthfully and fairly and prohibit misleading information or material omissions, in order to protect market participants and promote information exchange and the integrity of the market.

[5] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[6] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
	1. the information includes the name of the Investment Firm; 2. the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument; 3. the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent; 4. the information is sufficient for, and	communications shall be clearly identifiable as such." French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "investment service providers other than asset management companies authorised to provide the services mentioned in 1, 2 or 3 of Article L.321-1[7], may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles L.533-11 to L.533-14 [which includes Article L.533-12 I on the provisions of fair, clear and not misleading information to clients] […]in respect of those transactions or in respect of any ancillary service directly relating to those transactions.	

[7] The services refer to the service of execution of orders on behalf of clients, dealing on own account and/or the reception and transmission of orders

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
	presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; 5. the information does not disguise, diminish or obscure important items, statements or warnings; 6. the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has accepted to receive information in more than one language; and 7. the information is up-to-date and relevant to the means of communication used.	In their relationship with eligible counterparties, investment service providers act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
	Article 44(2) MiFID Org Reg.; Article 30 MiFID. Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of such ECP and of its business. Article 30 MiFID. Additional requirements apply where the information provides comparisons between services or financial instruments, where indications are provided regarding past (including simulated) or future performance of a financial instrument, financial index or an investment service, or where the information refers to a particular tax treatment. Article 44(3)-(7) MiFID Org Reg. The dissemination of information, by any means, that		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
1. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?			
	gives or is likely to give false or misleading signals in relation to the supply of, demand for or price of certain financial instruments, or secures or is likely to secure the price of certain financial instruments at an abnormal or artificial level, in each case where the person knew or ought to have known that the information was false or misleading, is prohibited (in addition to certain trading conduct which would also constitute market manipulation). Article 12(1)(c) MAR.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
2. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?			
Communications with counterparties must "provide a sound basis for evaluating the facts" with regard to particular security-based swaps or trading	Investment Firms must disclose a significant range of information 'in good time' to clients before the provision of any investment services, including in relation to a	French transposition of Article 24(4) MiFID is the following: Article L.533-12 II of the MFC provides that " Investment service	**<u>Comparability of outcomes</u>**: The EU's requirements that Investment Firms provide counterparties with information

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
2. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?			
strategies. Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[8]	general description of the nature and risks of financial instruments, the nature of the specific type of financial instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, all costs and related charges and the risks particular to that specific type of financial instrument in sufficient detail to enable clients to take investment decisions on an informed basis. Article 24(4) MiFID II and Articles 46 and 48(1) MiFID Org Reg.The content, timing and manner of disclosure of such information is highly prescriptive under MiFID and the supporting legislation with a view to promoting investor protection, including by facilitating informed decision-making. The ESMA Q&As on MiFID investor protection topics further confirm that disclosures to clients are	providers other than asset management companies shall, in good time, provide their clients and prospective clients with appropriate information with regard to the investment service provider other than an asset management company and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges." 	sufficient to make informed decisions provide a comparable regulatory outcome to the SEC counterparty communications requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and MiFID are consistent in that each requires Investment Firms to provide counterparties with sufficient information in order to protect market participants and facilitate sound decision-making about security-based swap transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
2. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?			
	intended to enable clients to make informed decisions. A detailed description of some of the specific requirements aimed at providing clients with information that is sufficient to promote their informed decision-making is set out in response to the questions set forth in section 4.c below.		**<u>Comparability of specific requirements</u>**: Both regimes require firms to provide information about the underlying securities-based swaps and transaction strategies, but the EU regime contains more detailed requirements on the manner and content of such communications.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
Communications with counterparties "may not imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast". Exchange Act rule	MiFID imposes disclosure requirements in relation to both past and future performance statements. **Past performance statements** Where information provided to a professional client or a retail client (but not an ECP) contains	**Past performance statements** French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "investment service providers other than asset management companies authorised to provide the services	**<u>Comparability of outcomes</u>**: The EU's requirements that Investment Firms qualify statements regarding past and future performance provide a comparable regulatory outcome to the SEC requirements on communications regarding past

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
15Fh-3(g) [17 CFR 240.15Fh-3(g)].[9]	an indication of past performance of a financial instrument, a financial index or an investment service, Investment Firms must ensure that the following conditions are satisfied: 1. that the indication is not the most prominent feature of the communication; 2. the information must include appropriate performance information which covers the preceding five years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has	mentioned in 1, 2 or 3 of Article L.321-1[10], may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles L.533-11 to L.533-14 [which includes Article L.533-12 I on the provisions of fair, clear and not misleading information to clients] […] in respect of those transactions or in respect of any ancillary service directly relating to those transactions." **Future performance statements** French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "investment service providers other than asset management companies authorised to provide the services mentioned in 1, 2 or 3 of Article	performance and future performance predictions. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and MiFID are consistent in that each prohibit Investment Firms from making unwarranted inferences about future performances based on past performances, or about future performances, in order to protect market participants from misleading information and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[9] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

[10] The services refer to the service of execution of orders on behalf of clients, dealing on own account and/or the reception and transmission of orders

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	been provided where less than five years, or such longer period as the Investment Firm may decide, and in every case that performance information is based on complete twelve-month periods; 3. the reference period and the source of information is clearly stated; 4. the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results; 5. where the indication relies on figures denominated in a currency other than that	L.321-1[11], may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles L.533-11 to L.533-14 [which includes Article L.533-12 I on the provisions of fair, clear and not misleading information to clients] […] in respect of those transactions or in respect of any ancillary service directly relating to those transactions. In their relationship with eligible counterparties, investment service providers act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business."	requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both regimes regulate how firms may communicate with respect to past and future performances, but the EU regime contains more detailed requirements on the manner and content of such communications.

[11] The services refer to the service of execution of orders on behalf of clients, dealing on own account and/or the reception and transmission of orders

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	of the member state in which the retail client or potential retail client is resident, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations; 6. where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed. Article 44(4) MiFID Org Reg. and Article 30 MiFID. Broadly similar requirements apply in respect of information referring to or including simulated past performance. Article 44(5) MiFID Org Reg. **Future performance statements**		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	Where information provided to a professional client or retail client (but not ECPs) contains information on future performance, Investment Firms must ensure that the following conditions are satisfied: 1. the information is not based on or refers to simulated past performance; 2. the information is based on reasonable assumptions supported by objective data; 3. where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed; 4. the information is based on performance scenarios in different		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
3. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?			
	market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis; and 5. the information contains a prominent warning that such forecasts are not a reliable indicator of future performance. Article 44(6) MiFID Org Reg. and Article 30 MiFID. Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. Article 30 MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
Risk disclosure Communications with counterparties that refer to potential opportunities or advantages presented by a security-based swap must include "an equally detailed statement of the corresponding risks." Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[12] Firm "communications with counterparties will be subject to the specific antifraud provisions added to the Exchange Act under Title VII of the Dodd-Frank Act, as well as general antifraud provisions under the federal securities laws." Substituted compliance is not available in connection with those antifraud provisions. *See* Business Conduct	The European legislation aimed at promoting investor protection, including with regards to informed investment decision-making, generally contains broad and highly specific disclosure requirements on Investment Firms, requiring that information provided to clients or potential clients is presented in a contextual and balanced manner, containing appropriate disclaimers or warnings. Examples of such instances are set out below. **Risks disclosure** Investment Firms must provide disclosure that meets prescribed conditions in relation to risks associated with the financial instruments in question. The response to the question set	French transposition of Article 24(3) MiFID is the following: Article L.533-12 I of the MFC provides that "All information, including marketing communications, addressed by investment service provider other than an asset management company to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such." French transposition of Article 24(2) MiFID is the following: Article L.533-24 of the MFC provides that " "Investment service providers other than asset management companies which manufacture financial instruments for sale to clients:	**<u>Comparability of outcomes</u>**: The EU's disclaimer requirements provide a comparable regulatory outcome to the SEC disclaimer requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and MiFID are consistent in that each prohibit Investment Firms from making fraudulent claims and require disclosure of relevant risks, in order to protect market participants and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[12] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
Adopting Release, 81 FR at 30001.[13]	forth in section 4.c.1 below describes these conditions in further detail. **Clear and prominent statements** There are instances where MiFID disclosure provisions specifically require that clear and prominent statements are made to the client. As part of an Investment Firm's obligation to provide fair, clear and not misleading information to clients, Investment Firms are required to ensure that, where the indication contains an indication of past performance of a financial instrument, a financial index or an investment service, a warning is included to state that the return may increase or decrease as a result of currency fluctuations where the indication relies on figures denominated in	1° Shall maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients. The product approval process shall specify an identified target market of end clients within the relevant category of clients for each financial instrument and shall ensure that all relevant risks to such identified target market are assessed; 2° Shall ensure that financial instruments are designed in accordance with the product approval process mentioned in 1° and that the strategy for distribution of the financial instruments is compatible with the identified target market; […]	requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both regimes require firms to provide information about the underlying securities and transaction strategies, but the EU regime contains more detailed requirements on the manner and content of such communications.

[13] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	a currency other than that of a member state in which the retail client is resident. Article 44(4)(e) MiFID Org Reg. Where the information refers to a particular tax treatment, it must prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future. Article 24(3) MiFID and Articles 44(4)(e) and 44(7) MiFID Org Reg. Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, Investment Firms must ensure that: (i) the comparison is meaningful and presented in a fair and balanced way, (ii) the sources of the information used for the comparison are specified, and (iii) the key facts and assumptions used to make the	4° Shall take reasonable steps to ensure that the financial instrument is distributed to the identified target market." French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "Investment service providers other than asset management companies authorised to provide the services mentioned in 1, 2 or 3 of Article L.321-1[14], may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under […] Article L.533-24 […]in respect of those transactions or in respect of any ancillary service directly relating to those transactions."	

[14] The services refer to the service of execution of orders on behalf of clients, dealing on own account and/or the reception and transmission of orders

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	comparison are included. Article 44(3) MiFID Org Reg. The requirements of Articles 36 and 44 MiFID Org Reg. apply where the client is a professional client or retail client (but not an ECP). Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. Article 30 MiFID. **Financial promotions** National member state laws may also require the inclusion of regulatory disclaimers or legends in offering documentation or marketing communications in relation to matters including financial promotion restrictions.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	For example, research recommendations must contain a statement that they have not been prepared in accordance with legal requirements designed to promote the independence of investment research and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research (and if recommendations are not balanced an independent then they must be identified as marketing communications rather than research recommendations). Article 36(2) MiFID Org Reg. MAR also requires that investment recommendations or other information recommending or suggesting an investment strategy are set out in such a matter that (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	factual information; (b) all substantially material sources of information are clearly and prominently indicated; (c) all sources of information are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated; (d) all projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated; (e) the date and time when the production of the recommendation was completed is clearly and prominently indicated. Article 3 MAR Investment Recommendations Regulation. **Selling restrictions** MiFID imposes product governance requirements on Investment Firms that manufacture financial instruments for sale to clients.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	Investment Firms must ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments is compatible with the identified target market and Investment Firms must take reasonable steps to ensure that the financial instrument is distributed to the identified target market. Article 24(2) MiFID. This requirement does not apply where the client is an ECP (for purposes of MiFID). Article 30 MiFID.As part of their compliance arrangements regarding such product governance requirements, Investment Firms provide disclaimers and include selling restrictions in their offering documentation. Industry bodies such as the International Capital Markets Association and the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?			
	Association for Financial Markets in Europe have assisted with the standardization of such disclaimers.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?			
Firms must communicate with all counterparties in a fair and balanced manner based on principles of fair dealing and good faith. Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)];[15] and Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)].[16]	MiFID information requirements discussed above in response to the questions set forth in sections 4.b.1-4.b.4 generally apply to all types of clients except, where noted, to ECPs (for purposes of MiFID). Where the requirements do not apply where the client is an ECP (for purposes of MiFID), Investment Firms are still required, in their relationship with ECPs, to act honestly, fairly and professionally and	French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "in their relationship with eligible counterparties, investment service providers act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of	**<u>Comparability of outcomes</u>**: The EU's requirements related to communications provide a comparable regulatory outcome to the SEC disclaimer requirements. In particular, the regulatory outcomes pursued under Exchange Act sections 15Fh-3(g) and 15F(h)(3)(C) and MiFID are consistent in that both regimes generally require disclaimers be made to all counterparties to promote

[15] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[16] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?			
	communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. Article 30 MiFID.The MAR disclosure requirements apply irrespective of the type of client in question, as their applicability is not driven by the type of client to whom the disclosure is made.	the eligible counterparty and of its business."	honest communications as part of firms' security-based swap businesses. Both regimes aim to protect all market participants and facilitate sound decision-making about securities-based swap transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under the EU regime are comparable to those under the US regime. Whilst the EU regime stipulates that certain MiFID disclosure requirements do not apply where the client is an ECP, Article 30 MiFID still requires Investment Firms, in their relationship with

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
b. Subcategory: Fair and Balanced Communications			
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?			
			ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business.

c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest[17]

The objective of the required disclosure of material risks and characteristics is to provide information to a counterparty to help them assess whether, and under what terms, they want to enter into the transaction.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
The SEC must adopt rules providing that firms must disclose to counterparties – other than counterparties that are dealers, participants, swap dealers or major swap participants – information	Investment Firms must provide appropriate information in good time to clients/potential clients with regards to matters including the financial instruments and proposed investment strategies, execution venues and all costs	French transposition of Article 24(4) MiFID II is the following: Article L.533-12 II of the MFC provides that " Investment service providers other than asset management companies shall, in	**<u>Comparability of outcomes</u>**: The EU's financial instrument disclosure requirements provide a comparable regulatory outcome to the SEC financial instrument disclosure

[17] Mandated by Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o10(h)(3)(B)(i), (ii)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(b) [17 CFR 240.15Fh-3(b)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
regarding the material risks and characteristics[18] of the security-based swap, and any material incentives[19] or conflicts of interest that the firm may have in connection with the security-based swap. Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[20]	and related charges. Article 24(4) MiFID and Articles 46-50 MiFID Org Reg.The information on financial instruments and proposed investment strategies must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market. Article 24(4)(b) MiFID. Investment Firms must provide clients/potential clients in good time before the provision of investment services with a general description of the nature	good time, provide their clients and prospective clients with appropriate information with regard to the investment service provider other than an asset management company and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges." French transposition of Article 24(4)(b) MiFID is the following: Article D.533-15 of the MFC provides that information provided to clients are the following : […] 2° the information on financial instruments and proposed investment strategies include appropriate guidance on	requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B) and MiFID are consistent in that both regulatory regimes require Investment Firms to provide counterparties with details of financial instruments, in order to protect market participants and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[18] "Material risks and characteristics" may include: (i) market, credit, liquidity, foreign currency, legal, operational, and other applicable risks; and (ii) material economic terms of the security-based swap, terms relating to the operation of the security-based swap, and the rights and obligations of the parties during the term of the security-based swap. Exchange Act rule 15Fh3(b)(1) [17 CFR 240.15Fh-3(b)(1)].

[19] The term "incentives" does not refer "to any profit or return that the [entity] would expect to earn from the security-based swap itself, or from any related hedging or trading activities . . . but rather to any other financial arrangements pursuant to which [the entity] may have an incentive to encourage the counterparty to enter into the transaction." *See* Business Conduct Adopting Release, 81 FR at 29986.

[20] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	and risks of financial instruments, taking into account the client's classification (e.g., as an ECP (for purposes of MiFID), professional or retail client). The description must explain: 1. the nature of the specific type of instrument concerned, 2. the functioning and performance of the instrument in different market conditions (including positive and negative conditions), and 3. risks particular to the specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis. Article 48(1) MiFID Org Reg.	and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with Article L.533-24."	requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both the EU regime and the US regime require the disclosure of risks and other features of the financial instruments involved. Requirements under Articles 24(3), (4) MiFID and Article 48 MiFID Org Reg. are comparable to those under Exchange Act section 15F(h)(3)(B)(i), (ii); the EU requirements are, in some respects, more detailed on how Investment Firms must describe the risks and other features of financial instruments. Please also see below the comparability of outcomes and specific requirements in relation to the question set forth in section 4.c.2 with regards to

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	The description of risks must include the following: 1. the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in; 2. the volatility of the price of such instruments and any limitations on the available market for such instruments; 3. information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial		conflicts of interest and revenues from third-parties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instruments; 4. the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments; and		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	5. any margin requirements or similar obligations, applicable to instruments of that type. Article 48(2) MiFID Org Reg. Where financial instruments incorporate a guarantee or capital protection, the Investment Firm must provide a client/potential client with information about the scope and nature of such guarantee or capital protection. Article 48(5) MiFID Org Reg. **Conflicts of interest** Please see the response below to the question set forth in 4.c.2 with regards to conflicts of interest requirements. **Incentives. Revenues from third-parties**		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
1. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?			
	Please see the response below to the question set forth in 4.c.2 with regards to incentives and revenues from third-parties requirements.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			

Comparability of outcomes:

The EU's conflicts of interest disclosure requirements provide a comparable regulatory outcome to the SEC conflicts of interest disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B) and MiFID and MAR are consistent in that both regulatory regimes require disclosure of conflicts of interest and revenues from third-parties, in order to protect market participants and facilitate sound decision-making about securities-based swaps transactions.

While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

The specific requirements under the EU regime and the US regime are comparable in the following ways:

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
Conflicts of interest: The SEC must adopt rules providing that firms must disclose to counterparties – other than counterparties that are dealers, participants, swap dealers or major swap participants – information regarding the material risks and characteristics of the security-based swap, and any material incentives or conflicts of interest that the firm may have in connection with the security-based swap. Exchange Act sections 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[21]	**Conflicts of interest**: Investment Firms are required to take all appropriate steps to identify and to prevent or manage conflicts of interests between themselves, or any person directly or indirectly linked to them by control and their clients, or between one client and another that arise in the course of providing investment services, including those caused by the receipt of inducements from third-parties. Article 23(1) MiFID. An Investment Firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of the clients, for example by establishing, implementing and maintaining an effective conflicts of interest	**Conflicts of interest**: French transposition of Article 23(1) MiFID and Article 16(3) MiFID are the following : Article L.533-10 II 3° of the MFC provides that "Investment service providers other than asset management companies […] Shall maintain and operate effective organisational and administrative arrangements, in order to take all reasonable measures to prevent conflicts of interests from adversely affecting the interest of their clients. For that purpose, they shall take all reasonable steps to identify and to prevent or manage conflicts of interest. These conflicts of interest are those arising between, on the one hand, themselves, persons under their authority or acting on their behalf or any person directly or indirectly linked to them by	**Conflicts of interest**: Requirements on disclosure of conflicts of interest to clients or potential clients under Article 23(2)-(3) MiFID and Article 20(1) MAR are comparable to those under Exchange Act sections 15F(h)(3)(B)(i), (ii). In addition, Article 23(1) MiFID and Article 34 MiFID Org Reg. focus on prevention and management of conflicts of interest, by requiring that Investment Firms take measures to detect and prevent conflict of interest beforehand, which the US regime does not require. Notably, the CFTC Substituted Compliance Decision on Entity-Level Requirements found that substituted compliance for the Section 23.605(e) requirements regarding disclosure of conflicts of interest to clients or potential

[21] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	policy in accordance with specific requirements. Article 16(3) MiFID and Article 34 MiFID Org Reg.Where the organisational or administrative arrangements made by the Investment Firm are not sufficient to ensure with reasonable confidence that risks of damage to client interests will be prevented, the Investment Firm must clearly disclose to the client the general nature and/or sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf. The disclosure must include sufficient detail, taking into account the nature of the client, to enable the client to take an informed decision with respect to the service in the context of which the conflict of interest arises. Article 23(2)-(3) MiFID.Such disclosure to clients is a measure of last resort that will only be used where the effective organisational and administrative	control and, on the other hand, their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof, including those caused by the receipt of inducements from third parties or by the investment firm's own remuneration and other incentive structures." French transposition of Article 23 (2) –(3) MiFID is the following: Article L.533-10 II 3° of the MFC provides that "Where these steps are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment service provider shall clearly disclose to the client, before undertaking business on its behalf. the general nature and source of conflicts of interest and the steps taken to mitigate those risks. This information is provided	clients was appropriate via the general disclosure requirements of the MiFID standards by requiring that each dealer disclose to counterparties any material incentives or conflicts of interest regarding the decision of a counterparty to execute a derivative on a swap execution facility or designated contract maker, or to clear a derivative through a derivatives clearing organization. CFTC Substituted Compliance Decision on Entity-Level Requirements at 78933.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	arrangements made by the Investment Firm are not sufficient. Article 34(4) MiFID Org Reg. MAR also requires that persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. Article 20(1) MAR. Any disclosure of conflicts of interest must meet the prescribed requirements set out in Articles 5 and 6 MAR Investment Recommendations Regulation.	in a durable medium and include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises."	
Revenues from third-parties:	**Revenues from third-parties**:	**Revenues from third-parties**:	**Revenue from third-parties**:

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
"Material incentives or conflicts of interest" may encompass "any compensation or other incentives from any source other than the counterparty in connection with the security-based swap to be entered into with the counterparty." Exchange Act rule 15Fh-3(b)(2) [17 CFR 240.15Fh-3(b)(2)].[22]	Investment Firms are regarded as not fulfilling their obligation to act in the client's best interest and to manage conflicts of interest where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service, to or by any party except the client, except where the payment or benefit is designed to enhance the quality of the service and does not impair compliance with the Investment Firm's duty to act honestly, fairly and professionally in accordance with the best interest of the client. Articles 23 and 24(9) MiFID.The existence, nature and amount (or method of calculating that amount where the amount cannot be ascertained) of such payment or benefit must be clearly disclosed to the client, in a manner that is	French transposition of Article 24(9) MiFID is the following : Article L.533-12-4 of the MFC provides that "Investment service providers other than asset management companies shall not pay or be paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client, unless the payment or benefit is designed to enhance the quality of the service and does not impair compliance with the provider's duty to act honestly, fairly and professionally in accordance with the best interest of the client. "The client is clearly informed of the existence, nature and amount of the payment or benefit	Requirements on disclosure of revenues and incentives from third-parties under Article 24(9) MiFID and Article 11(5) MiFID Delegated Directive are comparable to those under Exchange Act rule 15Fh-3(b)(2), but the limitations on permissible revenues from third-parties are more onerous under the EU regime.

[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	comprehensive, accurate and understandable, prior to the provision of the relevant investment service. The Investment Firm must also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment service, where applicable. Article 24(9) MiFID. Pursuant to this obligation, Investment Firms must disclose to a professional client or a retail client (but not to MiFID ECPs) the following information: 1. prior to the provision of the relevant investment service, the Investment Firm must disclose to the client information on the payment or benefit concerned. Minor non-monetary benefits may be described in a generic	referred to in the first subparagraph, or, where the amount cannot be ascertained, of the method of calculating that amount, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. Where appropriate, investment service providers other than asset management companies shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service. The information referred to in this subparagraph may be provided in a standardised form under the conditions set out in the General Regulation of the Autorité des marchés financiers.”	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	way. Other non-monetary benefits received or paid by the Investment Firm in connection with the service provided to a client must be priced and disclosed separately; 2. where an Investment Firm is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the Investment Firm must also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and	French transposition of Article 30 MiFID is the following: Article L.533-20 of the MFC provides that "investment service providers other than asset management companies authorised to provide the services mentioned in 1, 2 or 3 of Article L.321-1[23], may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles L.533-11 to L.533-14 [which includes Article L.533-12-4 on client information related to incentives received by the investment service provider] […]in respect of those transactions or in respect of any ancillary service directly relating to those transactions. In their relationship with eligible counterparties, investment service providers act honestly,	

[23] The services refer to the service of execution of orders on behalf of clients, dealing on own account and/or the reception and transmission of orders

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	3. at least once a year, as long as (ongoing) inducements are received by the Investment Firm in relation to the investment services provided to the relevant clients, the Investment Firm must inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way. Article 11(5) MiFID Delegated Directive and Article 30 MiFID. Investment Firms are required, in their relationship with MiFID ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into	fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business."	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
2. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?			
	account the nature of the ECP and of its business. Article 30 MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
3. What provisions govern the timing and manner of required disclosure?			
Disclosures must be made at a "reasonably sufficient time prior" to entering into the security-based swap, and in a "manner reasonably designed to allow the counterparty to assess" risks, characteristics, incentives and conflicts. However, the obligation does not apply unless "the identity of the counterparty is known" to the firm "at a reasonably sufficient time prior to execution" to permit the disclosure. Exchange Act rule	**Features, risks, terms of financial instruments** Investment Firms must provide clients/potential clients in good time before the provision of investment services with a general description of the nature and risks of financial instruments. Article 48(1) MiFID Org Reg. In assessing what constitutes the provision of information 'in good time', an Investment Firm should take into account, having regard to the urgency of the situation, the client's need for sufficient time to read and understand the		**<u>Comparability of outcomes</u>**: The EU's material risk disclosure requirements provide a comparable regulatory outcome to the SEC material risk disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(b) and MiFID are consistent in that both regulatory regimes require timely disclosure for counterparties to assess information and make decisions, in order to protect market participants and facilitate sound decision-making about

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
3. What provisions govern the timing and manner of required disclosure?			
15Fh-3(b) [17 CFR 240.15Fh-3(b)].[24]	information before taking an investment decision. A client is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with than a client considering a simpler or more familiar product or service, or where the client has relevant prior experience. Recital 83 MiFID. **Incentives. Revenues from third-parties** The disclosure must be made, subject to the conditions outlined immediately above, prior to the provision of service to the client. Yearly disclosure may also be required where ongoing incentives are received by the Investment Firm. Please see the responses set out above to the questions set forth		securities-based swap transactions. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under Recital 83 MiFID are comparable to the requirements under Exchange Act rule 15Fh-3(b), in that both aim to provide counterparties with sufficient time and information (including the risks and other features of the financial instruments involved and conflict of interest) to make decisions.

[24] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
3. What provisions govern the timing and manner of required disclosure?			
	in sections 4.c.1 and 4.c.2 for an outline on the manner and content of disclosure required in each case.		The EU regime also lays out in detail factors that may affect the sufficiency of time and information provided to counterparties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
Firm duties to disclose material risks and characteristics, and material incentives and conflicts of interest do not apply when the counterparty is a dealer, participant, swap dealer or major swap participant. Exchange Act sections 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[25]	Except where noted in response to the questions set forth in sections 4.b.1, 4.b.3, 4.b.4. 4.b.5, 4.c.1 and 4.c.2 above in respect of ECPs (for purposes of MiFID), the disclosure requirements described above apply irrespective of the type of counterparty.		**Comparability of outcomes**: The EU disclosure requirements provide for comparable outcomes as the SEC disclosure requirements. The disclosure requirements under both regimes generally apply in respect of all clients, except ECPs (for purposes of MiFID) in certain cases. This exception reflects the common regulatory focus of protecting less sophisticated investors.

[25] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

d. Subcategory: Daily Mark Disclosure[26]

Market participants need access to daily mark information to effectively understand and manage their security-based swap positions. The SEC rejected the suggestion that certain counterparties have the right to opt out of the receipt of daily mark disclosures. Business Conduct Adopting Release, 81 FR at 29990-91.[27]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
Disclosure of Daily Mark Information The SEC must adopt rules providing that firms must disclose daily mark information to counterparties that are not certain types of dealers and participants. For cleared security-based swaps, this would encompass receipt of daily mark information from the clearing organization upon request of the counterparty. For uncleared security-based swaps, this would encompass receipt of the daily mark from the firm. Exchange Act	**Calculation of daily mark information** Whilst there is no strict regulatory requirement for parties to provide their counterparties with daily mark information as a matter of course, we note the following requirements relevant to the calculation of the daily mark information. **Mark-to-market**: FCs and NFC+s are required to mark the value of outstanding uncleared OTC derivative contracts to market on a daily basis. EMIR, Article 11(2). The mark-to-market value should		**<u>Comparability of outcomes</u>**: The EU's daily mark disclosure and calculation requirements are not strictly analogous to the SEC daily mark disclosure and calculation requirements. However, taken as a whole, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B)(iii) and EMIR are consistent in that the effect of both regulatory regimes is that firms are required to disclose daily mark information to counterparties, in order to allow counterparties to effectively understand and manage their transactions and portfolios.

[26] Mandated by Exchange Act section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.

[27] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)].[28]	be based on the end of day settlement price of the market (or CCP) from which the prices are taken as reference. If an end of day settlement price is not available, then the mark-to-market value should be based on the closing mid-price of the market concerned. For transactions cleared by a CCP, counterparties should use the CCP's valuation in accordance with EMIR RTS 2017/104, Article 3(5). ESMA Q&A on EMIR, TR Question 3b(a2). The mark-to-market value should represent the total value of the contract, rather than a daily change in the valuation of the contract. ESMA Q&A on EMIR, TR Question 3b(a3). **Mark-to-model**: where market conditions prevent marking-to-market, a reliable and prudent		While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under both the EU and the US regimes are comparable in the following way: • **Daily mark information**. The daily mark information to be disclosed under EMIR, Article 11(2) and RTS 2017/104, Annex, Table 1, Field 17 is comparable to the information required under

[28] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	marking-to-model must be used. Market conditions which may prevent marking-to-market include: (a) the market is inactive, or (b) the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed. RTS 149/2013, Article 16. Where a marking-to-model is used, the entity subject to the requirement must have a model that: (a) incorporates all factors that counterparties would consider in setting a price, including using as much as possible marking-to-market information; (b) is consistent with accepted economic methodologies for pricing financial instruments; (c) is calibrated and tested for validity using prices from any observable current market trades in the same financial instrument or based on any available		Exchange Act section 15F(h)(3)(B)(iii).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	observable market data; (d) is validated and monitored independently by another division than the division taking the risk; and (e) is duly documented and approved by the board of directors as frequently as necessary, following any material change and at least annually. This approval may be delegated to a committee. RTS 149/2013, Article 17. **Disclosure of daily mark information** Whilst there is no strict regulatory requirement for parties to provide their counterparties with daily mark information as a matter of course, we nonetheless note the following relevant obligations: **Portfolio reconciliation**: FCs and NFCs are required to have a written reconciliation process		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	which covers key trade terms, including, at least, the valuation attributed to each contract in accordance with Article 11(2) of EMIR. Reconciliation is only required to be performed on a daily basis (i.e. on each business day) for FCs and NFC+s where the counterparties have 500 or more OTC derivative contracts outstanding with each other. Further details are provided in response to the question set forth in section 1.f.1. EMIR, Article 11(1)(b) and RTS 149/2013, Article 13. NFC-s are not required to calculate the mark-to-market or mark-to-model valuation of their transactions and, as such, are able to rely on their counterparties' valuations or on other means for the purposes of portfolio reconciliation. ESMA Q&A on EMIR, OTC Question 14(e).		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	Dispute resolution: FCs and NFCs are also required to have in place detailed procedures and processes in relation to the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract (recording at least the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed), as further detailed in response to the question set forth in section 1.f.1. RTS 149/2013, Article 15(1). **Reporting**: Counterparties[29] and CCPs are required to report the valuation of a contract on a daily basis to a trade repository registered or recognised under EMIR. For contracts cleared by a CCP, the counterparty must report the valuation provided by the CCP in		

[29] Counterparties is understood in this context to mean EU FCs and EU NFCs. *See* TR Answer 15 in the ESMA EMIR Question and Answers Document for further details.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	accordance with Fields 17 to 20 in Table 1 of the Annex to RTS 148/2013. Field 17 relates to the value of the contract and specifically, the CCP's valuation for a cleared trade. RTS 2017/104, Article 3(5). For contracts not cleared by a CCP, the counterparty must report, in accordance with Fields 17 to 20 in Table 1 of the Annex to RTS 148/2013, the valuation performed in accordance with the methodology defined in International Financial Reporting Standard 13 Fair Value Measurement (as adopted by the Union and referred to in the Annex to Commission Regulation (EC) No 1126/2008). Field 17 relates to the value of the contract and specifically the mark-to-market valuation, or the mark-to-model valuation where applicable under Article 11(2) of		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
1. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?			
	EMIR. EMIR RTS 2017/104, Article 3(6). The reporting obligation currently applies to both parties to a transaction (i.e. two-sided reporting is required).[30]. Whilst parties are not required to agree on the valuation reported, the valuation would be discussed between the parties for reporting purposes. EMIR, Article 9 and ESMA Q&A on EMIR, TR Question 3b(e). NFC-s shall not be required to report collateral, mark-to-market, or mark-to-model valuations of the contracts. EMIR RTS 2017/104, Article 3(4).		

[30] Following changes made by EMIR Refit 2.1, from June 18, 2020 onwards, FCs must be solely responsible and legally liable for reporting the details of OTC derivative contracts they have concluded with NFC-s on behalf of both counterparties, as well as for ensuring the correctness of the reported details.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
2. To what extent do firms also have to disclose underlying assumptions, methodologies or information sources related to daily mark calculations?			
For uncleared security-based swaps, the firm must disclose "the midpoint between the bid and offer, or the calculated equivalent thereof, as of the close of business, unless the parties agree in writing otherwise to a different time, on each business day during the term of the security-based swap." That daily mark "may be based on market quotations for comparable security-based swaps, mathematical models or a combination thereof," and the firm must disclose its data sources and a description of the underlying methodology and assumptions, and promptly disclose any material changes to the data sources, methodology and assumptions during the term of the security-based swap. Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)].[31]	FCs and NFCs are required to have a written reconciliation process which covers key trade terms, including, at least, the valuation attributed to each contract in accordance with Article 11(2) of EMIR. FCs and NFCs are also required to have in place detailed procedures and processes in relation to the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract. Consequently, to the extent there is any divergence in the valuation attributed by each counterparty, parties may be requested to clarify their underlying methodologies, assumptions and information sources relating to daily mark calculations, as part of these portfolio reconciliation and		**<u>Comparability of outcomes</u>**: *See* response to the above question set forth in section 4.d.1. The regulatory outcome is comparable.

[31] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
2. To what extent do firms also have to disclose underlying assumptions, methodologies or information sources related to daily mark calculations?			
	dispute resolution processes. Further details are provided in the response to the question set forth in section 1.f.1. EMIR, Article 11(1)(b) and RTS 149/2013, Article 13.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
3. Can firms restrict recipients' use of this daily mark information, or charge recipients for the information?			
Firms must provide the daily mark to the counterparty without charge or restrictions on internal use. Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)].[32]	There are no specific regulatory requirements under EMIR or MiFID which relate to counterparties providing the daily mark information without charge or restrictions on internal use.		**Comparability of outcomes**: The EU requirements do not provide for comparable outcomes to the SEC requirements. Since the EU regime does not directly address this issue, firms may restrict the use of daily mark information or charge counterparties for such information.

[32] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
The disclosure requirement is lessened for cleared security-based swaps as firms must only disclose the daily mark received from the clearing agency upon their counterparty's request.	The required frequency of portfolio reconciliation (whereby parties compare daily mark valuations) varies depending on the status of the counterparty and the number of outstanding OTC derivative contracts between the specific counterparties. For FCs and NFC+s, portfolio reconciliation must be performed: 1. on each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other, 2. once per week when the counterparties have between fifty-one and 499 OTC derivative contracts outstanding with each other at any time during the week, and		**Comparability of outcomes**: The EU regime does not prescribe daily mark disclosure requirements such as those required under the SEC regime, but in practice valuation disclosure must occur to satisfy the EU portfolio reconciliation requirements. The EU portfolio reconciliation requirements impose less frequent reconciliation requirements as the number of outstanding OTC derivative contracts decreases among the parties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
d. Subcategory: Daily Mark Disclosure			
4. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?			
	3. once per quarter when the counterparties have fifty or less OTC derivative contracts outstanding with each other at any time during the quarter. For NFC-s, portfolio reconciliation must be performed: 1. once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter, or 2. once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other. RTS 149/2013, Article 13(3).		

e. Subcategory: Know Your Counterparty

Dealers must obtain essential counterparty information to promote effective compliance and risk management. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)][33] addresses this need.

Dealers must establish, maintain and enforce written policies and procedures "reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known . . . that are necessary for conducting business with such counterparty." Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[34] The rule further specifies that those "essential facts" are: facts required to "comply with applicable laws, regulations and rules"; facts required to implement the dealer's credit and operational risk management policies in connection with transactions involving the counterparty; and information regarding the authority of any person acting for the counterparty.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**EU Requirement and/or Policy Goal Summary**	**French provisions**	**Comparability Assessment**
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the facts required to "comply with applicable laws, regulations and rules" in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[35] This requirement "is consistent with basic principles of legal and regulatory compliance . . . ." *See*	Investment Firms must obtain information from clients in order to categorise them as retail clients, professional clients or, to the extent relevant for the services to be provided, ECPs (for purposes of MiFID). Among other matters, Investment Firms must determine whether the client is an authorised entity (e.g. another Investment Firm), data on their financial standing (balance sheet total, net turnover and capital resources), and the knowledge	French transposition of Annex II MiFID is the following: Article D. 533-4 of the MFC provides that" I. Investment service providers other than asset management companies establish and implement appropriate written internal policies and procedures to categorise clients. [...]	**Comparability of outcomes**: The EU's requirements to obtain counterparty information provide a comparable regulatory outcome to the SEC requirements to obtain counterparty information. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MLD4, MLD5 and MiFID are consistent in that both require Investment Firms to collect and

[33] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[34] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[35] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
Business Conduct Adopting Release, 81 FR at 29994.[36]	and experience of the client's staff in relation to the type of transaction to be conducted. Annex II MiFID. Investment Firms must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. Article 16(2) MiFID. In particular, among other things, Investment Firms must implement appropriate written internal policies and procedures to categorise clients. Annex II Part II.2. MiFID. Please refer to the response to the question set forth in section 4.f.1 below regarding the suitability and appropriateness information that an Investment	III. Professional clients or eligible counterparties are responsible for keeping the investment service provider informed about any change, which could affect their current categorisation. IV. Should the investment service provider become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action. [...]" French transposition of Article 16(2) MiFID is the following: Article L.533-10 II of the FMFC provides that "Investment service providers other than asset management companies […] 2° Shall establish adequate policies and procedures sufficient to ensure compliance, by persons	retain information about counterparties, in order to protect market participants and facilitate regulatory oversight and enforcement.

[36] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
	Firm must obtain from clients, where relevant. Credit Institutions and Investment Firms are generally subject to MLD4 and MLD5 requirements which impose customer identification obligations. Credit Institutions and Investment Firms must apply customer due diligence measures when (i) establishing a business relationship, (ii) conducting transactions that meet certain thresholds, and (iii) there are doubts about the veracity or adequacy of previously obtained customer identification data. Article 11 MLD4. Enhanced diligence is required in respect of a 'politically exposed person' and other high risk customers.	under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons." French transposition of Annex II Part II 2. MiFID is the following: Article D. 533-11 of the MFC provides that, in particular, among other things, "investment service providers other than asset management companies shall implement appropriate written internal policies and procedures to categorise clients".	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
1. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?			
	Ongoing monitoring requirements also apply. The MLD4 and MLD5 customer identification requirements are supplemented by Member State-specific requirements.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
2. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the facts required to implement the dealer's credit and operational risk management policies in connection with counterparty transactions.	CRR Firms must have robust governance arrangements, which include effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, and practices that are consistent with and promote sound and effective risk management. Article 74(1) CRD IV.		**<u>Comparability of outcomes</u>**: The EU's counterparty information collection requirements provide a comparable regulatory outcome to the SEC counterparty information collection requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MLD5

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
2. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?			
Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[37] This requirement "is consistent with basic principles of . . . operational and credit risk management." *See* Business Conduct Adopting Release, 81 FR at 29994.[38]	CRR Firms must have in place sound, effective and comprehensive strategies and processes to assess and maintain on an on-going basis the amounts, types and distribution of internal capital that they consider to be adequate to cover the nature and level of the risks to which they are exposed. Article 73 CRD IV. Regulators must ensure that CRR Firms implement policies and procedures to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events, including an articulation of what constitutes operational risk. Article 85(1) CRD IV. These CRD IV requirements will oblige CRR Firms to obtain		are consistent in that they require Investment Firms to collect and retain counterparty information pursuant to internal risk management policies in order to protect market participants and facilitate regulatory oversight and enforcement.

[37] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

[38] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
2. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?			
	information on their counterparties to enable an assessment of credit and operational risk to be made.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provision	Comparability Assessment
e. Subcategory: Know Your Counterparty			
3. To what extent are firms required to obtain information regarding the authority of persons acting for the counterparty?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the information regarding the authority of any person acting for the counterparty in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[39]	Investment Firms are required to establish a record that includes the document or documents agreed between the Investment Firm and a client that sets out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to a client, which will typically identify the person(s) that are authorised to act on behalf of the Investment	French transposition of Article 25(5) MiFID is the following: Article L.533-14 of the MFC provides that "Investment service providers other than asset management companies shall establish a record that includes the document or documents agreed between the investment firm and the client that set out the rights and obligations of the parties, and the other terms on	**<u>Comparability of outcomes</u>**: The EU's counterparty due diligence requirements provide a comparable regulatory outcome to the SEC counterparty due diligence requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MiFID are consistent in that they require Investment Firms to collect and retain information about the

[39] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provision	Comparability Assessment
e. Subcategory: Know Your Counterparty			
3. To what extent are firms required to obtain information regarding the authority of persons acting for the counterparty?			
	Firm's counterparty. Article 25(5) MiFID. When performing customer due diligence measures, Credit Institutions and Investment Firms must verify that any person purporting to act on behalf of the customer is authorized to do so and identify and verify the identity of that person. Article 13(1) MLD4.	which the investment firm will provide services to the client."	authority of persons acting on behalf of counterparties, in order to protect market participants from fraudulent acts and facilitate regulatory oversight and enforcement.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
4. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?			
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty. Exchange Act	Credit Institutions and Investment Firms must conduct customer due diligence regardless of the nature of the counterparty. The MiFID customer due diligence requirements noted in		**<u>Comparability of outcomes</u>**: The EU's counterparty due diligence requirements provide a comparable regulatory outcome to the SEC counterparty due diligence requirements. In particular, the regulatory

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
4. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?			
rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[40]	response to the questions set forth in sections 4.e.1 and 4.f.1 apply in respect of all types of clients. Customer due diligence can either be simplified or enhanced, depending on a range of factors, including: (i) the types of customers in question – for example, legal persons or arrangements that are personal asset-holding vehicles, companies that have nominee shareholders or shares in bearer form, businesses that are cash-intensive, etc. may be considered higher risk customers for whom enhanced due diligence may be required; and (ii) the customers' geographical location. Annexes II and III of MLD4.		outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MiFID are consistent in that they require Investment Firms to collect and retain information about all counterparties, in order to protect market participants and facilitate regulatory oversight and enforcement. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under the two regimes are analogous except as follows: Annexes II and

[40] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
e. Subcategory: Know Your Counterparty			
4. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?			
	Additional member state requirements and EU guidelines may also apply in this respect.		III of MLD4 allow different levels of due diligence on counterparties based on a number of risk-based factors, but the US regime does not explicitly allow or prohibit such practices.

f. Subcategory: Suitability

The counterparty protection requirements in part account for the need to guard against dealers making unsuitable recommendations.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
The SEC has noted that "the obligation to make only suitable recommendations is a core business conduct requirement for broker-dealers and other financial intermediaries." *See* Business Conduct Adopting Release, 81 FR at 29997;[41] Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)].[42]	MiFID suitability requirements are triggered where an Investment Firm provides investment advice or portfolio management services. Investment Firms must undertake a suitability assessment in relation to recommendations to buy a financial instrument and for all decisions whether to trade, including whether to buy, hold or sell an investment. Recital 87 MiFID Org Reg. **Provision of investment advice or portfolio management** When providing investment advice or portfolio management, Investment Firms must obtain the necessary information	French transposition of Article 25(2) MiFID is the following: Article L.533-13 I of the MFC provides that "When providing the investment services mentioned in Article Article L.321-1 4° or 5° [investment advice or portfolio management] investment service providers other than asset management companies shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his ability to bear losses, and his investment objectives including his risk tolerance so as to enable the investment firm to recommend to the client or	**<u>Comparability of outcomes</u>**: The EU's suitability requirements provide a comparable regulatory outcome to the SEC suitability requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f) and MiFID are consistent in that they prohibit firms from making unsuitable recommendations in order to protect market participants and facilitate sound decision-making. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific

[41] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap
[42] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
	regarding the client's/potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including their ability to bear losses, and their investment objectives including their risk tolerance, so as to enable the Investment Firm to recommend to the client/potential client the investment services and financial instruments that are suitable for the client and, in particular, are in accordance with their risk tolerance and ability to bear losses. Where the Investment Firm provides investment advice recommending a package of services or products bundled, the overall bundled package must be suitable. Article 25(2) MiFID. When providing investment advice or portfolio management, Investment Firms must not recommend or decide to trade where none of the services or	potential client the investment services and financial instruments that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses. Where the provision of the investment service mentioned in Article L.321-1 5° [investment advice] leads to recommending a package of services or products bundled pursuant to Article L.533-12-1, investment service provider other than asset management companies shall ensure that the overall bundled package is suitable."	requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under the EU regime are more detailed. In addition to the prohibition against unsuitable recommendations under Article 54(10) MiFID Org Reg., the EU regime also lays out factors to consider for evaluation of suitability under Article 25(2) MiFID and Recital 82 MiFID.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
	instruments are suitable for the client. Article 54(10) MiFID Org Reg. **Provision of investment advice to retail clients** When providing investment advice, the Investment Firm should specify in a written statement on suitability how the advice given meets the preferences, needs and other characteristics of the retail client. The responsibility to undertake the suitability assessment and to provide an accurate suitability report to the client lies with the Investment Firm and appropriate safeguards must be in place to ensure that the client does not incur a loss out as a result of the report presenting in an inaccurate or unfair manner the personal recommendation, including how the recommendation provided is suitable for the client and the disadvantages of the		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
1. To what extent are market participants prohibited from making unsuitable recommendations?			
	recommended course of action. Recital 82 MiFID.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
2. What types of activities constitute "recommendations" or otherwise trigger the application of your jurisdiction's suitability requirement?			
Whether a dealer has made a recommendation turns on the facts and circumstances of the particular situation. Relevant factors include whether the communication "reasonably could be viewed as a 'call to action'" and "reasonably would influence an investor to trade a particular security or group of securities." *See* Business Conduct Adopting Release, 81 FR at 29997.[43]	MiFID suitability requirements are triggered where an Investment Firm provides investment advice or portfolio management services. 'Investment advice' requires that a personal recommendation is made to a person in his capacity as an investor, or as an agent for the same, that is presented as suitable for that person, or based on a consideration of the circumstances of that person, and constitutes a recommendation to: buy, sell,		**<u>Comparability of outcomes</u>**: The EU's suitability requirements provide a comparable regulatory outcome to the SEC suitability requirements. In particular, although the two regimes describe "recommendations" with different language, actions that are treated as "recommendations" under one regime would very likely be treated the same under the other. Both regimes aim to capture "recommendation"

[43] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
2. What types of activities constitute "recommendations" or otherwise trigger the application of your jurisdiction's suitability requirement?			
	subscribe for, exchange, redeem, hold or underwrite a particular financial instrument; or exercise or not exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument. A recommendation must not be considered a personal recommendation if it is issued exclusively to the public. Article 9 MiFID Org Reg.		broadly to facilitate investor protection.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
3. To what extent do firms and their personnel need to understand the risks and rewards of products subject to the suitability requirement?			
A dealer that recommends a security-based swap, or a trading strategy involving a security-based swap, to a counterparty (other than a counterparty that is a dealer or participant) must	Investment Firms are required to ensure and to be able to demonstrate to their national regulators on request that natural persons giving investment advice or information	French transposition of Article 24(3) and Article 25(1) MiFID are the following : Article L533-12 of the MFC provides that "All information,	**<u>Comparability of outcomes</u>**: The EU's requirements for natural persons giving recommendations provide a comparable regulatory outcome

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
3. To what extent do firms and their personnel need to understand the risks and rewards of products subject to the suitability requirement?			
undertake "reasonable diligence" to understand the potential risks and rewards associated with the recommendation. Exchange Act rule 15Fh-3(f)(1) [17 CFR 240.15Fh-3(f)(1)].[44]	about financial instruments, investment services or ancillary services to clients on behalf of the Investment Firm possess the necessary knowledge and competence to comply with the requirement that all information provided to clients is fair, clear and not misleading. Article 24(3) MiFID and Article 25(1) MiFID. In practice, this means that the relevant individuals at the Investment Firm must be able to understand the potential risks and rewards associated with the recommendations they make in order to be able to comply with Articles 24(3) and 25(1) MiFID. National Member States criteria apply in assessing such knowledge and competence.	including marketing communications, addressed by an investment service provider other than an asset management company to clients or potential clients shall be fair, clear and not misleading." Article L. 533-12-6 of the MFC provides that " Investment service providers other than asset management companies ensure and are capable of demonstrating to the Autorité des marches financiers that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment service provider possess the necessary knowledge and competence to fulfil their obligations under this section."	to the SEC natural person recommendation requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f)(1) and MiFID are consistent in that they require that the person giving recommendations must have necessary knowledge about the features of the financial instruments involved. A person that satisfies the knowledge requirement under Articles 24(3) and 25(1) MiFID is very likely to satisfy the "reasonable diligence" requirement under Exchange Act rule 15Fh-3(f)(1). Both regimes aim to protect market participants from misleading information.

[44] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
A dealer that recommends a security-based swap, or a trading strategy involving a security-based swap, to a counterparty (other than a counterparty that is a dealer or participant) must have a "reasonable basis" to believe that the recommendation is suitable for the counterparty, based on information such as the counterparty's investment profile, trading objectives and ability to absorb potential losses. Exchange Act rule 15Fh-3(f)(1) [17 CFR 240.15Fh-3(f)(1)].[45]	When providing investment advice or portfolio management services, the Investment Firm must collect from the client all 'necessary information' required by Article 25(2) MiFID and Article 54(2) MiFID Org Reg. In cases where the Investment Firm does not obtain such information, it must not recommend investment services or financial instruments to that client or potential client. Article 54(8) MiFID Org Reg. The required information has to be considered in light of all the features of the investment advice or portfolio management services. The Investment Firm has to be able to assess the client's ability to understand and financially bear the relevant risks associated with the investment. The depth and detail of the	French transposition of Article 25(2) MiFID is the following: Article L533-13 of the MFC provides that " When providing the services mentioned in Article L.321-1 4° and 5° [investment advice and portfolio management], investment services providers other than asset management companies shall obtain the necessary information regarding their clients' or potential clients' knowledge and experience in the investment field relevant to the specific type of product or service, their financial situation including their ability to bear losses, and their investment objectives including their risk tolerance so as to enable the investment service provider to recommend them the investment services and financial instruments that are suitable for them and are in accordance with	**<u>Comparability of outcomes</u>**: The EU's requirement that recommendations be made only after all 'necessary information' has been obtained provides a comparable regulatory outcome to the SEC's requirement that recommendations be made only if the dealer has a "reasonable basis" to believe the recommendation is suitable. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f)(1) and MiFID and ESMA are consistent in that they require that firms determine the suitability of recommendations based on counterparty-specific information, in order to protect market participants and facilitate sound decision making. While the SEC Guidance does not require that the EU have

[45] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
	required information are subject to the proportionality principle, for example they can vary depending on the complexity, risks and structure of the financial instrument and on the nature and extent of the service provided. In particular, for more complex and risky products, as well as for the illiquid ones, the Investment Firm should consider whether more in-depth information may need to be collected, so as to be able to carry out the assessment. Article 54(2) MiFID Org Reg. Investment Firms are responsible for ensuring that the information collected from clients is reliable and need to take reasonable steps to this effect, in accordance with Article 54(7) MiFID Org Reg. **Examples of information required**	their risk tolerance and ability to bear losses."	analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the EU regime are comparable to those under the US regime. The counterparty-specific information that Investment Firms must collect and consider when making suitability assessments under Article 25 MiFID and Article 54 MiFID Org Reg. is comparable to the information required under Exchange Act rule 15Fh-3(f)(1).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
	The information regarding the financial situation of the client/potential client must include, where relevant, information on the source and extent of their regular income, their assets, investments and real property, and their regular financial commitments. Article 54(4) MiFID Org Reg. The information regarding the investment objectives of the client/potential client must include, where relevant, information on the length of time for which the client wishes to hold the investment, their preferences regarding risk taking, their risk profile, and the purposes for their investment. Article 54(5) MiFID Org Reg. ESMA has provided guidance with regards to the requirements applicable to Investment Firms and their personnel when (i) collecting the suitability-related		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
4. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?			
	information and (ii) making their suitability assessments. Question 7 ESMA Q&As on MiFID and MiFIR Investor Protection.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
5. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?			
A dealer may fulfil its "reasonable basis" requirement with respect to an eligible contract participant (**ECP**)[46] (except those that are non-financial corporations, benefit plans, government entities and individuals), or other persons with at least $50 million in total assets (**institutional counterparty**) if the dealer reasonably determines that the	Where an Investment Firm provides investment advice or portfolio management services to a professional client, the Investment Firm is entitled to assume that the client has the necessary level of experience and knowledge, and therefore is not required to obtain extensive		**Comparability of outcomes**: The scope of the EU's suitability requirements provide a comparable regulatory outcome to the SEC's suitability requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f) and MiFID and ESMA are consistent in that they

[46] The definition of "eligible contract participant" under Commodity Exchange Act section 1a(18) [7 U.S.C. 1a(18)] includes: corporations and other entities with more than $10 million in assets; individuals with more than $10 million invested on a discretionary basis (or $5 million if hedging); entities with a net worth of at least $1 million that are hedging commercial risk; financial institutions; insurance companies; certain investment companies; commodity pools with more than $5 million in assets under management; certain employee benefit plans; governmental entities; certain brokers and dealers; and certain futures commission merchants.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
5. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?			
counterparty, or an agent with decision-making authority, is capable of independently evaluating investment risks; the counterparty or agent affirms it is exercising independent judgment; and the dealer discloses that it is acting as counterparty and is not assessing suitability. Exchange Act rule 15Fh-3(f)(1), (4) [17 CFR 240.15Fh-3(f)(1), (4)].[47] A dealer may satisfy its "reasonable diligence" obligation if the dealer receives written representations that, for a counterparty that is not a special entity,[48] the counterparty has complied with policies and procedures reasonably designed to ensure that the persons evaluating the recommendation and making trading decisions are	information from the client. Article 54(3) MiFID Org Reg. Where the investment service consists of the provision of investment advice to a per se professional client (i.e. not a retail client that has elected to be treated as a professional client), the Investment Firm is entitled to assume that the client is able to financially bear any related investment risks consistent with the investment objectives of that client and therefore is not generally required to obtain information on the financial situation of the client. Article 54(3) MiFID Org and paras. 40-41 of the ESMA Guidelines on suitability. Unlike other activities relating to dealing in financial instruments, clients cannot be classified as		provide for less-onerous suitability requirements for more sophisticated counterparties. The US regime allows exemptions when the counterparty is a professional, experienced market participant, while the EU regime permits Investment Firms to assume certain levels of knowledge and expertise without conducting the client suitability assessment in certain circumstances. While the SEC Guidance does not require that the EU have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[47] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

[48] The definition of "special entity" under Exchange Act rule 15Fh-2(d) [17 CFR 240.15Fh-2(d)] includes: US persons that are federal agencies, certain state and local agencies and political subdivisions and instrumentalities, certain employee benefit plans and government plans, and endowments.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
5. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?			
capable of doing so. Rule 15Fh-3(f)(3) [17 CFR 240.15Fh-3(f)(3)].[49]	ECPs for the purposes of investment advice – they must be treated as either retail clients or professional clients – and so even the most sophisticated clients must receive this protection.		**Comparability of specific requirements**: The specific requirements under the EU regime are comparable to those under the US regime, except the following: • **Disclosure**. One of necessary conditions for exemption under the US regimes is that the dealer must disclose that it is not assessing suitability for the counterparty. The EU regime does not require such disclosure.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
6. To what extent does the suitability requirement apply – or not apply – in connection with cross-border activities?			
The suitability requirements generally apply only to a non-US firm's activities involving US	MiFID suitability requirements apply to Investment Firms in the context of investment advice		**Comparability of outcomes**:

[49] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
f. Subcategory: Suitability			
6. To what extent does the suitability requirement apply – or not apply – in connection with cross-border activities?			
counterparties (unless the transaction is arranged, negotiated or executed in the US). *See* Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)].[50] For non-US dealers, the business conduct requirements under Exchange Act section 15F(h) (other than internal supervision requirements) apply only to the dealer's transactions with US counterparties (apart from certain transactions conducted through a foreign branch of the US counterparty), or to transactions arranged, negotiated or executed in the US. *See* Exchange Act rule 3a71-3(c) [17 CFR 240.3a71-3(c)];[51] Exchange Act rules 3a71-3(a)(3), (8) and (9) [17 CFR 240.3a71-3(a)(3), (8) and (9)].[52]	(and portfolio management) to retail and professional clients, irrespective of the clients' origin or their physical location.		The applicability of the EU's suitability requirements to cross-border activities provides a comparable but more onerous, regulatory outcome to the SEC's cross-border suitability requirements. The regulatory outcomes pursued under MiFID and ESMA have broader coverage than those under the US regime. In particular, the US regime contains a national element and is applicable to non-US firms only when the counterparty is a US person or entity (or where the relevant transaction is arranged, negotiated or executed in the US). The applicability of the EU regime does not depend on the location or nationality of the counterparty and is therefore more onerous than the US requirements.

[50] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[51] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol4/pdf/CFR-2016-title17-vol4-sec240-3a71-3.pdf
[52] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol4/pdf/CFR-2016-title17-vol4-sec240-3a71-3.pdf

g. Subcategory: Disclosure of Clearing Rights

Firms are required to disclose to a counterparty (other than a counterparty that is a dealer or participant) certain information regarding clearing rights. This obligation is only applicable if the identity of the counterparty is known "at a reasonably sufficient time prior to execution of the transaction". Exchange Act rule 15Fh-3(d) [17 CFR 240.15Fh-3(d)];[53] and Exchange Act section 3C [15 U.S.C. 78c-3].[54]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
Mandatory clearing obligation The SEC requires the clearing of security-based swaps it designates to be subject to mandatory clearing. The SEC has not made any such designations to date. Exchange Act section 3C(a)-(b) 15 U.S.C. 78c-3(a)-(b).[55] **Mandatory clearing: disclosure** For security-based swaps subject to mandatory clearing, the firm would have to: (i) disclose the names of the clearing agencies that accept the security-based swap, and identify which clearing agencies the firm is authorized to	**Mandatory clearing obligation** **<u>EMIR</u>** All OTC derivative contracts of a class that has been declared subject to the clearing obligation entered into or novated between certain entities which are both required to clear that asset class on or after the date the clearing obligation takes effect must be cleared via a CCP authorized in accordance with Article 14 of EMIR or recognized in accordance with Article 25 of EMIR. EMIR, Article 4.		**<u>Comparability of outcomes</u>**: The EU's clearing requirements provide a comparable regulatory outcome to the SEC's clearing requirements. In particular, the regulatory outcomes pursued under Exchange Act sections 3C(a)-(b) and (g)(5), and 15Fh-3(d) and EMIR, MiFID and ESMA are consistent in that they require regulators have the power to designate certain types of derivatives to be subject to mandatory clearing. Also, under both the EU and US regimes, in respect of derivatives not subject to mandatory clearing,

[53] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[54] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c-3.pdf
[55] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c-3.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
use; and (ii) notify the counterparty that it has the sole right to select which clearing agency must be used for clearing. Exchange Act rule 15Fh-3(d)(1) [17 CFR 240.15Fh-3(d)(1)].[56] **Voluntary clearing: disclosure** For security-based swaps not subject to mandatory clearing, the firm must: (i) determine whether the security-based swap is accepted for clearing by one or more clearing agencies; (ii) disclose the names of the clearing agencies that accept the security-based swap, and identify which clearing agencies the firm is authorized to use; and (iii) notify the counterparty that it may elect to require clearing and has the sole right to select the clearing agency (provided that the firm is authorized to clear	FCs above the "clearing threshold" and NFC+s are subject to mandatory clearing (to the extent they transact with each other or non-EEA equivalents and, in certain cases, if two non-EEA equivalents transact with each other). EMIR, Articles 4 and 4a. To date, certain interest rate and index credit derivative transactions have been declared subject to clearing and the requirements have now been phased in for all in-scope entities (*see* EMIR Clearing RTS). We note that there are various exceptions and derogations at a counterparty and transaction level. Article 5 of EMIR and the related draft technical standards set out		counterparties may choose to voluntarily clear and select the clearing agency (to the extent that a clearing agency clears the relevant contract type and, if relevant, is authorized or recognized under EMIR). The EU rules do not provide that a counterparty has the sole right to select the clearing agency (either in a mandatory clearing or voluntary clearing context) and, consequently, there is no related notification requirement. However, as a practical matter, both parties will need to agree the clearing agency that they wish to use for a particular transaction. We note that although the SEC has the power to require mandatory clearing for certain types of securities, it has not exercised this power. The EU

[56] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
through that clearing agency). Exchange Act rule 15Fh-3(d)(2) [17 CFR 240.15Fh-3(d)(2)].[57]	the detailed process regarding consideration of a class of OTC derivatives for the clearing obligation. If a class of OTC derivative contracts no longer has a CCP which is authorised or recognised to clear those contracts under EMIR, it must cease to be subject to the clearing obligation in Article 4 of EMIR and ESMA must publish a call for development of proposals for the clearing of the relevant class of derivatives. EMIR, Article 5(6). Authorisation of a CCP to clear can be withdrawn in certain circumstances (*see* EMIR, Article 20) but not simply at the request of ESMA or the EC. ESMA may request that the EC temporarily suspend mandatory		regulators have already designated certain credit and interest rate derivatives as subject to mandatory clearing and have therefore developed more detailed regulations relating to mandatory clearing under EMIR. *See* EMIR Clearing RTS.

[57] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
	clearing for specific classes of OTC derivatives contracts or for a specific type of counterparty if certain conditions are met. EMIR, Article 6a. **<u>MiFIR</u>** All derivatives transactions concluded on a regulated market (i.e. all exchange-traded derivatives) must be cleared by a CCP. If a transaction is executed on a regulated market it will be an "exchange-traded derivative" for the purposes of MiFIR and will not be an "OTC derivative" for the purposes of EMIR (and thus will be outside the scope of EMIR clearing requirements). MiFIR, Article 29. The MiFIR RM Clearing Obligation RTS set out requirements that CCPs, trading venues and clearing members must comply with in respect of all cleared derivatives		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
1. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?			
	(both exchange-traded and OTC) relating to effective systems, procedures and arrangements to ensure that transactions are submitted and accepted for clearing as quickly as technologically practicable. **Voluntary clearing** In the absence of mandatory clearing of transactions of a particular type, counterparties may elect to clear such transactions and non-EU entities are not required to clear such transactions via a CCP authorized or recognized in accordance with EMIR (although EU entities must clear such transactions via a CCP authorized or recognized in accordance with EMIR). In such circumstances, the counterparties may select any CCP that clears the relevant contract type.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
Firms must disclose certain clearing rights information to counterparties that are not also dealers. This information includes: (i) a list of clearing agencies that the dealer can use and will accept the swap; (ii) notice to the counterparty that it has the sole right to select which clearing agency from the list will be used, and for non-mandatory clearing; and (iii) notice to the counterparty that it may elect to require clearing. Exchange Act rules 15Fh-3(d)(1) and (2) [17 CFR 240.15Fh-3(d)(1) and (2)].[58] Firms must make written records of non-written disclosures, and provide written versions of the disclosures "in a timely manner, but in any case no later than the delivery of the trade acknowledgement." Exchange	A clearing member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. EMIR, Article 39(4). A clearing member must offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in Article 39(7) of EMIR associated with each option. The client must confirm its choice in writing. EMIR, Article 39(5). CCPs and clearing members must publicly disclose the levels of protection and the costs associated with the different		**<u>Comparability of outcomes</u>**: The EU's clearing rights disclosure requirements provide a comparable regulatory outcome to the SEC's clearing rights disclosure requirements. In particular, both regimes require the disclosure of certain clearing information and rights to clients to enable clients to understand which clearing agencies may be used for clearing. As discussed above, the EU rules do not provide that a counterparty has the sole right to select the clearing agency (either in a mandatory clearing or voluntary clearing context) and, consequently, there is no related notification requirement. However, as a practical matter, both parties will need to agree on the clearing agency that they wish to use for a particular transaction.

[58] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
Act rule 15Fh-3(d)(3) [17 CFR 240.15Fh-3(d)(3)].[59]	levels of segregation that they provide and must offer those services on reasonable commercial terms. Details of the different levels of segregation must include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions. EMIR, Article 39(7). We note that under changes made by EMIR Refit 2.1, with effect from June 18, 2021, without being obliged to contract, clearing members and clients which provide clearing services, whether directly or indirectly, must provide those services under fair, reasonable, non-discriminatory and transparent (**FRANDT**) commercial terms. EMIR Refit 2.1, introducing a new Article 4(3a). While the detail of the		The US regime stipulates the duties of firms to maintain records of clearing rights under Exchange Act rule 15Fh-3(d)(3). There is no such general requirement under EMIR. However, we note that the EU regime requires that clearing members offer their clients, at least, the choice between omnibus client segregation and individual client segregation, must inform their clients of and must publicly disclose the costs and level of protection associated with each option and must offer those services on reasonable commercial terms (EMIR, Article 39(5) and (7)). The ESMA Q&A on EMIR provide that clearing members must comply with the requirements on segregation and portability under Article 39 of EMIR by the time that a relevant CCP is authorised under EMIR.

[59] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	EU Requirement and/or Policy Goal Summary	French provisions	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights			
2. To what extent does your jurisdiction require disclosure of applicable clearing rights?			
	FRANDT rules is not yet final and may be subject to change, we note that the ESMA Consultation Paper on FRANDT indicates that, amongst other things, clearing service providers will be required to publicly disclose the general standard contract terms under which they provide clearing services, presented in clearly divided sections, including scope and definitions, information, relationships between clearing service provider and client, termination and default provisions. The requirements on clearing members that are established in EMIR (e.g. those in Articles 38 and 39 of EMIR) apply to clearing members of all CCPs established in the EU. These obligations therefore come into force at and should be met by the time that the CCP is authorised under EMIR. ESMA Q&A on EMIR, CCP Question 8(c).		

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NON-PUBLIC (FOR SEC/AMF/ACPR USE ONLY)
November 12, 2020

AMF Substituted Compliance Submission

SEC Staff Follow-Up Questions

Margin

- The AMF's comparability analysis cites EMIR Margin RTS, Article 9(2) requires a recalculation of initial margin where there is a change in the netting set, or where no calculation has been performed in the preceding 10 business days. The analysis says that this, in practice, will require dealer counterparties to recalculate initial margin on a daily basis. Is it the practice of dealer counterparties to calculate initial margin on a daily basis for Phase 4 counterparties? Will this be an expected practice for Phase 5 and 6 counterparties?

  In practice, counterparties in France which are subject to the EMIR Margin RTS calculate initial margin on a daily basis and are expected to continue this practice through Phases 5, 6, and beyond. ISDA forms of regulatory IM Credit Support Annex all have daily valuation as default, and in practice, counterparties don't deviate from daily calculation.

- The AMF's comparability analysis states that a new EMIR Margin RTS which is expected to include a requirement for certain initial margin model approvals is expected to be published in draft form by June 18, 2020 and to enter into effect during the course of 2020. Has this EMIR Margin RTS been implemented? If so, can you provide us with a link to the amended EMIR Margin RTS?

  We have updated this paragraph in the latest version of the table on margin requirements (sent with our draft filing on 23 November 2020). The work in this respect has been subject to a slight delay apparently and no draft has been published yet. But the work is still ongoing and the RTS should enter into force during 2021.

- SEC's Rule 18a-3(c)(6) requires that initial and variation margin calculations must be made more frequently than the close of each business day during periods of extreme volatility and for accounts with concentrated positions. Is there an analogous requirement in EMIR, EMIR Margin RTS, or in a required risk management procedure?

  Articles 9(1) and 9(2) of the EMIR Margin RTS, require at least daily calculation of variation margin and initial margin, and the ISDA forms of regulatory IM and VM CSAs contemplate daily margin calls.

- EMIR Margin RTS Article 19(3)(b) states that "[i]nitial margin shall be protected from the default or insolvency of the collecting counterparty by segregating it in either or both of the following ways:(a) on the books and records of a third-party holder or custodian; (b) via other legally binding arrangements. Can you provide examples of "other legally binding arrangements" that have been implemented by counterparties in France?

We have not encountered among our supervised entities practical examples of legally binding arrangements.

- EMIR Margin RTS Article 22 and Annex III allows counterparties to use their own estimates to adjust the value of collected collateral. Are any counterparties using these provisions or are most counterparties using the standardized haircuts for collateral?

  Based on our supervising experience, counterparties subject to the EMIR Margin RTS are not using their own estimates to adjust the value of collected collateral and are using the standardized haircuts (or haircuts which are more conservative than the standardized haircuts).

- SEC Rule 18a-3(e)(6) requires a nonbank security-based swap dealer to have as part of its risk monitoring procedures for determining the need to collect collateral from the counterparty, including whether that determination was based on the creditworthiness of the counterparty and/or the risk of the specific non-cleared security-based swap contracts with the counterparty. Do dealer and other counterparties have the ability to collect initial margin in excess of the amount required to be calculated in the EMIR Margin RTS (i.e., house margin requirements)?

  Recital (1) of the EMIR Margin RTS which clarifies that margin requirements under the EMIR Margin RTS represent the minimum requirements, and, accordingly, that counterparties are permitted to collect initial margin in excess of the minimum required by the RTS

AMF ACPR Substituted Compliance Submission

SEC Staff Follow-Up Questions

Capital

- Footnote 7 in the draft capital submission states that "EU Member States are required to adopt and publish measures to implement CRD V by December 2020." What is the status of the implementation of CRD V in France?

  The implementation of CRD V is currently being finalized and the implementing text is drafted. The final texts should be published in early 2021. Please note that this new legislation should not have a specific impact on the supervision of swap dealers activities.

- On page 4 of the draft capital submission, it states that French firms that have indicated they intend to register as nonbank SBSDs will be re-authorized as credit institutions by the European Central Bank. Such credit institutions will continue to be subject to the capital requirements under CRR and CRD IV (as amended by CRR II and CRD V), and will be supervised by the European Central Bank, together with competent national authorities.

  Once these institutions are re-authorized as credit institutions, will there be any material changes to the descriptions in the draft capital submission (and the applicable French laws) with respect to the role of the relevant supervisors (French authorities and European Central Bank), such as in cases where capital or liquidity requirements are breached (e.g. notification requirements, relevant supervisors ability to sanction)?

  Class I investment firms will indeed be turned into credit institutions pursuant to IFR/IFD. Those qualifying as significant institutions in accordance with the SSM Regulation will be supervised by the SSM, while those considered as less significant institutions will remain within the remit of the NCAs.

  The situation would therefore be exactly the same as for other credit institutions.

  The supervision of significant credit institution will be ensured by the JSTs, composed of ECB and ACPR staff members. In case of breach of prudential requirements such as liquidity or capital requirements, the initiative of the sanctioning proceedings will lie with the ECB. You may consult in this regard the Element IV questionnaire on credit institutions.

- Footnote 14 in the draft capital submission states that the changes under BRRD II have to be implemented into the national laws of the member states by December 28, 2020. What is the status of the implementation of BRRD II in France?

The implementation of BRRD II is currently being finalized and the implementing text is drafted. The final texts should be published in early 2021.Please note that this new legislation should not have a specific impact on the supervision of swap dealers activities.

Substituted Compliance- SEC Staff Follow-Up Questions for AMF Staff

Recordkeeping, Reporting and Notifications

- **We did not see an EU or French parallel requirement identified in your comparability chart for the following U.S. SEC requirements. Can you please confirm there is no parallel requirement, or provide a parallel requirement if this was an inadvertent omission?**
  - **Memoranda of brokerage orders recordkeeping requirement in 17 CFR 240.18a-5(b)(4)**
  - **Memoranda of proprietary orders recordkeeping requirement in 17 CFR 240.18a-5(a)(5) and (b)(5)**
  - **Portfolio reconciliation recordkeeping requirement in 17 CFR 240.18a-5(a)(18) [and 5(b)(14)]**

While we believe that the items were substantively addressed before, A&O has provided updates to its table in response to the SEC's questions. Those help to further illustrate how these topics are addressed under EU law. We are sending those changes as separate PDF attachment.

From a French law perspective, it should be noted that the French ministerial order on internal control features several provisions which are meant to achieve the same purpose as the abovementioned provisions of the SEC Act, in particular:

- Article 11 which provides for the general obligation to establish sound and complete procedures to ensure compliance with applicable financial requirements;
- Article 140 to 147 which require specific procedures regarding operations conducted by financial service providers.

Further to the work by A&O, please see below for more complete citations of EU law.

EU COMPARABLE REQUIREMENTS:

1. General Principles in MiFID II (Directive 2014/65/EU) and MiFIR (Regulation 600/2014).

Article 16(6) of MiFID II sets forth an obligation for investments firms to keep records about their services:

Article 16(6) **Organisational requirements**
[…] 6. *An investment firm shall arrange for records to be kept of all services, activities and transactions undertaken by it which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions under this Directive, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014, and in*

particular to ascertain that the investment firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market

[…]

This principle is detailed in article 72 of Directive 2017/565, which sets out the operating conditions of the record-keeping obligation for investment firms:

Article 72
Retention of records

1. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:

(a) the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;

(b) it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it is not possible for the records otherwise to be manipulated or altered;

(d) it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and

(e) the firm's arrangements comply with the record keeping requirements irrespective of the technology used.

2. Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.

The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.

3. Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures in writing.

Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.

[…]

In addition, under article 25(1) of MiFIR, which is directly applicable in France, investments firms must maintain all relevant data regarding all orders and transactions they carried out, on an agency or principal basis:

Article 25(1)
Obligation to maintain records

1. *Investment firms shall keep at the disposal of the competent authority, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 2005/60/EC of the European Parliament and of the Council. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.* […]

2. Specific recordkeeping obligations regarding pre-trade, execution and post-trade transparency

Articles 74 and 75 of the MiFID Delegated Regulation (Regulation 2017/565), which is directly applicable in France, include detailed recordkeeping obligations regarding client orders and transactions:

Article 74 **Record keeping of client orders and decision to deal**
An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV to this Regulation to the extent they are applicable to the order or decision to deal in question. Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Article 75 **Record keeping of transactions and order processing**
Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV. Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

The exact content of the records that must be maintained under **article 74** are detailed in Section 1 of Annex IV:

SECTION 1: Record keeping of client orders and decision to deal

1. Name and designation of the client 2. Name and designation of any relevant person acting on behalf of the client 3. A designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision 4. A designation to identify the algorithm (Algo ID) responsible within the investment firm for the investment decision 5. B/S indicator 6. Instrument identification 7. Unit price and price notation 8. Price 9. Price multiplier 10. Currency 1 11. Currency 2 12. Initial quantity and quantity notation 13. Validity period 14. Type of the order 15. Any other details, conditions and particular instructions from the client; 16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU.

The exact content of the records that must be maintained under **article 75** are detailed in Section 2 of Annex IV:

SECTION 2: Record keeping of transactions and order processing
1. name and designation of the client 2. name and designation of any relevant person acting on behalf of the client 3. a designation to identify the trader (Trader ID) responsible within the investment firm for the investment decision 4. a designation to identify the Algo (Ago ID) responsible within the investment firm for the investment decision 5. Transaction reference number 6. a designation to identify the order (Order ID) 7. the identification code of the order assigned by the trading venue upon receipt of the order 8. a unique identification for each group of aggregated clients' orders (which will be subsequently placed as one block order on a given trading venue). This identification should indicated 'aggregated_X' with X representing the number of clients whose orders have been aggregated 9. the segment MIC code of the trading venue to which the order has been submitted 10. the name and other designation of the person to whom the order was transmitted 11. designation to identify the Seller & the Buyer 12. the trading capacity 13. a designation to identify the Trader (Trader ID) responsible for the execution 14. a designation to identify the Algo (Algo ID) responsible for the execution 15. B/S indicator 16. instrument identification

17. ultimate underlying
18. Put/Call identifier
19. Strike price
20. Up-front payment
21. Delivery type
22. Option style
23. Maturity date
24. unit price and price notation
25. price
26. price multiplier
27. Currency 1
28. Currency 2
29. remaining quantity
30. modified quantity
31. executed quantity
32. the date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU
33. the date and exact time of any message that is transmitted to and received from the trading venue in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under Commission Delegated Regulation (EU) 2017/574 (1)
34. the date and exact time any message that is transmitted to and received from another investment firm in relation to any events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU
35. Any message that is transmitted to and received from the trading venue in relation to orders placed by the investment firm
36. Any other details and conditions that was submitted to and received from another investment firm in relation with the order
37. Each placed order's sequences in order to reflect the chronology of every event affecting it, including but not limited to modifications, cancellations and execution
38. Short selling flag
39. SSR exemption flag
40. Waiver flag

Recordkeeping, Reporting and Notifications

- **Are all security-based swap dealers and major security-based swap participants that would be required to register with the SEC covered by the CRR as CRR Firms and by MiFIR/MiFID as Investment Firms?**

Yes.

Recordkeeping, Reporting and Notifications

- **Regarding the credit risk determination recordkeeping requirement in 17 CFR 240.18a-6(b)(1)(x), you identify as the comparable requirement that Investment Firms must assess their internal capital adequacy. Is there a French law that specifically requires firms to keep records of the basis for internal credit assessments of counterparties? If not, how does France's requirement to assess internal capital adequacy result in a record of the basis for internal credit assessments of counterparties?**

Regarding the credit risk determination recordkeeping requirement referred to above, first of all it is our understanding that this requirement does not apply as such to banks which register as security-based swap dealer. Indeed, our understanding is that this specific section of the rule does not apply to entities which are not directly under the control of a supervisor. Banks as such are supervised, either by the national supervisor ACPR, or directly by the European Central Bank for entities which are deemed to be systemic.

It should also be mentioned here that article 176 of the European Capital Requirement Regulation contains requirements regarding recordkeeping of credit risk determination process. This regulation, as every European regulation, applies directly into French law, without the need of a specific transposition text

There is no French provision that specifically requires firms to keep records of the basis for internal credit assessments of counterparties.

However, EBA/GL/2016/10 on ICAAP/ILAAP, supervised entities shall provide the competent authorities with information on the methodology for ICAAP measurements.

Under French law, article 258 of the Ministerial order on internal control and ACPR Instruction n° 2017-I-24, ensure that this data is communicated to ACPR each year through the template for the annual report on internal control (*Canevas pour le rapport annuel de contrôle interne*).

Definitions

- **MiFID 4(1)(9) contains the definition of the term "client." Does the French MFC contain a similar definition of the term "client"?**

The French MFC indeed defines the notion of client, taking into consideration a categorization of client. Three categories of clients are to be distinguished: retail clients, professional clients and

eligible counterparties. This classification exactly corresponds to the one made in MIFID text (appendix 2). It is detailed in articles D533-4, D533-11 and below of the MFC.

- **CRD 3(1)(3) contains the definition of the term "institution." We note that the French MFC instead uses the terms "les établissements de crédit et les sociétés de financement" ("credit institutions and finance companies") in provisions that implement CRD 74(1) and 85(1). If we have missed a definition of the term "institution" in the MFC, we would be grateful if you could send us a citation.**

Indeed, from a French legal perspective, CRR regulation directly apply to credit institutions, and to "financing companies" which constitute a specific French type of entities that, from a prudential perspective, generally applies CRR rules. In other words, the French legislator did not narrow in any way the CRR scope, but made the choice to apply its rules to a specifically French type of entities. In any kind of way, it is not in the French legislator power to reduce the scope of application of a European regulation.

French implementation of CRD 77-78

- **Please provide citations to the French implementation of CRD 77 and 78 (Articles portant respectivement sur les Approches internes pour le calcul des exigences de fonds propres et l'analyse comparative prudentielle des approches internes pour le calcul des exigences de fonds propres)**

The implementation of these articles would be articles L 511-41-1 B, L511-41-1 C, L 533-2-2 and L533-2-3 of the French MFC and articles 3 and 4 of the Ministerial order of 3 November 2014 on the process of prudential supervision and risk assessment of providers of banking services and investment firms other than asset management companies.

Additional translations

- **Please provide English translations of the entirety of MFC parts L511, L533 and R511, and the ministerial order on internal control.**

There are no English translations available at the moment, we may need to assess the timeline to produce them.

Relevant articles of EU Directives	Implementation of these articles into French law

Implementation into French law of provisions of the CRD IV Directive	
Article 13 of CRD IV 1. The competent authorities shall grant authorisation to commence the activity of a credit institution only where at least two persons effectively direct the business of the applicant credit institution. […] 2. Each Member State shall require that: (a) a credit institution which is a legal person and which, under its national law, has a registered office, has its head office in the same Member State as its registered office; (b) a credit institution other than that referred to in point (a) has its head office in the Member State which granted it authorisation and in which it actually carries out its business.	**Article L. 511-13 of the MFC** The registered office and head office of any credit institution or finance company approved in accordance with Article L. 511-10 are located in France. These provisions do not apply to branches of credit institutions mentioned in I of Article L. 511-10. The effective management of the business of credit institutions, including branches of credit institutions mentioned in I of Article L. 511-10, or finance companies is carried out by at least two persons.
Article 65(1) and (2) of CRD IV 1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the	**Article L.612-23 of the MFC** The Secretary General of the Autorité de contrôle prudentiel et de résolution shall organise off-site and on-site inspections. The exercise of investigations relating to the provisions of the Consumer Code commissioned by the Autorité de contrôle prudentiel et de résolution shall be carried out without prejudice to the powers recognised to the staff referred to in Articles L. 511-3 and L. 511-21 of the Consumer Code, under the conditions laid down in Book V of the above-mentioned code. The Secretary General may appeal to, for inspections, external control bodies, auditors, experts or competent persons or authorities. In order to contribute towards investigations about the persons described in subparagraph II 1° et 3° of Article L.612-2, the Secretary General may appeal to a

Relevant articles of EU Directives	Implementation of these articles into French law
Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive. 2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, penalties may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach. 3. Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013 those powers shall include: (a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes: (i) institutions established in the Member State concerned; (ii) financial holding companies established in the Member State concerned; (iii) mixed financial holding companies established in the Member State concerned; (iv) mixed-activity holding companies established in the Member State concerned;	professional association, representing the interests of one or more categories of these persons, and of which the investigated person is a member. **Article L.612-24 of the MFC** The Autorité de contrôle prudential et de résolution determines the list, model, frequency and deadlines for the transmission of documents and information that must be submitted to it periodically. The Secretary General of the Autorité de contrôle prudential et de résolution may, therewith, request from the entities subject to its investigations all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may ask said entities to provide the reports of the statutory auditors and, more generally, with any accounting document and may, where necessary, request certification thereof. The Secretary General of the Autorité de contrôle prudentiel et de résolution may request subsidiaries of credit institutions, investment firms, financing companies, financial holding companies, mixed financial holding companies, mixed holding companies, parent undertakings of financing companies, mixed parent undertakings of financing companies and to third parties to which these persons have outsourced operational functions or activities all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may for the supervision of a credit institution, a financing company or an investment firm that is not included in the scope of consolidation, request to the parent undertaking of this credit institution, financing company or investment firm to provide all the required information under the conditions provided for in the previous paragraph. The Autorité de contrôle prudential et de résolution collects from the persons referred to in subparagraph I B of Article L. 612-2, on behalf of the National Institute of Statistics and Economic Studies and the Statistical Services of the Ministry of Social Security, data related to the supplementary social protection fixed by a decree adopted under the conditions laid down by the Law of 7 June 1951 on the obligation, coordination and confidentiality related to statistics after advice of the High Council of Mutuality and the Advisory Committee of financial legislation and regulation.

Relevant articles of EU Directives	Implementation of these articles into French law
(v) persons belonging to the entities referred to in points (i) to (iv); (vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities; (b) the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including: (i) the right to require the submission of documents; (ii) to examine the books and records of the persons referred to in points(a)(i) to (vi) and take copies or extracts from such books and records; (iii) to obtain written or oral explanations from any person referred to in points (a) (i) to (vi) or their representatives or staff; and (iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation; (c) the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a)(i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.	The Secretary General of the Autorité de contrôle prudential et de résolution or his representative may summon and hear any entity subject to its supervision or which it needs to hear in order to perform its supervisory duties. The Secretary General of the Autorité de contrôle prudential et de resolution or its representative may, in addition, for the persons referred to in Article L.612-2, participate in the management board, the supervisory board or any body exercising equivalent functions, or summon or hear collectively the members or the executive board, the supervisory board or any body exercising equivalent functions. Subject to the exercise of the rights provided by adversary procedures or the requirements of jurisdictional procedures, the Secretary General of the Autorité de contrôle prudential et de resolution shall not be required to disclose to entities subject to its supervision or to third parties the documents concerning them that it has produced or received, notably when such communication would breach business secrets or professional secrecy to which the Autorité de contrôle prudential et de resolution is bound. When the persons or entities referred to in subparagraph I to II of Article L. 612-2 provide their services over the internet, banking supervisors may, to access to information and elements available on the services, use of a borrowing identity without being criminally liable. **Article L.612-26 of the MFC** The Secretary General of the Autorité de contrôle prudential et de resolution mays decide to extend onsite inspection of a entity subject to its supervision to: 1° its subsidiaries; 2° the legal entities that directly or indirectly control it within the meaning of Article L. 233-3 of the Commercial Code; 3° the subsidiaries of these legal entities; 4° any other company or legal entity belonging to the same group; 5° the entities and organisations of any kind that have directly or indirectly entered into a management or reinsurance agreement with said company or any other type of agreement liable to alter its operational or decision-making autonomy concerning any of its business areas;

Relevant articles of EU Directives	Implementation of these articles into French law
	6° any company which is affiliated to it within the meaning of 4 ° of Article L. 356-1 of the Insurance Code to parent companies mentioned in 1 ° of the same article; 7° the mutual societies and unions falling under Book III of the mutual insurance code which are linked to it; 8° the supplementary pension management institutions linked to it; 9° agents and persons entrusted with operational functions or activities. The facts gathered during this extension of inspection may be communicated by the Secretary General to the entity referred to in the first paragraph of this Article nonwithstanding the professional secrecy referred to in Article L. 612-17. On-site inspection may thereby be extended to branches or subsidiaries located abroad of entities subject to the control of the authority or, for inspections in a State party to the Agreement on the European Economic Area, pursuant to Article L. 632-12, or, for the other States, within the framework of the bilateral agreements provided for in Article L. 632-13 or with an express agreement for the conduct of this extension obtained from the competent authority responsible for a similar mission to that entrusted, in France, to the Autorité de contrôle prudentiel et de resolution, provided that that authority is itself subject to professional secrecy. For the countries with which one of the bilateral conventions provided for in the same article L. 632-13 has not been concluded, the Secretary General shall be responsible for obtaining the agreement of the competent authority concerned and for specifying with it, where appropriate, the conditions for extending the on-site inspections of a specified taxable entity to its subsidiaries or branches. These conditions shall be brought to the attention of that person and of those entities. **Article L.612-27 of the MFC** In case of onsite inspections, a report shall be drawn up. The draft report shall be brought to the attention of the officers of the entity inspected, who may make their observations known for inclusion in the definitive report.

Relevant articles of EU Directives	Implementation of these articles into French law
	In the event of an emergency or any other requirement to proceed without delay with statements of findings for facts or misconducts likely to constitute violations of the provisions applicable to entities supervised, the inspectors of the Autorité de contrôle prudentiel et de resolution may draw up minutes. The follow-up to on-site inspections shall be communicated to the Executive board, the Supervisory Board or any other body exercising equivalent supervisory functions of the entities inspected. They may be sent to its statutory auditors and to the specialised real-estate credit company and housing loan company inspectors. They may be sent to the company that controls it within the meaning of Article I of L. 511-20, to the central body to which it is affiliated, and to the parent company within the meaning of Article L. 356-1 of the Insurance Code. These follow-ups, and any other information transmitted to the entities inspected or to the entities referred to in the preceding subparagraph, including an assessment of their situation, cannot be provided to third parties, except in cases where permitted by the law, without the agreement of the Autorité de contrôle prudentiel et de resolution. **Article L. 612-39 of the MFC** Subject to the provisions of Article L. 612-40, if any of the entities referred to paragraph I of Article L. 612-2, with the exception of those mentioned in subparagraphs A-4 bis, A-5° and A- 11° and subparagraph B-4°, has breached a European, legislative or regulatory provision that the Autorité is responsible for monitoring or the approved conduct of business rules applicable to its profession and has not submitted to the Autorité the requested recovery programme or training plan referred to in paragraphe V of Article L. 612-23-1, failed to heed a warning, failed to comply with a demand or failed to comply with the specific conditions or commitments made at the time of an application for approval, authorisation or exception envisaged in the applicable laws or regulations, the Enforcement Commission may impose one or more of the following disciplinary sanctions, depending on the seriousness of the violation: 1° a warning;

Relevant articles of EU Directives	Implementation of these articles into French law
	2° a reprimand; 3° a prohibition on execution of certain transactions and any other restriction on the conducting of its business; 4° The temporary suspension of one or more senior managers or of any other person referred to in Article L. 612-23-1 or, in the case of a payment institution or an electronic money institution engaged in hybrid activities, of the individuals declared responsible, respectively, for the management of the payment services activities or electronic money issuance and management activities, with or without the appointment of a provisional administrator; 5° The dismissal without consultation of one or more senior managers or of any other individual referred to in Article L. 612-23-1 or, in the case of a payment institution or an electronic money institution engaged in hybrid activities, of individuals declared responsible, respectively, the management of payment services activities or electronic money issuance and management activities, with or without the appointment of a provisional administrator; 6° a partial withdrawal of approval; 7° complete withdrawal of approval or deletion from the list of approved individuals, with or without appointment of a liquidator. The sanctions mentioned in 3° and 4° cannot exceed ten years. For credit institutions, the sanction provided for in 6° may be imposed only for services not covered by the approval issued by the European Central Bank. For the same institutions and for activities falling within the scope of the approval issued by the European Central Bank, the penalties provided for in 6° and 7°, respectively, take the form of a partial or total prohibition of conservatory activity. When the Enforcement commission of the Autorité de contrôle prudentiel et de résolution pronounces the total prohibition of the activity of a credit institution, the Autorité de contrôle prudentiel et de résolution proposes to the European Central Bank to declare the withdrawal of the authorisation. Where the European Central Bank does not declare the withdrawal of authorisation, the Sanctions Committee may deliberate again and impose another sanction among those provided for in this Article.

Relevant articles of EU Directives	Implementation of these articles into French law
	Where the disciplinary proceedings initiated may lead to the imposition of sanctions to senior managers, the Autorité de contrôle prudentiel et de resolution session which decided to initiate the procedure shall expressly indicate, in the notice of complaints, that the sanctions referred to in 4° and 5° are likely to be imposed against the senior manager it designates, specifying the elements likely to establish their direct and personal responsibility in the breaches or infractions in question, and the Enforcement commission shall ensure that the procedure is adversarial. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead or in addition to these sanctions, a financial penalty not exceeding EUR 100 million or 10 % of the net annual turnover within the meaning of Article V of Article L. 612-40 of this Code for breaches of Articles L. 113-5, L. 132-5, L. 132-8, L. 132-9-2 and L. 132-9-3 of the Insurance Code, Articles L. 223-10, L. 223-10-1, L. 223-10-2 and L. 223-19-1 of the Mutuality Code, in Chapters I and II of Title VI of Book V of this Code and in European provisions relating to obligations relating to the fight against money laundering and the financing of terrorism and restrictive measures. Where a withdrawal of approval is made under this Article, the Enforcement commission may cancel the certificates subscribed by the person concerned pursuant to Article L. 312-7. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may join a coercive fine to the sanction, the amount of which it shall fix and the effective date. A decree following consultation with the Conseil d'Etat shall determine the procedure applicable, the maximum daily amount of the coercive fine and the procedure according to which, in the event of total or partial non-performance or delay in execution, the coercice fine shall be collected. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may also impose the sanctions referred to in this Article if the injunctions provided for in Articles L. 511-41-3, L. 522-15-1 and L. 526-29 and to the additional requirements provided for in the second paragraph of Article L. 334-1 of the Insurance Code, in the first paragraph of Article L. 352-3 of the same Code or in the second paragraph of Article L. 385-8 of the same Code have not been complied with. The decision of the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall be made public in the publications, newspapers or media it designates, in a format proportionate to the fault committed and the penalty imposed. The costs are borne by the sanctioned persons.

Relevant articles of EU Directives	Implementation of these articles into French law
	However, where the publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision. For defaults relating to the marketing of structured deposits by credit institutions, sanctions shall be imposed under the conditions mentioned in paragraphs X and XII of Article L. 612-40. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a financial penalty not exceeding EUR 100 million or a tenfold increase in the amount of the benefit derived from the default, if that benefit can be determined. Where direct and personal responsibility for the breaches or infractions in question is established against individuals who actually direct, within the meaning of Article L. 511-13, the activity of a credit institution, or within the meaning of Article L. 322-3-2 of the Insurance Code, the activity of an insurance or reinsurance undertaking or within the meaning of Article L. 211-13 of the Mutual Code, the activity of a mutual or union, or within the meaning of Article L. 931-7-1 of the Social Security Code, the activity of a provident institution or a union, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a financial penalty on the individuals concerned not more than EUR 5 million or tenfold of the amount of the benefit derived from the infringement, whether that benefit can be determined. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may also impose the sanctions referred to in this Article if it has not been referred to the measures taken pursuant to Article IV L. 612-33. For breaches of the obligations provided for in Articles L. 516-1, L. 521-1 to L. 521-6 and L. 522-1 to L. 522-6 of the Insurance Code by persons mentioned in 1° to 5° of B of I of Article L. 612-2 of this Code where they distribute individual life insurance contracts with redemption values, capitalisation contracts or optional group contracts with a redemption or transfer value referred to in Articles L. 132-5-3 of the Insurance Code, L. 223-8 of the Mutual Code and L. 932-15 of the Social Security Code or of the contracts referred to in Articles L. 441-1 of the Insurance Code, L. 222-1 of the Mutual Code and L. 932-24 of the Social Security Code, the Sanctions Committee may pronounce, instead, or in addition to the penalties mentioned in 1° to 7°, a financial penalty the amount of which does not exceed the higher of the following three limits: one hundred million euro, or 5 % of the net annual turnover within the

Relevant articles of EU Directives	Implementation of these articles into French law
	meaning of Article V of Article L. 612-40 or double the amount of the benefit derived from the default, if that benefit can be determined. **Article L.612-40 of the MFC** I. - If a credit institution, investment firm or financing company has breached a provision of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, a provision of Title I and Title III of Book V of the MFC or of a regulation made for its application or any other legislative or regulatory provision the lack of which leads to the failure to comply with the above provisions to these provisions or to an injunction provided for in Articles L. 511-41-3 and L. 511-41-4, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose one or more of the following disciplinary sanctions, depending on the seriousness of the breach: 1° a warning; 2° a reprimand; 3° a prohibition of certain operations and any other restrictionon the conducting of its business; 4° a partial withdrawal of approval; 5° a complete withdrawal of approval or deletion from the list of approved individuals, with or without appointment of a liquidator. The sanction mentioned in 3° cannot exceed ten years. For credit institutions, the sanction provided for in paragraph 4 may be imposed only for activities not covered by the approval issued by the European Central Bank. For the same institutions and for activities falling within the scope of the approval issued by the European Central Bank, the penalties provided for in 4° and 5°, respectively, take the form of a partial or total prohibition of conservatory activity. When the Enforcement commission of the Autorité de contrôle prudentiel et de résolution pronounces the total prohibition of activity of a credit institution, the Autorité de contrôle prudentiel et de résolution proposes to the European Central Bank to declare the withdrawal of the approval. Where

Relevant articles of EU Directives	Implementation of these articles into French law
	the European Central Bank does not declare the withdrawal of approval, the Enforcement commission may deliberate again and impose another sanction among those provided for in this Article. II. – If a financial holding company, a mixed financial holding company or a financing company parent company has breached a provision of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, a provision of Title I and Title III of Book V of the MFC or of a regulation made for its application or any other legislative or regulatory provision the lack of which leads to the failure to comply with the provisions referred to above, or comply with these provisions, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may issue a warning or reprimand against it, depending on the seriousness of the breach. III. – If a mixed holding company or a mixed parent undertaking of a financing company has not submitted to a periodic injunction pursuant to Article L. 612-25 or is not subject to an on-the-spot control provided for in Article L. 612-26, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a 1 exceeding one million euros. IV. – If any of the persons or entities mentioned in Article I or II of Article L. 613-34 has contravened a provision of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, a provision of Section 4 of Chapter III of this Title or any other legislative or regulatory provision the lack of which leads to the lack of knowledge of the aforementioned provisions or where it has not submitted to formal notice to comply with these provisions or with an injunction under Article L. 312-6-1, Article I, II and III of Article L. 511-41-5, Article III and V of Article L. 613-36, Article II of Article L. 613-42, Article L. 613-45 and Article 3 of Article L. 613-46-7, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose on that person or entity one or more of the disciplinary sanctions referred to in I above. V. - The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead or in addition to the penalties provided for in paragraphs I, II and IV, a financial penalty of a maximum amount of 10% of the net annual turnover, including the gross income of the undertaking consisting of interest and similar income, income from shares, units and other variable or fixed-income securities and commissions received in accordance with Article 316 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 during the previous financial year.

Relevant articles of EU Directives	Implementation of these articles into French law
	Where the entity is a subsidiary of a parent undertaking, the gross income to be taken into account shall be that which emerges from the consolidated accounts of the ultimate parent undertaking during the preceding financial year. Where the benefit derived from the infraction can be determined, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall impose a penalty of a maximum amount of twice. Where a withdrawal of approval is made under this Article, the Enforcement commission may cancel the certificates subscribed by the person concerned pursuant to Article L. 312-7. VI. – The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a penalty payment, the amount and date of which it shall fix. VII. – Where direct and personal responsibility for the breaches or infringements referred to in paragraphs I, II and IV is established against individuals who effectively direct the business of the entity within the meaning of Articles L. 511-13 or L. 532-2, members of the management board, the supervisory board, or any other body exercising equivalent functions within a credit institution, an investment firm, a financing company, a financial holding company, a mixed financial holding company, a parent undertaking of a financing company or any other entity referred to in paragraph I and, where applicable, paragraph II of Article L. 613-34, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may, depending on the seriousness of the infringement, declare their temporary suspension or resignation. Such sanctions cannot exceed 10 years. VIII. – Where direct and personal responsibility for the breaches or infractions in question is established against the individuals who actually direct, within the meaning of Articles L. 511-13 or L. 532-2, the business of a credit institution, an investment firm, a financing company, a financial holding company, a mixed financial holding company, a parent undertaking of a financing company or any other entity referred to in I and, where appropriate, in Article II of Article L. 613-34, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead of or in addition to the sanctions referred to in Article VII, a financial penalty not exceeding EUR 5 million.

Relevant articles of EU Directives	Implementation of these articles into French law
	Where the benefit derived from the breach can be determined, it shall impose a penalty of a maximum amount of twice. IX. – The termination of duties in respect of which the liability of an individual is established, if it occurs within a period less than or equal to one year before the initiation of disciplinary proceedings, does not constitute an obstacle to the imposition of any of the sanctions provided for in this Article. X. – The amount and type of the sanction imposed under this Article shall be determined taking into account, in particular, where appropriate: 1° The seriousness and duration of the breaches committed and, where appropriate, their potential systemic consequences; 2° The degree of responsibility of the perpetrator of the defaults, of his financial situation, of the extent of the gains he has obtained or of the losses he has avoided, its level of cooperation with the Autorité de contrôle prudentiel et de résolution and its previous breaches; 3° Damages suffered by third parties as a result of breaches, if they can be determined. XI. – Where sanction procedures are instituted against an individual pursuant to the provisions of this Article, the session of the Autorité de contrôle prudentiel et de résolution which decides to initiate the procedure shall notify the individual of the objections, by specifying the elements likely to justify its direct and personal responsibility in the breaches or offences in question. A copy of the statement of objections shall be sent to the management board, the supervisory board or any other body exercising equivalent functions of the undertaking in which the individual performs his functions and, where appropriate, the management board, the supervisory board or any other body exercising equivalent functions of the parent undertaking or the central body of the undertaking in which the individual carries out his functions. XII. – Under the conditions laid down by a decree with consultation of the Conseil d'Etat, the decision of the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall be made public in the publications, newspapers or media it designates, in a format proportionate to the infraction committed and the penalty imposed. The costs are borne by the sanctioned persons;

Relevant articles of EU Directives	Implementation of these articles into French law
	However, the decisions of the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall be published anonymously in the following cases: 1° Where, in the case of a sanction imposed on a individual, it emerges from a prior assessment carried out on the basis of the information provided by the person concerned that publication of the personal data concerning him or her would cause him or her disproportionate harm; 2° Where the non-discretised publication would jeopardize the stability of the financial markets or an ongoing criminal investigation; 3° Where it appears from objective and verifiable evidence provided by the accused person that the harm that would result for him or her from an anonymous publication would be disproportionate. Where the situations mentioned in 1° to 3° are likely to cease to exist within a short period of time, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may decide to defer publication during that period. XIII. – The provisions of this Article shall apply to persons who have not complied with the injunction provided for in Articles L. 511-12-1 and L. 531-6.
Article 73 of CRD IV Institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. Those strategies and processes shall be subject to regular internal review to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities of the institution concerned.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation.

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	The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy. **Article L. 533-2-2 of the MFC** Investment firms implement systems, strategies and procedures that are subject to regular internal control mentioned in Article L. 511-55 enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate risk, operational risk, liquidity risk and excessive leverage risk. Investment firms, particularly in view of their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the Autorité de contrôle prudentiel et de résolution, an internal approach to determine the capital requirements appropriate to their situation. The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable investment firms to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Investment firms must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate liquidity cushions and have plans for restoring their liquidity.

Relevant articles of EU Directives	Implementation of these articles into French law
	Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the arrangements, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions of application of this article are set by order of the Minister in charge of the economy.
Article 79 of CRD IV Competent authorities shall ensure that: (a) credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established; (b) institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital; (c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems; (d) diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.	**Article 111 of the ministerial order on internal control** The lending decision procedures, the commitment procedures, the renewing procedures, notably when they are organized by way of delegation of powers, are based on specific criteria, clearly documented and appropriate to the features of the supervised entity, in particular its size, its organization and the nature of its activity. **Article 114 of the ministerial order on internal control** Covered entities shall have the internal methodologies that enable them to assess the credit risk of exposures to individual counterparties, securities or securitization positions, and credit risk at the portfolio level. Internal methodologies of assessment of the credit risk shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating calculated by an external credit rating institution or based on the fact that an exposure is unrated, the covered entities shall consider additionally other relevant information for assessing their allocation of internal capital. **Article 115 of the ministerial order on internal control** Systems of assessment and management of credit risks implemented by covered entities shall enable to, effectively, identify and manage problem credits, make adequate value adjustments and record appropriate amounts of provisions or impairment.

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	Article 106 of the ministerial order on internal control Covered entities shall have a procedure for selecting credit risks and a system for measuring those risks which enables them in particular: (a) to identify centrally on- and off-balance-sheet risks in relation to a counterparty or counterparties regarded as a single group of connected customers in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013; (b) to capture different categories of risk levels on the basis of qualitative and quantitative information, including intraday credit risk, where it is material to the business of the reporting undertaking; (c) to address and control concentration risk by means of written policies and procedures; (d) to address and control residual risk by means of written policies and procedures; (e) to verify the adequacy of the diversification of credit portfolios given their credit strategy.
Article 86 of CRD IV 1. Competent authorities shall ensure that institutions have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks. 2. The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the management body and reflect the institution's importance in	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed.

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each Member State in which it carries out business. Institutions shall communicate risk tolerance to all relevant business lines.	Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate level of liquidity buffers and have in place liquidity recovery plans.
3. Competent authorities shall ensure that institutions, taking into account the nature, scale and complexity of their activities, have liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.	Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy.
	Article L. 511-41-1-C of the MFC
Competent authorities shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations.	The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B.
Competent authorities shall take effective action where developments referred to in the second subparagraph may lead to individual institution or systemic instability.	The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings.
Competent authorities shall inform EBA about any actions carried out pursuant to the third subparagraph.	The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at least once a year the quality of the internal approaches used for the calculation of own funds requirements.
EBA shall make recommendations where appropriate in accordance with Regulation (EU) No 1093/2010.	The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour.
4. Competent authorities shall ensure that institutions develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet	Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner.

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items, including contingent liabilities and the possible impact of reputational risk. 5. Competent authorities shall ensure that institutions distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also ensure that institutions take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account and their eligibility and shall monitor how assets can be mobilised in a timely manner. 6. Competent authorities shall ensure that institutions also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area. 7. Competent authorities shall ensure that institutions consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly. 8. Competent authorities shall ensure that institutions consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. For those purposes, alternative	The conditions for the application of this Article shall be set by order of the Minister for the Economy. **Article L. 533-2-2 of the MFC** Investment firms implement systems, strategies and procedures that are subject to regular internal control mentioned in Article L. 511-55 enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate risk, operational risk, liquidity risk and excessive leverage risk. Investment firms, particularly in view of their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the Autorité de contrôle prudentiel et de résolution, an internal approach to determine the capital requirements appropriate to their situation. The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable investment firms to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Investment firms must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate liquidity cushions and have plans for restoring their liquidity. Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the arrangements, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions of application of this article are set by order of the Minister in charge of the economy. **Article L.533-2-3 of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by investment firms to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 533-2-2.

Relevant articles of EU Directives	Implementation of these articles into French law
scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation (EU) No 575/2013, in relation to which the institution acts as sponsor or provides material liquidity support. 9. Competent authorities shall ensure that institutions consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stress conditions shall be considered. 10. Competent authorities shall ensure that institutions adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraph 8. 11. Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 8, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. For credit institutions, such operational steps shall include holding collateral	The Authority supervises the use by investment firms of internal approaches for determining the capital requirements imposed on them, ensuring in particular that they do not rely exclusively or mechanically on external credit ratings. On the basis of the information provided by investment firms, it shall assess at least once a year the quality of the internal approaches used for the calculation of capital requirements. The Authority shall carry out a comparative analysis of internal approaches. If the Authority determines, as a result of that analysis, that an investment firm's internal approach leads to an underestimation of its capital requirement, it may impose corrective measures. These corrective measures must not lead to standardisation or a propensity for certain methods, create unjustified incentives or provoke imitative behaviour. Where the Autorité de contrôle prudentiel et de résolution finds that investment firms with similar risk profiles due to the similarity of their business models or the geographical location of their exposures are or could be exposed to similar risks or represent similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions of application of this article are set by order of the minister in charge of the economy. **Article 148 of the ministerial order on internal control** Covered entities shall have robust strategies, policies, processes, systems, tools and limits in place for the identification, measurement, managements and monitoring of liquidity risk over an appropriate set of time horizons, from short-term, including intra-day, to long-term, in order to maintain adequate level of liquidity buffers and avoid excessive transformation. These time horizons, set by the covered entity, constitute the modellable time horizon. **Article 149 of the ministerial order on internal control** The strategies, policies, processes, systems, tools and limits of the covered entities referred to in Article 148 shall be specifically tailored to their business lines, the currencies in which they conduct significant business, their branches and legal entities, where applicable, and shall include adequate allocation mechanisms of liquidity costs, benefits and risks between these different entities.

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immediately available for central bank funding. This includes holding collateral where necessary in the currency of another Member State, or the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.	**Article 150 of the ministerial order on internal control** The strategies, policies, processes, systems, tools and limits referred to in Article 148 shall also be proportionate to the complexity, risk profile, scope of operation of the covered entities, the risk tolerance determined in accordance with Article 181 and shall reflect the importance of the covered entities in each of the Member States of the European Union or of the States party to the Agreement on the European Economic Area in which they carry out business, assessed in the light of the systemic repercussions which may result from their importance in those markets. **Article 151 of the ministerial order on internal control** The strategies, policies, processes, systems, tools and limits referred to in Article 148 shall be an integral part of the overall risk management framework and shall be effectively used in the measurement and management of liquidity risk in on going and stress situations. **Article 152 of the ministerial order on internal control** Covered entities shall adapt to their liquidity risk: - their strategies, policies, processes, systems, limits and tools referred to in Article 148 - their definition of the stock of liquid assets and diversification of source of financing to their liquidity risk. **Article 153 of the ministerial order on internal control** The limits referred to in Article 148 shall be consistent with the credit quality of the covered entities, with general market conditions and with the results of the stress scenarios set out in Article 168. **Article 154 of the ministerial order on internal control**

Relevant articles of EU Directives	Implementation of these articles into French law
	Covered entities shall communicate to the Autorité de contrôle prudentiel et de résolution the level of liquidity risk tolerance and the limits, referred to in Articles 181 and 148 respectively, adopted for all relevant business lines. **Article 155 of the ministerial order on internal control** The information systems of covered entities shall enable them to monitor and control liquidity risk and, in particular, to measure their liquidity positions. The information systems of covered entities shall enable them to know at all times the stock of liquid assets that may constitute liquidity reserves for the time horizons mentioned in Article 148. The information systems of covered entities shall include tools for measuring the cost of liquidity, including the cost of internal liquidity, and mechanisms for managing liquidity costs. **Article 156 of the ministerial order on internal control** Covered entities shall develop methodologies for the identification, measurement, management and monitoring of funding positions, using the indicators and limits referred to in Article 148, with sufficiently prudent assumptions and in both a static and dynamic manner. **Article 157 of the ministerial order on internal control** Those methodologies shall include the current and projected material cash-flows in and arising from all assets, liabilities, off-balance sheet items, and other contingent liabilities, including liabilities of securitisation entities or other special purpose entities, within the meaning of Regulation (EU) No 575/2013, for which covered entities act as sponsors or for which covered entities provide significant liquidity support. Those methodologies shall include the possible impact of reputational risk. Those methodologies shall also include the assessment of liquidity needs and resources of covered entities in relation with their business forecasts.

Relevant articles of EU Directives	Implementation of these articles into French law
	Article 158 of the ministerial order on internal control Covered entities shall document their methodologies and explain the choices made. **Article 159 of the ministerial order on internal control** Covered entities distinguish between encumbered assets and unencumbered assets that are available at all times, in particular during emergency situations. They shall take into account the legal entity in which the assets reside, the country where the assets are legally recorded, either in a register or in an account, as well as their eligibility for central bank refinancing, and shall monitor how these assets can be mobilised both in normal and emergency situations. Covered entities shall have regard to legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, including outside the European Economic Area. **Article 160 of the ministerial order on internal control** In order to be able to cope with a range of different types of crises, covered firms shall rely on different liquidity risk mitigation tools, including a system of limits as referred to in Article 148 and liquidity buffers, which shall be available at any time. Covered entities shall diversify their funding structure and funding sources. Covered entities shall also define the modalities for the rapid mobilisation of complementary sources of funding. **Article 161 of the ministerial order on internal control** Covered entities shall take into account the foreseeable value of the use of the sources of financing mentioned in Article 160. They shall take into account haircuts that encompass risk of losses related to a squeeze-out within a short period of time or in the event of non-renewal of certain debt outstanding.

Relevant articles of EU Directives	Implementation of these articles into French law
	Article 162 of the ministerial order on internal control Covered entities shall assess their capacity to raise funds from each sources of funding, both in normal and stress scenarios. To this end, they shall periodically test, directly or through their refinancing entity, their capacity to borrow from their counterparties. They shall test as well their access to the central bank refinancing mechanism and other refinancing mechanisms. **Article 163 of the ministerial order on internal control** Covered entities shall regularly review the appropriateness of the criteria for the identification, valuation, liquidity and availability of assets and the measures taken for the application of Article 160. **Article 164 of the ministerial order on internal control** Covered entities shall also implement tools to measure and monitor their intraday liquidity risk. **Article 165 of the ministerial order on internal control** Covered entities shall implement alert procedures and action plans in case the limits referred to in Article 148 are exceeded. **Article 166 of the ministerial order on internal control** In order to establish their net borrowing, covered entities shall calculate liquidity shortfalls for all time horizons defined pursuant to Article 148 and shall determine the terms and conditions for their coverage. **Article 167 of the ministerial order on internal control**

Relevant articles of EU Directives	Implementation of these articles into French law
	Liquidity shortfalls correspond to the balance, whether cumulative or not, of current and forecast cash receipts and disbursements. They are calculated, for each significant currency, according to the contractual or expected maturity of the transactions and according to the impact of contingent liabilities such as off-balance sheet transactions concluded in the form of guarantees, sureties or financing commitments not yet drawn down. **Article 168 of the ministerial order on internal control** Covered entities shall consider alternative scenarios on liquidity positions and on risk mitigants, based on assumptions different from those mentioned in Article 156. For these purposes, alternative scenarios shall cover both certain and probable inflows and outflows resulting from all assets, liabilities and off-balance-sheet items and other contingent liabilities, including those of securitisation entities or other special purpose entities, within the meaning of Regulation (EU) No 575/2013 referred to above, for which reporting undertakings act as sponsors or provide material liquidity support. **Article 169 of the ministerial order on internal control** Covered entities shall examine the potential impact of the alternative scenarios referred to in Article 168 on the entities themselves, on the market as a whole and on a combination of the two, leading to a sudden deterioration in their financing conditions. Covered entities shall take into account periods of different durations and stress conditions of different intensity, including extremes, in the development of the alternative scenarios referred to in Article 168. **Article 170 of the ministerial order on internal control** Covered entities shall identify liquidity risk factors according to their size, the nature of their activities and their importance in each of the Member States of the European Union or the States party to the

Relevant articles of EU Directives	Implementation of these articles into French law
	Agreement on the European Economic Area where they operate, assessed in the light of the systemic implications that may result from their importance in those markets. They shall establish the alternative scenarios referred to in Article 168 by adapting them to those risk factors. **Article 171 of the ministerial order on internal control** Where Covered entities develop scenarios specific to certain foreign locations, legal entities or business lines, they document and justify their choices. **Article 172 of the ministerial order on internal control** Covered entities shall test the alternative scenarios referred to in Article 168 on a regular basis in order to ensure that their exposure to liquidity risk remains consistent with their defined risk tolerance. **Article 173 of the ministerial order on internal control** At least once a year, the covered entities shall review the assumptions underlying the decisions relating to financing and carry out a periodic review of the relevance and severity of the assumptions used to establish the alternative scenarios referred to in Article 168. **Article 174 of the ministerial order on internal control** The covered entities shall analyse the impact of the alternative scenarios mentioned in Article 168 on their liquidity position, on the level and sustainability of funding commitments received, confirmed and unconfirmed, and on the level and composition of their stock of liquid assets. **Article 175 of the ministerial order on internal control**

Relevant articles of EU Directives	Implementation of these articles into French law
	They shall, taking into account the results of the scenarios referred to in Article 168, develop effective formalised contingency plans to prepare for crisis situations. The contingency plans shall specify the strategy and procedures to be followed to manage liquidity under the different alternative scenarios referred to in Article 168. **Article 176 of the ministerial order on internal control** The procedures referred to in Article 175 shall determine in particular: - the persons concerned, their level of responsibility and their tasks; - the alternative solutions for access to liquidity to be implemented; - the arrangements for communicating information to the public. **Article 177 of the ministerial order on internal control** Periodically, and at least once a year, covered entities shall test and update their contingency plans, in particular in the light of the results of the alternative scenarios referred to in Article 168, to ensure that they are effectively operational and appropriate. The contingency plans shall be communicated to and approved by the supervisory body. **Article 178 of the ministerial order on internal control** Covered entities shall have liquidity recovery plans setting out adequate strategies and appropriate implementation measures to address possible liquidity shortfalls, including in respect of branches established in other Member States of the European Union or other States party to the Agreement on the European Economic Area. **Article 179 of the ministerial order on internal control**

Relevant articles of EU Directives	Implementation of these articles into French law
	Covered entities shall take appropriate and anticipated operational measures to ensure the immediate implementation of the liquidity recovery plans referred to in Article 178, such as the holding of collateral immediately available for financing by central banks or the holding of collateral, denominated, where appropriate, in the currency of another State to which the covered entities is exposed and which is held, according to operational needs, in the territory of that State. **Article 180 of the ministerial order on internal control** Covered entities shall test at least once a year the liquidity recovery plans referred to in Article 178, updated taking into account the results of the scenarios referred to in Article 168. The results shall be communicated to the effective directors for adapting internal policies and processes accordingly. **Article 181 of the ministerial order on internal control** The effective directors determine the liquidity risk tolerance level of the covered entities, i.e. the level of risk-taking it accepts based on its risk profile, which is approved by the supervisory body. They shall determine the liquidity management policy appropriate to the risk tolerance level of the reporting undertaking and put in place the procedures, systems, limits and tools for identifying, measuring and managing liquidity risk as referred to in Article 148. **Article 182 of the ministerial order on internal control** The effective directors shall ensure the adequacy of those procedures, systems, tools and limits referred to in Article 148 by monitoring developments in the liquidity situation. They shall report the results of their analyses to the supervisory body and, where appropriate, to the risk committee at least twice a year. **Article 183 of the ministerial order on internal control**

Relevant articles of EU Directives	Implementation of these articles into French law
	The Supervisory Body shall decide at least once a year on the level of risk tolerance referred to in Article 181 and on the strategies, policies, procedures, systems, tools and limits referred to in Article 148. The Supervisory Body shall approve any substantial changes to the elements referred to in the first subparagraph. **Article 184 of the ministerial order on internal control** The supervisory body is kept informed and, where appropriate, the Risk Committee, of the conclusions of the reviews and analyses of the liquidity risk mentioned in the preceding articles. It shall be kept informed and, where appropriate, the Risk Committee, of the results of the alternative stress scenarios conducted pursuant to Article 168 and of the actions taken, if any. **Article 185 of the ministerial order on internal control** The Risk Committee shall, where appropriate, regularly review the strategies, policies, procedures, systems, tools and limits referred to in Article 148 and the underlying assumptions and report its findings to the Supervisory Body. **Article 186 of the ministerial order on internal control** Covered entities shall immediately inform the Autorité de contrôle prudentiel et de résolution of any material change in their current or projected liquidity position and of any overshooting of the limits referred to in Article 148. They shall also communicate to the Autorité de contrôle prudentiel et de resolution information on their strategies, policies, procedures, systems, tools, contingency plans and the results of the scenarios referred to in Articles 148, 175 and 168 respectively. **Article 7 of the ministerial order on prudential supervision and risk assessment**

Relevant articles of EU Directives	Implementation of these articles into French law
	I.- The Autorité de contrôle prudentiel et de résolution shall determine whether the liquidity risk profiles implemented by the covered entity mentioned in Article 1, taking into account the nature, scale and complexity of their activities, comply with and do not exceed what is required by a sound and efficient system. The Autorité de contrôle prudentiel et de résolution shall monitor developments affecting liquidity risk profiles, including product design and volumes, risk management, funding policies and funding concentrations. The Autorité de contrôle prudentiel et de résolution may enjoin a covered entity to take corrective measures or to comply with a specific liquidity requirement, in accordance with the provisions of I and IV of Article L. 511-41-3 of the Monetary and Financial Code, when the developments mentioned in the previous paragraph could lead to instability in that entity or the system. The Autorité de contrôle prudentiel et de résolution shall inform the European Banking Authority of all corrective measures taken and all specific liquidity requirements imposed pursuant to the previous paragraph, except when these measures concern financing companies and parent undertakings of financing companies. II-The Autorité de contrôle prudentiel et de resolution shall assess whether it is necessary to impose a specific liquidity requirement to take account of the liquidity risks to which a covered etitiy referred to in Article 1 is or might be exposed, taking into account the following elements: 1° The particular business model of that entity; 2° The arrangements, processes and mechanisms of the entity mentioned in I and Chapter VI of Title IV of the ministerial order of 3 November 2014; 3° The results of the monitoring and assessment carried out in accordance with Article 6 of this ministerial order; 4° A systemic liquidity risk constituting a threat to the integrity of financial markets in France. III. When a covered entity, with the exception of a financing company and a parent undertaking of a financing company, has significant branches in other Member States of the European Union or parties to the Agreement on the European Economic Area, the Autorité de contrôle prudentiel et de resolution shall consult the authorities of the host Member States on the operational measures required under

Relevant articles of EU Directives	Implementation of these articles into French law
	Articles 178 to 180 of the aforementioned Order of 3 November 2014 whenever relevant with regard to liquidity risks in the currency of the host State. Where the Autorité de contrôle prudentiel et de résolution, in accordance with Article L. 613-32-1 of the Monetary and Financial Code, is the competent authority of the host Member State of a significant branch, it may refer the matter to the European Banking Authority, in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 referred to above, in one of the following cases: 1° The Autorité de contrôle prudentiel et de résolution has not been consulted by the competent authority within the meaning of Articles L. 511-21 or L. 532-16 of the same Code; 2° The Autorité de contrôle prudentiel et de résolution considers that the operational measures required within the meaning of Articles 178 to 180 of the ministerial order of 3 November 2014 are not adequate.
Article 97 of CRD IV 1. Taking into account the technical criteria set out in Article 98, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation (EU) No 575/2013 and evaluate: (a) risks to which the institutions are or might be exposed; (b) risks that an institution poses to the financial system taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010, or recommendations of the ESRB, where appropriate; and (c) risks revealed by stress testing taking into account the nature, scale and complexity of an institution's activities.	**Article 6 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies** I.- The Autorité de Contrôle Prudentiel et de Résolution supervises the systems, strategies and procedures implemented by the companies mentioned in Article 1 [including credit institutions and investment firms] in order to comply with Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 mentioned above, as well as the provisions of Title I and Title III of Book V of the Monetary and Financial Code or of a regulation adopted for their application or any other legislative or regulatory provision, the breach of which entailing the breach of the aforementioned provisions. In accordance with the provisions of the first paragraph of Article L. 511-41-1 C or the first paragraph of Article L. 533-2-3 of the Monetary and Financial Code, the Autorité de Contrôle Prudentiel et de Résolution assesses: 1° The risks to which the companies mentioned in Article 1 are or could be exposed;

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2. The scope of the review and evaluation referred to in paragraph 1 shall cover all requirements of this Directive and of Regulation (EU) No 575/2013. 3. On the basis of the review and evaluation referred to in paragraph 1, the competent authorities shall determine whether the arrangements, strategies, processes and mechanisms implemented by institutions and the own funds and liquidity held by them ensure a sound management and coverage of their risks. 4. Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 99(2). 5. Member States shall ensure that where a review shows that an institution may pose systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 the competent authorities inform EBA without delay about the results of the review.	2° The risks that an undertaking mentioned in Article 1 presents for the financial system taking into account the identification and measurement of systemic risk pursuant to Article 23 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of November 24, 2010 mentioned above or the recommendations of the European Systemic Risk Board; 3° The risks highlighted by the stress tests, taking into account the nature, scale and complexity of the activities of the undertakings mentioned in Article 1. The Autorité de Contrôle Prudentiel et de Résolution shall determine the frequency and intensity of the monitoring and assessment, taking into account the principle of proportionality, the size and systemic importance of the undertaking mentioned in Article 1 and the nature, scale and complexity of its activities. Such monitoring and assessment shall take place at least once a year for the undertakings covered by the prudential supervision programme provided for in II of Article 9. II- The Autorité de Contrôle Prudentiel et de Résolution shall determine whether the arrangements, strategies and procedures implemented by the undertakings referred to in Article 1, as well as the own funds and liquid assets they hold, ensure sound risk management and coverage. III- The Autorité de Contrôle Prudentiel et de Résolution shall inform the European Banking Authority without delay when a supervision reveals that an undertaking referred to in Article 1 may pose a systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 referred to above, unless that undertaking is a finance company or a parent undertaking of a finance company. The Autorité de Contrôle Prudentiel et de Résolution shall examine in particular the extent to which value adjustments made in accordance with Article 105 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 referred to above for trading book positions enable the undertaking referred to in Article 1 to sell or hedge its positions quickly without incurring significant losses under normal market conditions. IV- The Autorité de Contrôle Prudentiel et de Résolution shall inform the European Banking Authority of the functioning of its monitoring and evaluation process defined in this Article, except for finance companies and parent undertakings of finance companies.

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Article 98 (1)(e) of CRD IV 1. In addition to credit, market and operational risks, the review and evaluation performed by competent authorities pursuant to Article 97 shall include at least: (e) the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;	**Article 8 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms** I. - In addition to credit, market and operational risks, the control and evaluation carried out by the Autorité de contrôle prudentiel et de résolution pursuant to Article 6 shall cover at least: […] 5° The exposure to liquidity risk and the measurement and management of this risk by the companies mentioned in Article 1 [including credit institutions and investment firms], including the development of analyses based on alternative scenarios, the management of risk mitigation elements, including the level, composition and quality of liquidity buffers, and the implementation of effective contingency plans; […]
Article 98(6) of CRD IV 6. The review and evaluation performed by competent authorities shall include the exposure of institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. In determining the adequacy of the leverage ratio of institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage, competent authorities shall take into account the business model of those institutions.	**Article 8(5) of the Arrêté of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms** V. - The monitoring and assessment carried out by the Autorité de contrôle prudentiel et de résolution covers the exposure of the companies mentioned in Article 1 [including credit institutions and investment firms], with the exception of finance companies, to the risk of excessive leverage, as shown by the indicators of excessive leverage, and in particular the leverage ratio determined in accordance with Article 429 of the same Regulation. When the Autorité de contrôle prudential et de résolution assesses the adequacy of the leverage ratio of the companies referred to in Article 1, with the exception of finance companies, and the provisions, strategies, processes and mechanisms they implement to manage the risk of excessive leverage, it takes into account the business model of those companies**.**

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Article 99 of CRD IV 1. The competent authorities shall, at least annually, adopt a supervisory examination programme for the institutions they supervise. Such programme shall take into account the supervisory review and evaluation process under Article 97. It shall contain the following: (a) an indication of how competent authorities intend to carry out their tasks and allocate their resources; (b) an identification of which institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3; (c) a plan for inspections at the premises used by an institution, including its branches and subsidiaries established in other Member States in accordance with Articles 52, 119 and 122. 2. Supervisory examination programmes shall include the following institutions: (a) institutions for which the results of the stress tests referred to in points (a) and (g) of Article 98(1) and Article 100, or the outcome of the supervisory review and evaluation process under Article 97, indicate significant risks to their ongoing financial soundness or indicate breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013; (b) institutions that pose systemic risk to the financial system; (c) any other institution for which the competent authorities deem it to be necessary. 3. Where appropriate under Article 97 the following measures shall, in particular, be taken if necessary:	**Article 9 of the Arrêté of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies** I.- The Autorité de contrôle prudentiel et de résolution adopts at least once a year a supervisory examination program for the companies mentioned in Article 1 [including credit institutions and investment firms]. This program shall take into account the supervisory review and evaluation process provided for in Article 6. It shall include: 1° An indication of how the Autorité de contrôle prudentiel et de résolution intends to carry out its missions and allocate its resources; 2° An identification of the companies that it intends to subject to enhanced supervision and the measures taken to that end, in accordance with III; 3° A plan for inspections in the premises used by the companies mentioned in Article 1, including their branches and subsidiaries established in other Member States of the European Union or parties to the agreement on the European Economic Area, in accordance with the provisions of Articles L. 612-26 and L. 632-12 of the Monetary and Financial Code. II- Supervisory examination programs cover the companies mentioned in Article 1 below: 1° The companies mentioned in Article 1 for which the results of the stress tests mentioned in 1° and 7° of I of Article 8 and in Article 10 or the results of the supervisory review and evaluation process provided for in Article 6 reveal significant risks to their financial soundness or breaches of the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 referred to above and the provisions of Title I and Title III of Book V of the Monetary and Financial Code or of a regulation adopted for their application or any other legislative or regulatory provision, the breach of which entailing the breach of the aforementioned provisions; 2° Companies mentioned in Article 1 that pose a systemic risk for the financial system; 3° Any other company mentioned in Article 1 if the Autorité de contrôle prudentiel et de résolution deems it necessary. III-Where appropriate in the light of Article 6, the following measures may be taken by the Autorité de contrôle prudentiel et de résolution:

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(a) an increase in the number or frequency of on-site inspections of the institution; (b) a permanent presence of the competent authority at the institution; (c) additional or more frequent reporting by the institution; (d) additional or more frequent review of the operational, strategic or business plans of the institution; (e) thematic examinations monitoring specific risks that are likely to materialise. 4. Adoption of a supervisory examination programme by the competent authority of the home Member State shall not prevent the competent authorities of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of institutions on their territory in accordance with Article 52(3).	1° An increase in the number and frequency of on-site inspections of the company mentioned in Article 1; 2° The permanent presence of the Autorité de contrôle prudentiel et de résolution in the company mentioned in Article 1, in accordance with 2° of I of Article L. 612-33 of the same Code; 3° Additional or more frequent reporting from the company mentioned in Article 1; 4° Additional or more frequent reviews of the operational, strategic or business plans of the company mentioned in Article 1; 5° Thematic examinations allowing the monitoring of specific risks likely to materialize. IV.- The adoption of a supervisory examination program by the Autorité de contrôle prudential et de résolution for a company referred to in Article 1 shall take due account of the information and findings communicated by the host Member States concerning the risk assessment of the branches and subsidiaries of that company as well as those concerning the financial stability of those host Member States. V.- The adoption of a supervisory examination program by the competent authority of the home Member State does not prevent the Autorité de contrôle prudentiel et de résolution from carrying out on a case-by-case basis, in its capacity as host Member State authority, on-site inspections and inspections of the activities carried out by branches established within the territory of the French Republic by credit institutions having their head office in a Member State of the European Union or a State party to the Agreement on the European Economic Area, in accordance with Articles L. 511-25 and L. 532-18-1 of the same code.
Article 100(1) of CRD IV 1. The competent authorities shall carry out as appropriate but at least annually supervisory stress tests on institutions they supervise, to facilitate the review and evaluation process under Article 97.	**Article 10 of the *Arrêté* of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms other than portfolio management companies, applicable to both credit institutions and investment firms** I. - The Autorité de contrôle prudential et de résolution shall apply prudential stress tests at least once a year to the companies referred to in Article 1 [including credit institutions and investment firms] that it supervises, in support of the supervisory review and evaluation process provided for in Article 6. II. - The Prudential Supervisory Authority and Resolution Authority shall inform the European Banking Authority of the method used for the implementation of the stress tests provided for in this Article,

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	except where that information concerns finance companies and parent companies of finance companies.
Article 102 of CRD IV 1. Competent authorities shall require an institution to take the necessary measures at an early stage to address relevant problems in the following circumstances: (a) the institution does not meet the requirements of this Directive or of Regulation (EU) No 575/2013; (b) the competent authorities have evidence that the institution is likely to breach the requirements of this Directive or of Regulation (EU) No 575/2013 within the following 12 months. 2. For the purposes of paragraph 1, the powers of competent authorities shall include those referred to in Article 104.	**Article L. 511-41-5 of the MFC** I. - Without prejudice to Articles L. 511-41-3, L. 612-30 to L. 612-34, the Autorité de contrôle prudentiel et de résolution may enjoin a credit institution, an investment firm mentioned in 2° of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 to take one or more of the early intervention measures referred to in II when, in particular as a result of a rapid deterioration in its financial or liquidity situation, including an increase in the level of leverage, non-performing loans or concentration of exposures, that person infringes or is likely in the near future to infringe the requirements resulting from the provisions: 1° Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013; 2° Articles 3 to 7, 14 to 17 and 24 to 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014; 3° Of this title and title III of this book; 4° Any other legislative or regulatory provision, the ignorance of which entails that of the aforementioned provisions. II. - In the cases mentioned in I, a credit institution, an investment firm mentioned in 2° of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 may be enjoined to take at least one or more of the following early intervention measures: 1° To apply one or more of the measures contained in the preventive recovery plan mentioned in Article L. 613-35, if necessary after having updated it if the circumstances leading to the implementation of the measures in question differ from the initial assumptions of the plan; 2° Submit a specific recovery plan to the Autorité de contrôle prudentiel et de résolution, with a view to overcoming the difficulties identified, for approval by the Autorité de contrôle prudentiel et de résolution, under the formal and procedural conditions set out in Article L. 612-32; 3° Terminate the functions or mandates of the persons referred to in Article L. 511-13 or Article L. 532-2 4, the members of the board of directors, the supervisory board or any other body exercising

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	equivalent supervisory functions if these persons are no longer able to perform their functions in accordance with the requirements set out in Articles L. 511-51, L. 511-52, L. 533-25 or L. 533-26; 4° Draw up an action plan with a view to restructuring its debt with all or some of its creditors in accordance, where applicable, with the preventive recovery plan provided for in Article L. 613-35; 5° Modify its commercial strategy; 6° Modify its legal or operational structure. Where the person referred to in the first paragraph is a parent undertaking or a subsidiary within the meaning of Article L. 511-20, III and IV of Article L. 613-20-4, Articles L. 613-21-3 or L. 613-21-4, as the case may be, apply. The Autorité de contrôle prudentiel et de résolution shall define the timeframe for the implementation of the above-mentioned measures. III. - The Autorité de contrôle prudentiel et de résolution, for the purposes of implementing the measures mentioned in II, may enjoin the persons mentioned in Article L. 511-13 or in Article L. 532-2, the board of directors, the supervisory board or any other body exercising equivalent supervisory functions to convene a general meeting of a person mentioned in I. It shall draw up the agenda. If such a meeting has not been convened by the end of the period set by the Autorité de contrôle prudentiel et de résolution, the latter shall convene the meeting itself. IV. - The supervisory board shall inform the resolution college without delay of any measures taken pursuant to this Article.
Article 104 of CRD IV 1. For the purposes of Article 97, Article 98(4), Article 101(4) and Articles 102 and 103 and the application of Regulation (EU) No 575/2013, competent authorities shall have at least the following powers: (a) to require institutions to hold own funds in excess of the requirements set out in Chapter 4 of this Title and in Regulation	**Article L. 511-41-3 of the MFC** I. The Autorité de contrôle prudentiel et de résolution may require an entity mentioned in 1°, a of 2°, 4°, 9°, and 10°, A of I of Article L. 612-2 or I and, where appropriate, II of Article L. 613-34 to take, within a specified period, any measures to restore or strengthen its financial or liquidity position, improve its management methods or ensure that its organization is in line with its activities or development objectives, or where the information received or requested by the Autorité de contrôle prudentiel et de résolution is such as to establish that that person is likely to breach) within 12 months the obligations laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June

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(EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation; (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 73 and 74; (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements; (g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base; (h) to require institutions to use net profits to strengthen own funds; (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; (l) to require additional disclosures. 2. The additional own funds requirements referred to in paragraph 1(a) shall be imposed by the competent authorities at least where, (a) an institution does not meet the requirement set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013;	2013, by a provision of this Title and Title III of this Book or of a regulation made for its application or by any other legislative or regulatory provision the lack of which leads to a breach of that provision. II. - The Autorité de contrôle prudentiel et de résolution may thereby require the entity to hold capital in excess of the minimum amount provided for in the applicable regulations and may require the application of a specific policy to the assets of provisioning or specific treatment with regard to own funds requirements. The Autorité de contrôle prudentiel et de résolution shall impose the additional own funds requirement provided for in the preceding subparagraph, in particular in one of the following cases: 1° The company does not have adequate processes in place to maintain the amount, type and allocation of internal capital it deems appropriate at all times, nor does it have effective processes for detecting, managing and monitoring its risks; 2° Risks or risk elements are not covered by the own funds requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 or by the additional own funds obligations referred to in Articles L. 511-41-1 A or L. 533-2-1. 3° The Autorité de contrôle prudentiel et de résolution considers that the implementation of other measures would not be likely to sufficiently improve the company's systems, mechanisms and strategy within an appropriate period of time; 4° It is clear from the monitoring and assessment of the prudential situation of the entity that the failure to comply with the requirements governing the use of internal risk assessment approaches provided for in the Regulation (EU) no 575/2013 of the European Parliament and of the Council of 26 June 2013, risk of causing inadequate own funds requirements; 5° Risks are likely to be underestimated, despite compliance with the requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013; 6° The entity declares to the competent authority, in accordance with paragraph 5 of Article 377 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the results of the stress tests referred to in this Article significantly exceed the capital requirements for the correlation trading portfolio.

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(b) risks or elements of risks are not covered by the own funds requirements set out in Chapter 4 of this Title or in Regulation (EU) No 575/2013; (c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe; (d) the review referred to in Article 98(4) or Article 101(4) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements; (e) the risks are likely to be underestimated despite compliance with the applicable requirements of this Directive and of Regulation (EU) No 575/2013; or (f) an institution reports to the competent authority in accordance with Article 377(5) of Regulation (EU) No 575/2013 that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio. 3. For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following: (a) the quantitative and qualitative aspects of an institution's assessment process referred to in Article 73;	III. – Where the soundness of the financial situation of a credit institution, an investment firm or a financing company is compromised or likely to be so, the Autorité de contrôle prudentiel et de résolution may require the undertaking in question to: 1° Allocates all or part of its net profits to strengthening its own funds; 2° Limits variable remuneration as a percentage of total net income; 3° Publishes additional information. IV. – The Autorité de contrôle prudentiel et de résolution may thereby require a credit institution, an investment firm or a financing company to comply with a specific liquidity requirement, including restrictions on maturity mismatches between assets and liabilities. The Autorité de contrôle prudentiel et de résolution shall determine the specific liquidity requirement it imposes, in particular in view of: 1° To the extent and characteristics of the liquidity risks to which this person is exposed, taking into account his particular business model; 2° The arrangements, processes and mechanisms implemented by this person, relating in particular to liquidity risk; 3° The results of the monitoring and assessment of its prudential situation; 4° A systemic liquidity risk posing a threat to the integrity of the French financial markets. V. – The Autorité de contrôle prudential et de resolution shall take the measures provided for in this Article, taking into account, where appropriate, the provisions of the fourth and fifth paragraphs of Articles L. 511-41-1 C and L. 533-2-3. **Article L. 612-32 of the MFC** The Autorité de contrôle prudentiel et de résolution may require any person subject to its supervision to submit to its approval a recovery strategy including all appropriate measures to restore or strengthen its financial or liquidity position, improve its management methods or ensure that its organization is in line with its activities or development objectives, received or requested by the Autorité de contrôle prudentiel et de résolution for the exercise of the supervision are such as to establish that this person is likely to breach, within 12 months, the obligations provided for in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, by a provision of Title I or Title III of Book

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(b) an institution's arrangements, processes and mechanisms referred to in Article 74; (c) the outcome of the review and evaluation carried out in accordance with Article 97 or 101; (d) the assessment of systemic risk.	V of the MFC or of a regulation made for its application or by any other legislative or regulatory provision the lack of which leads to a breach of that provision. The Autorité de contrôle prudentiel et de résolution may require the person to submit to its approval the changes made to the programme during its implementation, in particular with regard to its scope and time limit for implementation. **Article R.612-32 of the MFC** Where the Autorité de contrôle prudentiel et de résolution temporarily suspends, restricts or prohibits the free disposal of all or part of the assets of a person subject to its control, pursuant to Article L. 612-33, the Autorité de contrôle prudentiel et de résolution may, in accordance with the procedures provided for in Article R. 612-9, require any company or issuing entity or depositary to refuse to carry out any transaction relating to accounts or securities belonging to the person concerned, and the payment of interest and dividends on such securities, or subject the execution of such transactions to the prior approval of a controller. The Autorité de contrôle prudentiel et de résolution may require the deposit to the Caisse des dépôts et des consignations of enforceable copies of mortgages granted by the said person. Finally, the Autorité de contrôle prudentiel et de résolution may require all funds, securities and securities held or owned by the person in question to be transferred to the Banque de France within the time and under the conditions it fixes to be deposited in a blocked account opened in the name of the controlled person. This account may be debited on the order of its holder only on the express authorization of the Autorité de contrôle prudentiel et de résolution or of any person designated by it, and only for a specified amount. **Article L.612-24 of the MFC** The Autorité de contrôle prudential et de résolution determines the list, model, frequency and deadlines for the transmission of documents and information that must be submitted to it periodically. The Secretary General of the Autorité de contrôle prudential et de résolution may, therewith, request from the entities subject to its investigations all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may ask said entities to provide the

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	reports of the statutory auditors and, more generally, with any accounting document and may, where necessary, request certification thereof. The Secretary General of the Autorité de contrôle prudentiel et de résolution may request subsidiaries of credit institutions, investment firms, financing companies, financial holding companies, mixed financial holding companies, mixed holding companies, parent undertakings of financing companies, mixed parent undertakings of financing companies and to third parties to which these persons have outsourced operational functions or activities all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may for the supervision of a credit institution, a financing company or an investment firm that is not included in the scope of consolidation, request to the parent undertaking of this credit institution, financing company or investment firm to provide all the required information under the conditions provided for in the previous paragraph. The Autorité de contrôle prudential et de résolution collects from the persons referred to in subparagraph I B of Article L. 612-2, on behalf of the National Institute of Statistics and Economic Studies and the Statistical Services of the Ministry of Social Security, data related to the supplementary social protection fixed by a decree adopted under the conditions laid down by the Law of 7 June 1951 on the obligation, coordination and confidentiality related to statistics after advice of the High Council of Mutuality and the Advisory Committee of financial legislation and regulation. The Secretary General of the Autorité de contrôle prudential et de résolution or his representative may summon and hear any entity subject to its supervision or which it needs to hear in order to perform its supervisory duties. The Secretary General of the Autorité de contrôle prudential et de resolution or its representative may, in addition, for the persons referred to in Article L.612-2, participate in the management board, the supervisory board or any body exercising equivalent functions, or summon or hear collectively the members or the executive board, the supervisory board or any body exercising equivalent functions. Subject to the exercise of the rights provided by adversary procedures or the requirements of jurisdictional procedures, the Secretary General of the Autorité de contrôle prudential et de resolution shall not be required to disclose to entities subject to its supervision or to third parties the documents concerning them that it has produced or received, notably when such communication would breach

Relevant articles of EU Directives	Implementation of these articles into French law
	business secrets or professional secrecy to which the Autorité de contrôle prudential et de resolution is bound. When the persons or entities referred to in subparagraph I to II of Article L. 612-2 provide their services over the internet, banking supervisors may, to access to information and elements available on the services, use of a borrowing identity without being criminally liable.
Article 105 of CRD IV For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an institution is or might be exposed, taking into account the following: (a) the particular business model of the institution; (b) the institution's arrangements, processes and mechanisms referred to in Section II and in particular in Article 86; (c) the outcome of the review and evaluation carried out in accordance with Article 97; (d) systemic liquidity risk that threatens the integrity of the financial markets of the Member State concerned. In particular, without prejudice to Article 67, competent authorities should consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of an institution and any liquidity and stable funding requirements established at national or Union level.	**Article L. 511-41-3 of the MFC** . The Autorité de contrôle prudentiel et de résolution may require an entity mentioned in 1°, a of 2°, 4°, 9°, and 10°, A of I of Article L. 612-2 or I and, where appropriate, II of Article L. 613-34 to take, within a specified period, any measures to restore or strengthen its financial or liquidity position, improve its management methods or ensure that its organization is in line with its activities or development objectives, or where the information received or requested by the Autorité de contrôle prudentiel et de résolution is such as to establish that that person is likely to breach) within 12 months the obligations laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, by a provision of this Title and Title III of this Book or of a regulation made for its application or by any other legislative or regulatory provision the lack of which leads to a breach of that provision. […] III. – Where the soundness of the financial situation of a credit institution, an investment firm or a financing company is compromised or likely to be so, the Autorité de contrôle prudentiel et de résolution may require the undertaking in question to: 1° Allocates all or part of its net profits to strengthening its own funds; 2° Limits variable remuneration as a percentage of total net income; 3° Publishes additional information. IV. – The Autorité de contrôle prudentiel et de résolution may thereby require a credit institution, an investment firm or a financing company to comply with a specific liquidity requirement, including restrictions on maturity mismatches between assets and liabilities. The Autorité de contrôle prudentiel et de résolution shall determine the specific liquidity requirement it imposes, in particular in view of: 1° To the extent and characteristics of the liquidity risks to which this person is exposed, taking into account his particular business model;

Relevant articles of EU Directives	Implementation of these articles into French law
	2° The arrangements, processes and mechanisms implemented by this person, relating in particular to liquidity risk; 3° The results of the monitoring and assessment of its prudential situation; 4° A systemic liquidity risk posing a threat to the integrity of the French financial markets. V. – The Autorité de contrôle prudential et de resolution shall take the measures provided for in this Article, taking into account, where appropriate, the provisions of the fourth and fifth paragraphs of Articles L. 511-41-1 C and L. 533-2-3. **Article L. 612-40 of the MFC** I. - If a credit institution, investment firm or financing company has breached a provision of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, a provision of Title I and Title III of Book V of the MFC or of a regulation made for its application or any other legislative or regulatory provision the lack of which leads to the failure to comply with the above provisions to these provisions or to an injunction provided for in Articles L. 511-41-3 and L. 511-41-4, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose one or more of the following disciplinary sanctions, depending on the seriousness of the breach: 1° a warning; 2° a reprimand; 3° a prohibition of certain operations and any other restrictionon the conducting of its business; 4° a partial withdrawal of approval; 5° a complete withdrawal of approval or deletion from the list of approved individuals, with or without appointment of a liquidator. The sanction mentioned in 3° cannot exceed ten years. For credit institutions, the sanction provided for in paragraph 4 may be imposed only for activities not covered by the approval issued by the European Central Bank. For the same institutions and for activities falling within the scope of the approval issued by the European Central Bank, the penalties

Relevant articles of EU Directives	Implementation of these articles into French law
	provided for in 4° and 5°, respectively, take the form of a partial or total prohibition of conservatory activity. When the Enforcement commission of the Autorité de contrôle prudentiel et de résolution pronounces the total prohibition of activity of a credit institution, the Autorité de contrôle prudentiel et de résolution proposes to the European Central Bank to declare the withdrawal of the approval. Where the European Central Bank does not declare the withdrawal of approval, the Enforcement commission may deliberate again and impose another sanction among those provided for in this Article. II. – If a financial holding company, a mixed financial holding company or a financing company parent company has breached a provision of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, a provision of Title I and Title III of Book V of the MFC or of a regulation made for its application or any other legislative or regulatory provision the lack of which leads to the failure to comply with the provisions referred to above, or comply with these provisions, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may issue a warning or reprimand against it, depending on the seriousness of the breach. III. – If a mixed holding company or a mixed parent undertaking of a financing company has not submitted to a periodic injunction pursuant to Article L. 612-25 or is not subject to an on-the-spot control provided for in Article L. 612-26, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a 1 exceeding one million euros. IV. – If any of the persons or entities mentioned in Article I or II of Article L. 613-34 has contravened a provision of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, a provision of Section 4 of Chapter III of this Title or any other legislative or regulatory provision the lack of which leads to the lack of knowledge of the aforementioned provisions or where it has not submitted to formal notice to comply with these provisions or with an injunction under Article L. 312-6-1, Article I, II and III of Article L. 511-41-5, Article III and V of Article L. 613-36, Article II of Article L. 613-42, Article L. 613-45 and Article 3 of Article L. 613-46-7, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose on that person or entity one or more of the disciplinary sanctions referred to in I above.

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	V. - The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead or in addition to the penalties provided for in paragraphs I, II and IV, a financial penalty of a maximum amount of 10% of the net annual turnover, including the gross income of the undertaking consisting of interest and similar income, income from shares, units and other variable or fixed-income securities and commissions received in accordance with Article 316 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 during the previous financial year. Where the entity is a subsidiary of a parent undertaking, the gross income to be taken into account shall be that which emerges from the consolidated accounts of the ultimate parent undertaking during the preceding financial year. Where the benefit derived from the infraction can be determined, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall impose a penalty of a maximum amount of twice. Where a withdrawal of approval is made under this Article, the Enforcement commission may cancel the certificates subscribed by the person concerned pursuant to Article L. 312-7. VI. – The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a penalty payment, the amount and date of which it shall fix. VII. – Where direct and personal responsibility for the breaches or infringements referred to in paragraphs I, II and IV is established against individuals who effectively direct the business of the entity within the meaning of Articles L. 511-13 or L. 532-2, members of the management board, the supervisory board, or any other body exercising equivalent functions within a credit institution, an investment firm, a financing company, a financial holding company, a mixed financial holding company, a parent undertaking of a financing company or any other entity referred to in paragraph I and, where applicable, paragraph II of Article L. 613-34, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may, depending on the seriousness of the infringement, declare their temporary suspension or resignation. Such sanctions cannot exceed 10 years. VIII. – Where direct and personal responsibility for the breaches or infractions in question is established against the individuals who actually direct, within the meaning of Articles L. 511-13 or L. 532-2, the business of a credit institution, an investment firm, a financing company, a financial holding company,

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	a mixed financial holding company, a parent undertaking of a financing company or any other entity referred to in I and, where appropriate, in Article II of Article L. 613-34, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead of or in addition to the sanctions referred to in Article VII, a financial penalty not exceeding EUR 5 million. Where the benefit derived from the breach can be determined, it shall impose a penalty of a maximum amount of twice.
Article 129(1) of CRD IV 1. Member States shall require institutions to maintain in addition to the Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of Regulation (EU) No 575/2013, a capital conservation buffer of Common Equity Tier 1 capital equal to 2,5 % of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation.	**Article L. 511-41-1-A of the MFC** I. - Credit institutions and finance companies are subject to an additional capital requirement in addition to the requirements set forth respectively in the third part of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 for credit institutions or in the order of the Minister in charge of the economy mentioned in 6 of Article L. 611-1 for finance companies. This additional requirement constitutes the combined buffer requirement provided for by the above-mentioned regulation of June 26, 2013. II. - The combined buffer requirement referred to above corresponds to the total amount of Common Equity Tier 1 capital defined in Article 26 of the Regulation (EU) of 26 June 2013 referred to in I, necessary to meet the capital conservation buffer, increased, where applicable, by: 1° the counter-cyclical capital buffer requirement specific to the credit institution or finance company; 2° the buffer requirement applicable to institutions of global systemic importance; 3° the buffer requirement applicable to other systemically important institutions; 4° the buffer requirement for systemic risk. The Common Equity Tier 1 capital referred to above, necessary to meet the global capital buffer requirement, may not be used to meet capital requirements resulting from other common equity tier 1 capital requirements. III. - The capital conservation buffer referred to in II is equal to 2.5% of the total amount of risk exposure of credit institutions and finance companies, calculated in accordance with paragraph 3 of Article 92 of the (EU) Regulation of 26 June 2013 referred to in I. […]

Relevant articles of EU Directives	Implementation of these articles into French law
	XV. - The conditions of application of this article are set by order of the Minister in charge of the economy. **Article L. 533-2-1 of the MFC** The provisions of Article L. 511-41-1 A shall apply to investment firms, with the exception of those: 1° Which are authorised exclusively to provide one or more of the investment services mentioned in 1, 2, 4 and 5 of Article L. 321-1 and which are not authorised to hold client funds or securities; or 2° Who are not authorized to provide one or more of the investment services mentioned in 3, 6.1 and 6.2 of Article L. 321-1. **Article 2 of the Arrêté of 3 November 2014 relating to the capital buffers of banking service providers and investment firms other than portfolio management companies (the "Arrêté of 3 November 2014 relating to capital buffers")** Companies subject to the capital conservation buffer requirement referred to in II of Article L. 511-41-1 A of the French Monetary and Financial Code shall meet such requirement with Common Equity Tier 1 capital, in addition to any amount of Common Equity Tier 1 capital held to meet the capital requirements imposed by Article 92 of the aforementioned Regulation (EU) No. 575/2013. […] The Autorité de contrôle prudentiel et de résolution is responsible for ensuring the application of the capital conservation buffer mentioned in III of Article L. 511-41-1 A of the Monetary and Financial Code.
Article 130(1) and (5) of CRD IV 1. Member States shall require institutions to maintain an institution-specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 multiplied by the weighted average of the countercyclical buffer rates calculated in	**Article L. 511-41-1-A of the MFC** I. - Credit institutions and finance companies are subject to an additional capital requirement in addition to the requirements set forth respectively in the third part of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 for credit institutions or in the order of the Minister in charge of the economy mentioned in 6 of Article L. 611-1 for finance companies. This

Relevant articles of EU Directives	Implementation of these articles into French law
accordance with Article 140 of this Directive on an individual and consolidated basis, as applicable in accordance with Part One, Title II of that Regulation. […] 5. Institutions shall meet the requirement imposed by paragraph 1 with Common Equity Tier 1 capital, which shall be additional to any Common Equity Tier 1 capital maintained to meet the own funds requirement imposed by Article 92 of Regulation (EU) No 575/2013, the requirement to maintain a capital conservation buffer under Article 129 of this Directive and any requirement imposed under Article 104 of this Directive.	additional requirement constitutes the combined buffer requirement provided for by the above-mentioned regulation of June 26, 2013. II. - The combined buffer requirement referred to above corresponds to the total amount of Common Equity Tier 1 capital defined in Article 26 of the Regulation (EU) of 26 June 2013 referred to in I, necessary to meet the capital conservation buffer, increased, where applicable, by: 1° the counter-cyclical capital buffer requirement specific to the credit institution or finance company; 2° the buffer requirement applicable to institutions of global systemic importance; 3° the buffer requirement applicable to other systemically important institutions; 4° the buffer requirement for systemic risk. The Common Equity Tier 1 capital referred to above, necessary to meet the global capital buffer requirement, may not be used to meet capital requirements resulting from other common equity tier 1 capital requirements. […] IV. - The Haut Conseil de la stabilité financière (French Financial Stability Board) provided for in Article L. 631-2-1 sets the counter-cyclical capital buffer rate, applicable to exposures located in France, on a quarterly basis. This rate is taken into account for the determination of the specific counter-cyclical capital buffer requirement mentioned in 1° of II. […] XV. - The conditions of application of this article are set by order of the Minister in charge of the economy. **Article L. 533-2-1 of the MFC** The provisions of Article L. 511-41-1 A shall apply to investment firms, with the exception of those: 1° Which are authorised exclusively to provide one or more of the investment services mentioned in 1, 2, 4 and 5 of Article L. 321-1 and which are not authorised to hold client funds or securities; or

Relevant articles of EU Directives	Implementation of these articles into French law
	2° Who are not authorized to provide one or more of the investment services mentioned in 3, 6.1 and 6.2 of Article L. 321-1. **Article L. 631-2-1 of the MFC** Without prejudice to the respective competences of the institutions that its members represent, the Haut Conseil de Stabilité Financière shall exercise oversight of the financial system as a whole, with the aim of safeguarding its stability and ability to make a sustainable contribution to economic growth. In this capacity, it defines macro-prudential policy and has the following tasks: […] 4° It may, on the proposal of the Governor of the Banque de France, impose on the persons mentioned in 1° and 9° of A of I of Article L. 612-2 [including credit institutions] and on the persons defined in Article L. 533-2-1 [investments firms including nonbank SBSD] the establishment of a counter-cyclical buffer provided for in 1° of II of Article L. 511-41-1 A and in Article L. 533-2-1; […] **Article 16 of the Arrêté of 3 November 2014 relating to capital buffers** The amount of the counter-cyclical capital buffer specific to each covered entity shall be equal to its total amount of risk exposure, calculated in accordance with paragraph 3 of Article 92 of Regulation (EU) No 575/2013 referred to above, multiplied by the weighted average of the counter-cyclical buffer rates, calculated in accordance with Article 17 on an individual basis and on a consolidated basis, as the case may be, in accordance with Title II of Part One of the same Regulation. **Article 23 of the Arrêté of 3 November 2014 relating to capital buffers** Companies subject to the counter-cyclical capital buffer requirement shall meet the counter-cyclical capital buffer requirement with Common Equity Tier 1 capital, in addition to any amount of Common Equity Tier 1 capital held to meet the capital requirements imposed by Article 92 of the above-mentioned Regulation (EU) No 575/2013, the requirement to hold a capital conservation buffer under

Relevant articles of EU Directives	Implementation of these articles into French law
	III of Article L. 511-41-1 A of the French Monetary and Financial Code and any requirement imposed by Article L. 511-41-3 of the same Code.
Article 133(1) and (4) of CRD IV 1. Each Member State may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector, in order to prevent and mitigate long term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No 575/2013, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State. […] 4. Institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirement under paragraph 3 to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013 and Articles 129 and 130 of this Directive and any requirements imposed under Articles 102 and 104 of this Directive. Where a group which has been identified as a systemically important institution which is subject to a G-SII buffer or an O-SII buffer on a consolidated basis in accordance with Article 131 is also subject to a systemic risk buffer on a consolidated basis in accordance with this Article, the higher of the buffers shall apply. Where an institution, on an individual or sub-consolidated basis, is subject to an O-SII buffer in accordance with Article 131 and a systemic risk buffer in accordance with this Article, the higher of the two shall apply.	**Article L. 511-41-1-A of the MFC** I. - Credit institutions and finance companies are subject to an additional capital requirement in addition to the requirements set forth respectively in the third part of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 for credit institutions or in the order of the Minister in charge of the economy mentioned in 6 of Article L. 611-1 for finance companies. This additional requirement constitutes the combined buffer requirement provided for by the above-mentioned regulation of June 26, 2013. II. - The combined buffer requirement referred to above corresponds to the total amount of Common Equity Tier 1 capital defined in Article 26 of the Regulation (EU) of 26 June 2013 referred to in I, necessary to meet the capital conservation buffer, increased, where applicable, by: 1° the counter-cyclical capital buffer requirement specific to the credit institution or finance company; 2° the buffer requirement applicable to institutions of global systemic importance; 3° the buffer requirement applicable to other systemically important institutions; 4° the buffer requirement for systemic risk. The Common Equity Tier 1 capital referred to above, necessary to meet the global capital buffer requirement, may not be used to meet capital requirements resulting from other common equity tier 1 capital requirements. […] IX. - Credit institutions and finance companies are required to comply with the systemic risk buffer rate set by the High Council for Financial Stability in application of 4° bis of Article L. 631-2-1, in order to prevent and mitigate long-term non-cyclical systemic or macro-prudential risks that are not covered by the (EU) Regulation of 26 June 2013 referred to in I. The qualification of systemic risk applies to a risk of disruption of the financial system likely to have serious repercussions on the financial system and the real economy.

Relevant articles of EU Directives	Implementation of these articles into French law
	[…] XV. - The conditions of application of this article are set by order of the Minister in charge of the economy. **Article L. 533-2-1 of the MFC** The provisions of Article L. 511-41-1 A shall apply to investment firms, with the exception of those: 1° Which are authorised exclusively to provide one or more of the investment services mentioned in 1, 2, 4 and 5 of Article L. 321-1 and which are not authorised to hold client funds or securities; or 2° Who are not authorized to provide one or more of the investment services mentioned in 3, 6.1 and 6.2 of Article L. 321-1. **Article L. 631-2-1 of the MFC** Without prejudice to the respective competences of the institutions that its members represent, the Haut Conseil de Stabilité Financière shall exercise oversight of the financial system as a whole, with the aim of safeguarding its stability and ability to make a sustainable contribution to economic growth. In this capacity, it defines macro-prudential policy and has the following tasks: […] 2° It identifies and assesses the nature and extent of the systemic risks resulting from the situation in the sector and in the financial markets, taking into account, in particular, the opinions and recommendations of the competent European institutions; 3° It formulates any opinions or recommendations likely to prevent any systemic risk and any threat to financial stability. It may make its opinions or recommendations public; […] 4° bis It may, on the proposal of the Governor of the Banque de France, require the persons mentioned in 1° and 9° of A of I of Article L. 612-2 [including credit institutions] and the persons defined in Article

Relevant articles of EU Directives	Implementation of these articles into French law
	L. 533-2-1 [investments firms including nonbank SBSD] to establish a buffer for the systemic risk provided for in 4° of II of Article L. 511-41-1 A and in Article L. 533-2-1; 4° ter It may, on the proposal of the Governor of the Banque de France, Chairman of the Autorité de contrôle prudentiel et de résolution, take the measures provided for in Article 458 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013, with respect to the companies to which this Article applies and with respect to finance companies; […] 6° It may address to the competent European institutions any opinion aimed at recommending the adoption of the measures necessary to prevent any systemic risk threatening the financial stability of France; In carrying out its missions, the Haut Conseil de Stabilité Financière takes into account the objectives of financial stability within the European Union and the European Economic Area. It cooperates with the counterpart authorities of other Member States and with the competent European institutions. The Minister for the Economy, the Banque de France, the Autorité de contrôle prudentiel et de résolution, the Autorité des marchés financiers and the Autorité des normes comptables ensure, as far as they are concerned, the implementation of the decisions of the High Council for Financial Stability. The Governor of the Banque de France may decide to make public the proposal he makes under points 4° to 5° ter of this Article. The decisions of the High Council of Financial Stability referred to in the same 4° to 5° ter may be appealed to the Conseil d'Etat for annulment. The decisions referred to in 4°, 4° bis, 5° bis and 5° ter shall be published. A decree in Council of State specifies the conditions of application of this article. **Article 37 of the Arrêté of 3 November 2014 relating to capital buffers** In application of 4° bis of Article L. 631-2-1 of the Monetary and Financial Code, the Haut Conseil de Stabilité Financière may impose a systemic risk buffer requirement for the financial sector or for one or more subsets of this sector, in order to prevent and mitigate long-term non-cyclical systemic or macro-prudential risks that are not covered by the aforementioned Regulation (EU) No. 575/2013, in the sense

Relevant articles of EU Directives	Implementation of these articles into French law
	of a risk of disruption of the financial system likely to have serious repercussions on the financial system and the real economy in France. The Haut Conseil de Stabilité Financière identifies the companies subject to the above-mentioned systemic risk buffer. **Article 38 of the Arrêté of 3 November 2014 relating to capital buffers** The Haut Conseil de Stabilité Financière may impose on covered entities a buffer for systemic risk at least equal to 1% of the total amount of exposures to which it applies in accordance with Article 43, on an individual, consolidated or sub-consolidated basis, as appropriate in accordance with the provisions of Title II of Part One of Regulation (EU) No 575/2013 referred to above. The Haut Conseil de Stabilité Financière may require covered entities to hold the systemic risk buffer on an individual and consolidated basis.
Article 141 of CRD IV 1. Member States shall prohibit any institution that meets the combined buffer requirement from making a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met. 2. Member States shall require institutions that fail to meet the combined buffer requirement to calculate the Maximum Distributable Amount (·MDA·) in accordance with paragraph 4 and to notify the competent authority of that MDA. Where the first subparagraph applies, Member States shall prohibit any such institution from undertaking any of the following actions before it has calculated the MDA: (a) make a distribution in connection with Common Equity Tier 1 capital;	**Article L. 511-41-1-A of the MFC** I. - Credit institutions and finance companies are subject to an additional capital requirement in addition to the requirements set forth respectively in the third part of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 for credit institutions or in the order of the Minister in charge of the economy mentioned in 6 of Article L. 611-1 for finance companies. This additional requirement constitutes the combined buffer requirement provided for by the above-mentioned regulation of June 26, 2013. II. - The combined buffer requirement referred to above corresponds to the total amount of Common Equity Tier 1 capital defined in Article 26 of the Regulation (EU) of 26 June 2013 referred to in I, necessary to meet the capital conservation buffer, increased, where applicable, by: 1° the counter-cyclical capital buffer requirement specific to the credit institution or finance company; 2° the buffer requirement applicable to institutions of global systemic importance; 3° the buffer requirement applicable to other systemically important institutions; 4° the buffer requirement for systemic risk.

Relevant articles of EU Directives	Implementation of these articles into French law
(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements; (c) make payments on Additional Tier 1 instruments. 3. While an institution fails to meet or exceed its combined buffer requirement, Member States shall prohibit it from distributing more than the MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of paragraph 2. 4. Member States shall require institutions to calculate the MDA by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The MDA shall be reduced by any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2. 5. The sum to be multiplied in accordance with paragraph 4 shall consist of: (a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparapgraph of paragraph 2 of this Article; plus (b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point	The Common Equity Tier 1 capital referred to above, necessary to meet the global capital buffer requirement, may not be used to meet capital requirements resulting from other common equity tier 1 capital requirements. […] X. - A credit institution or a finance company that meets the combined capital buffer requirement is prohibited from making a distribution of such a magnitude that it would reduce its capital to a level that would no longer allow it to meet the combined buffer requirement. A credit institution or finance company that does not comply with the combined buffer requirement laid down in II is prohibited to: 1° Make a distribution in relation to the Common Equity Tier 1 capital defined in Article 26 of the (EU) Regulation of 26 June 2013 referred to in I; 2° Create an obligation to pay discretionary pension benefits or variable remuneration or to pay such pensions or remuneration, unless the obligation to pay arose prior to the breach of the combined buffer requirement; 3° To make payments linked to additional equity instruments as defined in Article 51 of the (EU) Regulation of June 26, 2013 cited in I. XI. - The distributions referred to in X include: 1° The payment of dividends in cash; 2° The distribution of bonuses in the form of shares, or other equity instruments mentioned in a of paragraph 1 of Article 26 of the EU Regulation of June 26, 2013 mentioned in I for credit institutions, fully or partially paid up; 3° The repayment or repurchase by a credit institution or a finance company of its own shares or other capital instruments mentioned in paragraph 1 (a) of Article 26 of the EU Regulation of June 26, 2013 mentioned in I above; 4° The repayment of sums paid in connection with the capital instruments mentioned in paragraph 1 (a) of Article 26 of the EU Regulation of 26 June 2013 referred to in I above;

Relevant articles of EU Directives	Implementation of these articles into French law
(a), (b) or (c) of the second subparapgraph of paragraph 2 of this Article; minus (c) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained. 6. The factor shall be determined as follows: (a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0; (b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0,2; (c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0,4; (d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirement under Article 92(1)(c) of Regulation (EU) No 575/2013, expressed	5° Distributions of items mentioned in b to e of Article 26 of the EU Regulation of 26 June 2013 cited in I. XII. - The prohibitions mentioned in X do not apply where their implementation is likely to be considered by the insolvency regime applicable to the credit institution or finance company as an event of default or a condition for initiating insolvency proceedings. XIII. - A credit institution or finance company that does not meet the combined buffer requirement shall determine the maximum distributable amount applicable to it, based in particular on its profits. The prohibition provided for in the second paragraph of X applies to credit institutions and finance companies that have not satisfied this requirement and, for the others, beyond this maximum amount as determined. **Article L. 533-2-1 of the MFC** The provisions of Article L. 511-41-1 A shall apply to investment firms, with the exception of those: 1° Which are authorised exclusively to provide one or more of the investment services mentioned in 1, 2, 4 and 5 of Article L. 321-1 and which are not authorised to hold client funds or securities; or 2° Who are not authorized to provide one or more of the investment services mentioned in 3, 6.1 and 6.2 of Article L. 321-1. **Article 56 of the Arrêté of 3 November 2014 relating to capital buffers** Covered entities shall communicate to the Autorité de contrôle prudentiel et de résolution the maximum distributable amount referred to in XIII of Article L. 511-41-1 A of the Monetary and Financial Code applicable to them. **Article 57 of the Arrêté of 3 November 2014 relating to capital buffers** Covered entities shall calculate the maximum amount available for distribution by multiplying the sum obtained in I of Article 58 by the factor determined in II of the same Article. Execution of the transactions

Relevant articles of EU Directives	Implementation of these articles into French law
as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6; The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows: $\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$ $\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$ "Qn" indicates the ordinal number of the quartile concerned. 7. The restrictions imposed by this Article shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution. 8. Where an institution fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2, it shall notify the competent authority and provide the following information: (a) the amount of capital maintained by the institution, subdivided as follows: (i) Common Equity Tier 1 capital, (ii) Additional Tier 1 capital, (iii) Tier 2 capital; (b) the amount of its interim and year-end profits;	referred to in 1°, 2° and 3° of X of Article L. 511-41-1 A of the Monetary and Financial Code reduces the maximum amount available for distribution by the corresponding amount. **Article 58 of the Arrêté of 3 November 2014 relating to capital buffers** I. - The sum to be multiplied in accordance with Article 57 shall be : 1° Interim profits and profits at the end of the financial year not included in Common Equity Tier 1 capital of the covered entity in accordance with paragraph 2 of Article 26 of the aforementioned Regulation (EU) no. 575/2013 and realised since the last decision to distribute profits or since the execution of the last of the transactions carried out, mentioned in X of Article L. 511-41-1 A of the Monetary and Financial Code ; 2° After deducting the amounts that would be payable in respect of compulsory levies if the interim and year-end profits referred to in 1° were not distributed. II. - The factor is determined as follows : 1° Where the Common Equity Tier 1 capital held by the covered entity and not used to meet the capital requirement under c of paragraph 1 of Article 92 of the above-mentioned Regulation (EU) No. 575/2013, expressed as a percentage of the total amount of risk exposure, calculated in accordance with paragraph 3 of the same Article, is within the first quartile of the combined buffer requirement, i.e. its lowest quartile, the factor shall be zero ; 2° Where the Common Equity Tier 1 capital held by the covered entity and not used to meet the capital requirement under Article 92(1)(c) of the same Regulation, expressed as a percentage of the total amount of risk exposure, calculated in accordance with paragraph 3 of the same Article, is within the second quartile of the combined buffer requirement, the factor shall be 0.2 ; 3° Where the Common Equity Tier 1 capital held by the covered entity and not used to meet the capital requirement under Article 92(1)(c) of the Regulation, expressed as a percentage of the total amount of risk exposure, calculated in accordance with paragraph 3 of that Article, is within the third quartile of the combined buffer requirement, the factor shall be 0.4; 4° Where the Common Equity Tier 1 capital held by the covered entity not used to meet the capital requirement under Article 92(1)(c) of the same Regulation, expressed as a percentage of the total

Relevant articles of EU Directives	Implementation of these articles into French law
(c) the MDA calculated in accordance with paragraph 4; (d) the amount of distributable profits it intends to allocate between the following: (i) dividend payments, (ii) share buybacks, (iii) payments on Additional Tier 1 instruments, (iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements. 9. Institutions shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to demonstrate that accuracy to the competent authority on request. 10. For the purposes of paragraphs 1 and 2, a distribution in connection with Common Equity Tier 1 capital shall include the following: (a) a payment of cash dividends; (b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013; (c) a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26(1)(a) of that Regulation; (d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of that Regulation;	amount of risk exposure, calculated in accordance with paragraph 3 of the same Article, lies within the fourth quartile of the combined buffer requirement, i.e. its highest quartile, the factor shall be 0.6. The upper and lower limits of each quartile of the combined buffer requirement shall be calculated as follows : Lower quartile limit (You can view the image in the facsimile of the JO nº 0256 of 05/11/2014, text nº 11) Upper quartile limit (You can view the image in the facsimile of the JO nº 0256 of 05/11/2014, text nº 11) Where Qn is the serial number of the quartile concerned. **Article 59 of the Arrêté of 3 November 2014 relating to capital buffers** Where a covered entity does not meet the combined buffer requirement and plans to distribute all or part of its distributable profits or to carry out one of the transactions referred to in X of Article L. 511-41-1 A of the Monetary and Financial Code, it shall notify the Autorité de contrôle prudentiel et de résolution and provide the following information : 1° The amount of own funds that it holds, subdivided as follows : a) Common Equity Tier 1 capital ; b) Additional Tier 1 capital; c) Tier 2 capital; 2° The amount of its interim and year-end profits; 3° The maximum distributable amount, calculated in accordance with Article 57; 4° The amount of distributable profits that it intends to allocate, broken down into the following categories: a) Payment of dividends ; b) Repurchase of shares ;

Relevant articles of EU Directives	Implementation of these articles into French law
(e) a distribution of items referred to in points (b) to (e) of Article 26(1) of that Regulation.	c) Payments linked to additional tier 1 instruments; d) Payment of variable remuneration or discretionary pension benefits, either as a result of the creation of a new payment obligation or pursuant to a payment obligation created at a time when the covered entity did not meet the combined buffer requirement. **Article 60 of the Arrêté of 3 November 2014 relating to capital buffers** The covered entities are equipped with mechanisms to ensure that the amounts of distributable profits and the maximum distributable amount are calculated accurately. They are able to demonstrate this accuracy to the Autorité de contrôle prudentiel et de résolution if requested to do so.
Article 142 of CRD IV 1. Where an institution fails to meet its combined buffer requirement, it shall prepare a capital conservation plan and submit it to the competent authority no later than five working days after it identified that it was failing to meet that requirement, unless the competent authority authorises a longer delay up to 10 days. Competent authorities shall grant such authorisations only on the basis of the individual situation of a credit institution and taking into account the scale and complexity of the institution's activities. 2. The capital conservation plan shall include the following: (a) estimates of income and expenditure and a forecast balance sheet; (b) measures to increase the capital ratios of the institution; (c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;	**Article L. 511-41-1-A of the MFC** […] XIV. - Notwithstanding the provisions of X, when a credit institution or finance company does not meet the combined buffer requirement provided for in II, it shall draw up a capital conservation plan which it shall submit to the Autorité de contrôle prudentiel et de résolution. The Autorité de contrôle prudential et de résolution shall approve the capital conservation plan if it considers that its implementation can reasonably enable the credit institution or finance company to meet the combined buffer requirement under II. Otherwise, it imposes on the credit institution or finance company at least one of the measures provided for in Article L. 511-41-3 and in 9° and 10° of I of Article L. 612-33. XV. - The conditions of application of this article are set by order of the Minister in charge of the economy. **Article L. 533-2-1 of the MFC** The provisions of Article L. 511-41-1 A shall apply to investment firms, with the exception of those:

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(d) any other information that the competent authority considers to be necessary to carry out the assessment required by paragraph 3. 3. The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirements within a period which the competent authority considers appropriate. 4. If the competent authority does not approve the capital conservation plan in accordance with paragraph 3, it shall impose one or both of the following: (a) require the institution to increase own funds to specified levels within specified periods; (b) exercise its powers under Article 102 to impose more stringent restrictions on distributions than those required by Article 141.	1° Which are authorised exclusively to provide one or more of the investment services mentioned in 1, 2, 4 and 5 of Article L. 321-1 and which are not authorised to hold client funds or securities; or 2° Who are not authorized to provide one or more of the investment services mentioned in 3, 6.1 and 6.2 of Article L. 321-1. **Article 61 of the Arrêté of 3 November 2014 relating to capital buffers** In accordance with XIV of Article L. 511-41-1 A of the Monetary and Financial Code, a covered entity that does not meet the combined buffer requirement must submit a capital conservation plan to the Autorité de contrôle prudentiel et de résolution no later than five business days after it is found to have failed to meet this requirement, unless the Authority grants it an extension that may not exceed ten days. The Autorité de contrôle prudentiel et de résolution shall grant such a period only on the basis of the particular situation of a covered entity and taking into account the scale and complexity of that undertaking's activities. **Article 62 of the Arrêté of 3 November 2014 relating to capital buffers** The capital conservation plan includes : 1° Estimates of income and expenditure and a provisional balance sheet; 2° Measures aimed at increasing the capital ratios of the covered entity; 3° A plan and timetable for the increase of capital, with a view to fully satisfying the combined buffer requirement; 4° Any other information that the Autorité de contrôle prudentiel et de résolution considers necessary to carry out the assessment required under the second paragraph of XIV of Article L. 511-41-1 A of the Monetary and Financial Code.

Relevant articles of EU Directives	Implementation of these articles into French law
	Article 63 of the Arrêté of 3 November 2014 relating to capital buffers When the Autorité de contrôle prudential et de résolution assesses the capital conservation plan in accordance with the second paragraph of XIV of Article L. 511-41-1 A of the Monetary and Financial Code, it approves it only if it considers that its implementation would enable the covered entity to meet the combined buffer requirement within a period it deems appropriate.
French law provisions implementing provisions of the BRRD cited in the narrative letter	
Article 27(1) of BRRD 1. Where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable, at least the following measures: (a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a	**Article L. 511-41-5 of the MFC** I. - Without prejudice to Articles L. 511-41-3, L. 612-30 to L. 612-34, the Autorité de contrôle prudentiel et de résolution may require a credit institution, an investment firm mentioned in 2° of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 to take one or more of the early intervention measures referred to in II when, in particular because of a rapid deterioration in its financial or liquidity situation, including an increase in the level of leverage, non-performing loans or concentration of exposures, that person infringes or is likely in the near future to infringe the requirements resulting from the following provisions: 1° Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013; 2° Articles 3 to 7, 14 to 17 and 24 to 26 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of May 15, 2014; 3° Of this title and of title III of this book [provisions applicable specifically to credit institutions and investment firms in the Monetary and Financial Code]; 4° Any other legislative or regulatory provision, whose infringement will result in the infringement of the above-mentioned provisions. II. - In the cases mentioned in I, a credit institution, an investment firm mentioned in 2° of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 may be required to take at least one or more of the following early intervention measures:

Relevant articles of EU Directives	Implementation of these articles into French law
specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply; (b) require the management body of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation; (c) require the management body of the institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders; (d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU; (e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable; (f) require changes to the institution's business strategy; (g) require changes to the legal or operational structures of the institution; and (h) acquire, including through on-site inspections and provide to the resolution authority, all the information necessary in order to update the resolution plan and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with Article 36.	1° To apply one or more of the measures set out in the preventive recovery plan referred to in Article L. 613-35, if necessary after having updated it if the circumstances leading to the implementation of the measures in question differ from the initial assumptions of the plan; 2° Submit to the approval of the Autorité de contrôle prudentiel et de résolution, in order to overcome the identified difficulties, a specific recovery plan under the formal and procedural conditions provided for in Article L. 612-32; 3° Terminate the functions or mandates of the persons mentioned in Article L. 511-13 or 4 of Article L. 532-2, members of the board of directors, the supervisory board or any other body performing equivalent supervisory functions, if such persons are no longer able to perform their functions in accordance with the requirements set forth in Articles L. 511-51, L. 511-52, L. 533-25 or L. 533-26; 4° Establish an action plan in order to achieve the restructuring of its debt with all or part of its creditors in accordance, where applicable, with the preventive recovery plan provided for in Article L. 613-35; 5° Modify its commercial strategy; 6° Modify its legal or operational structure. Where the person referred to in the first paragraph is a parent undertaking or a subsidiary within the meaning of Article L. 511-20, sections III and IV of Article L. 613-20-4, as well as Articles L. 613-21-3 or L. 613-21-4, as the case may be, apply. The Autorité de contrôle prudentiel et de résolution shall define the time limit for the implementation of the above-mentioned measures. III. - The Autorité de contrôle prudentiel et de résolution, for the purposes of implementing the measures mentioned in II, may require the persons mentioned in Article L. 511-13 or in paragraph 4 of Article L. 532-2, the board of directors, the supervisory board or any other body exercising equivalent supervisory functions to convene a general meeting of a person mentioned in I. It sets the agenda for such a meeting. If such a meeting has not been convened by the end of the deadline set by the Autorité de contrôle prudentiel et de résolution, the latter shall convene the meeting itself. IV. - The supervisory board shall inform the resolution college without delay of any measures taken pursuant to this article.

Relevant articles of EU Directives	Implementation of these articles into French law
Article 31(2) of BRRD 2. The resolution objectives referred to in paragraph 1 are: (a) to ensure the continuity of critical functions; (b) to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline; (c) to protect public funds by minimising reliance on extraordinary public financial support; (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC; (e) to protect client funds and client assets. When pursuing the above objectives, the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.	**Article L. 613-50.I of the MFC** I. - When implementing a resolution, the Resolution College shall take into account the objectives of the resolution. These objectives are as follows: 1° To ensure the continuity of critical functions; 2° To avoid significant adverse effects on financial stability; 3° To protect the State's resources by reducing as much as possible the recourse to exceptional public financial aid; 4° To protect clients' funds and assets, in particular those of depositors covered by the guarantee instituted pursuant to 1° of II of Article L. 312-4 and investors covered by the guarantee instituted pursuant to 3° of II of Article L. 312-4. […]
Article 32(1)(a) and (5) of BRRD 1. Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in point (a) of Article 1(1) only if the resolution authority considers that all of the following conditions are met: (a) the determination that the institution is failing or is likely to fail has been made by the competent authority, after consulting the resolution authority or,; subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority;	**Article L. 613-49 of the MFC** I. - The members mentioned in 1° and 2° of I of Article L. 612-8-1 or the European Central Bank may refer to the Resolution College of the Autorité de contrôle prudentiel et de résolution the situation of a person mentioned in I of Article L. 613-34 with a view to implementing one or more resolution measures. However, in the case provided for in 3° of II of Article L. 613-48, only the member of the Resolution College mentioned in 2° of I of Article L. 612-8-1 may refer the matter to the Resolution College. The persons effectively directing the business of an undertaking within the meaning of Article L. 511-13 or of paragraph 4 of Article L. 532-2, the board of directors, the supervisory board or any other body exercising equivalent supervisory functions shall refer the matter to the Supervision College without delay if they consider that the default of the person mentioned in the first paragraph is proven or

Relevant articles of EU Directives	Implementation of these articles into French law
[…] 5. For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.	foreseeable within the meaning of II of Article L. 613-48. The Supervision College shall inform the Resolution College of this and inform it of the measures taken with regard to this person in application of Articles L. 511-41-3, L. 511-41-5, L. 612-32, L. 612-33, L. 612-34, L. 612-34-1 and L. 613-36 and subsection 4 of the present section. II. - In cases referred to it pursuant to I, the Resolution College of the Autorité de contrôle prudentiel et de résolution may only take the resolution measures referred to in I if the following conditions are met: 1° The Supervision College, after receiving the opinion of the Resolution College, or the Resolution College, after receiving the opinion of the Supervision College, has established that the default of a person mentioned in I of Article L. 613-34 is proven or foreseeable in application of II of Article L. 613-48; 2° There is no reasonable prospect that such default can be avoided within a reasonable period of time other than by the implementation of a resolution measure; 3° A resolution measure is necessary in view of the objectives of the resolution mentioned in I of Article L. 613-50 and a judicial liquidation procedure instituted by Book VI of the Commercial Code would not enable these objectives to be achieved to the same extent.
Article 45(6) of BRRD 6. The minimum requirement for own funds and eligible liabilities of each institution pursuant to paragraph 1 shall be determined by the resolution authority, after consulting the competent authority, at least on the basis of the following criteria: (a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives; (b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, if the bail-in tool were to be applied, losses could be absorbed and the Common	**Article L.613-44 of the MFC** I. - Credit institutions and investment firms shall comply at all times with a minimum requirement for own funds and eligible liabilities. The minimum requirement shall be expressed as a percentage of the total capital and other liabilities of the person concerned. For the application of the first subparagraph, liabilities arising from derivatives within the meaning of Article 2(5) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 shall be included in total liabilities on the basis of full recognition of counterparties' rights of set-off. Credit institutions or investment firms shall comply with the minimum requirements set out in this Article on an individual basis. The Resolution College may, after consultation with the Supervision College, decide to apply the minimum requirement provided for in this Article to a person mentioned in 3° to 6° of I of Article L. 613-34.

Relevant articles of EU Directives	Implementation of these articles into French law
Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU and to sustain sufficient market confidence in the institution or entity; (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under Article 44(3) or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the institution has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU; (d) the size, the business model, the funding model and the risk profile of the institution; (e) the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 109; (f) the extent to which the failure of the institution would have adverse effects on financial stability, including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.	Without prejudice to the preceding paragraph, parent undertakings in the Union shall comply with the minimum requirements set out in this Article on a consolidated basis. […] III. - Eligible liabilities are included in the amount of own funds and eligible liabilities mentioned in the first paragraph of I provided that they meet the following conditions: 1° The instrument is issued and fully paid up; 2° It is not a liability made by the credit institution or the investment firm to themselves or guaranteed by them; 3° The purchase of the instrument is financed neither directly nor indirectly by the credit institution or investment firm; 4° The liability has a residual maturity of at least one year; 5° The liability is not the result of a derivative within the meaning of Article 2, paragraph 5 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of July 4, 2012; 6° The liability does not result from a deposit mentioned in 1° and 2° of Article L. 613-30-3 paid by priority before other claims in the event of the opening of compulsory liquidation proceedings. For the application of 4°, where a liability gives its holder the right to early repayment, the due date of the liability is deemed to be the first date on which this right may be exercised. Subordinated debt instruments and subordinated loans that are not considered as additional Tier 1 capital instruments or Tier 2 capital instruments are included in the amount of own funds and eligible liabilities provided that they meet the conditions mentioned above. IV. - Where a liability is governed by the law of a third country, the Resolution College may require the credit institution or investment firm to demonstrate that any decision by the resolution panel to reduce the nominal value or to convert the liability would be effective under the law of that country, taking into account in particular the terms of the contract governing the liability and international agreements on the recognition of resolution procedures. If the Resolution College considers that such a decision

Relevant articles of EU Directives	Implementation of these articles into French law
	would not be effective pursuant to the law of that third country, the liability is not accounted for in the minimum requirement for own funds and eligible liabilities provided for in I. V. - The level of the minimum capital requirement and eligible liabilities of each credit institution or investment firm that is not part of a group shall be determined by the Resolution College, after obtaining the opinion of the Supervision College, in particular on the basis of the following criteria: 1° The need for the resolution measures taken pursuant to Articles L. 613-52, L. 613-53, L. 613-54 and L. 613-55 to fully satisfy the objectives of the resolution; 2° The need, where applicable, for the credit institution or investment firm to have a sufficient amount of eligible liabilities in order to be certain, in the event of application of a resolution measure provided for in Article L. 613-55, that the losses can be absorbed and that the Common Equity Tier 1 capital requirement of the person under resolution can be raised to the level necessary to enable that person to continue to meet the conditions of its authorisation and to carry on the activities for which it has been authorised and to ensure that market confidence in that person remains sufficient; 3° The necessity that, if the preventive resolution plan provides that certain categories of eligible liabilities may not be subject to an bail-in measure pursuant to II of Article L. 613-55-1 or that certain categories of eligible liabilites may be transferred in full to an acquirer as part of a partial transfer, the credit institution or investment firm has a sufficient amount of other eligible liabilites so that the losses can be absorbed and so that the Common Equity Tier 1 capital requirement of that person can be raised to the level necessary to enable it to continue to meet the conditions of its authorisation and to carry on the activities for which it has been authorised and so that market confidence in that person remains sufficient; 4° The size, business model, financing model and risk profile of the credit institution or investment firm; 5° The possibility for the deposit guarantee and resolution fund to contribute to the financing of the resolution under the deposit guarantee scheme; 6° The negative effects on financial stability of the failure of the credit institution or investment firm in question, due in particular to the contagion effect resulting from their interconnection with other persons or with the rest of the financial system. […]

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	X. - Decisions taken pursuant to this Article may provide that the minimum requirement for own funds and eligible liabilities will be partially met at the consolidated level or at the individual level by means of contractual bail-in instruments. In this case, the Resolution College shall assess the extent to which the following conditions are met: 1° The instrument includes a contractual clause whereby, when a resolution authority decides to apply a bail-in measure to a credit institution or investment firm, the instrument is converted or its nominal value reduced before other eligible liabilities are converted or their nominal value is reduced; 2° The instrument is the subject of a binding agreement, liability or subordination provision under the terms of which, in the event of collective proceedings, it ranks in the order of claims after the other eligible liabilities and can only be redeemed after the latter. XI. - The Resolution College, in conjunction with the Supervision College, informs the European Banking Authority of the requirements set for persons falling within its jurisdiction pursuant to this Article.
Article 81(1) of BRRD 1. Member States shall require the management body of an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority where they consider that the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, within the meaning specified in Article 32(4).	**Article L. 613-49 of the MFC** I. - The members mentioned in 1° and 2° of I of Article L. 612-8-1 or the European Central Bank may refer to the Resolution College of the Autorité de contrôle prudentiel et de résolution the situation of a person mentioned in I of Article L. 613-34 with a view to implementing one or more resolution measures. However, in the case provided for in 3° of II of Article L. 613-48, only the member of the Resolution College mentioned in 2° of I of Article L. 612-8-1 may refer the matter to the Resolution College. The persons effectively directing the business of an undertaking within the meaning of Article L. 511-13 or of paragraph 4 of Article L. 532-2, the board of directors, the supervisory board or any other body exercising equivalent supervisory functions shall refer the matter to the Supervision College without delay if they consider that the default of the person mentioned in the first paragraph is proven or foreseeable within the meaning of II of Article L. 613-48. The Supervision College shall inform the Resolution College of this and inform it of the measures taken with regard to this person in application of Articles L. 511-41-3, L. 511-41-5, L. 612-32, L. 612-33, L. 612-34, L. 612-34-1 and L. 613-36 and subsection 4 of the present section.

Relevant articles of EU Directives	Implementation of these articles into French law
French law provisions implementing MiFID provisions cited in the narrative letter	
Article 8(c) of MiFID2 The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm: […] (c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Regulation (EU) No 575/2013; […]	**Article L. 532-6 of the MFC** Withdrawal of an investment firm's authorization is pronounced by the Autorité de contrôle prudentiel et de résolution at the request of the investment firm. It may also be decided ex officio by the Authority if the investment firm no longer fulfils the conditions or commitments to which its authorisation or a subsequent authorisation was subject, or if the investment firm has not made use of its authorisation within 12 months, or if it has not carried on business for at least six months, or if it has obtained the authorisation through false statements or any other irregular means. Withdrawal of approval takes effect upon expiry of a period of time determined by the Autorité de contrôle prudentiel et de résolution. During this period: 1. The investment firm remains subject to the supervision of the Autorité de contrôle prudentiel et de résolution and the Autorité des marchés financiers. The Autorité de contrôle prudentiel et de résolution and the Autorité des marchés financiers may impose the disciplinary sanctions provided for in Articles L. 612-39 and L. 612-40 and the sanctions provided for in Article L. 621-15 on any investment firm whose authorization has been withdrawn; 2. It may only carry out transactions that are strictly necessary for the discharge of its investment services; 3. The firm may not disclose its status as an investment firm unless it states that its authorisation is being withdrawn. Securities issued by such firm that are not traded on a regulated market shall be redeemed by the firm on maturity or, if such maturity is later than the expiry of the above-mentioned period, on the date set by the Autorité de contrôle prudentiel et de résolution. At the end of this period, the firm loses its status as an investment firm and must have changed its corporate name.

Relevant articles of EU Directives	Implementation of these articles into French law
	Notwithstanding the provisions of 4° and 5° of Article 1844-7 of the Civil Code, the early dissolution of an investment firm may only be pronounced after the withdrawal of its approval by the Autorité de contrôle prudentiel et de résolution. Notwithstanding Articles L. 123-1 and L. 237-3 of the French Commercial Code, the publication and amending entry in the Trade and Companies Register concerning the pronouncement of such dissolution must mention the date of the decision of withdrawal of approval pronounced by the Autorité de contrôle prudentiel et de résolution. Until the close of its liquidation, the company remains subject to the supervision of the Autorité de contrôle prudentiel et de résolution, which may pronounce all the sanctions provided for in Articles L. 612-39 and L. 612-40 of the present code. The firm may not state that it is an investment firm without specifying that it is in liquidation.
Article 9(6) of MiFID2 6. Member States shall require that at least two persons meeting the requirements laid down in paragraph 1 effectively direct the business of the applicant investment firm. By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that: (a) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market; (b) the natural persons concerned are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.	**Article L. 532-2 of the MFC** In order to grant authorisation to an investment firm, the Autorité de contrôle prudentiel et de résolution verifies whether the firm: […] 4. Is effectively managed by at least two persons. An order of the minister in charge of the economy issued in accordance with article L. 611-3 sets the conditions under which an investment firm may, by exception, be effectively managed by a single person. It specifies the measures that must be taken to ensure the efficient, sound and prudent management of the firm concerned, taking into account in an appropriate manner the interests of the investment firm's clients as well as the integrity of the market; […]

Other French provisions cited in the letter

- **Article 2 of the Arrêté of 4 December 2017 relating to the authorization, changes of situation, withdrawal of authorization and deregistration of investment firms and assimilated institution**

I. The covered entities must have a paid-up capital of at least 3.8 million euros when they carry out the activity of custody or administration of financial instruments.
When, due to legislative or regulatory requirements, the purpose of a covered entity is limited to the activity of custody or administration of financial instruments in the area of employee savings schemes, the initial amount of paid-up capital is set at 150,000 euros, on condition that the covered entity is controlled exclusively or jointly by one or more companies subject to the requirement provided for in the first paragraph of this article and declaring themselves jointly and severally liable for the commitments of the subsidiary.
II. The covered entity must have a paid-up capital of at least 3.8 million euros when it carries out the activity of clearing financial instruments as member of a clearing house.

- **Article L. 511-42 of the MFC**

When it appears that the situation of a credit institution or a finance company justifies it, the Governor of the Banque de France, Chairman of the Autorité de contrôle prudentiel et de résolution, invites, after having, except in an emergency, taken the opinion of the Autorité de contrôle prudentiel et de résolution, the shareholders or members of this company to provide the necessary support to the company.

In cases where the credit institution is a major institution within the meaning of paragraph 4 of Article 6 of Council Regulation (EU) No. 1024/2013 of 15 October 2013, the governor must have previously referred the matter to the European Central Bank for an opinion.

- **Article L. 612-33 of the MFC**

I. - Where the solvency or liquidity of a person subject to supervision by the Autorité de contrôle prudentiel et de résolution or where the interests of its clients, policyholders, members or beneficiaries are, or are likely to be, compromised, or where the information received or requested by the Authority for the purpose of exercising supervision is such as to establish that such person is likely to fail within a period of twelve months to comply with the obligations laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, by a provision of Titles I and III of Book V or of a regulation made for its application or by any other legislative or regulatory provision whose infringement will result in the infringement of the aforementioned provisions, the Autorité de contrôle prudentiel et de résolution shall take the necessary precautionary measures.

In this respect, it may:

1° Place the entity under special supervision;

2° Assign one or more of its agents to carry out a permanent control mission within the entity concerned in order to ensure close monitoring of its situation;

3° Temporarily limit or prohibit the exercise of certain operations or activities by this person, including the acceptance of premiums or deposits;

4° Suspending, restricting or temporarily prohibiting the free disposal of all or part of the assets of the supervised entity;

5° Require that entity to dispose of activities;

6° Limit the number of agencies or branches of that entity;

[…]

8° To pronounce the automatic transfer of all or part of a credit institution's portfolio of loans or deposits;

9° Decide to prohibit or limit the distribution of a dividend to shareholders […];

10° Decide to prohibit or limit the payment of interest to holders of additional Tier 1 capital instruments as defined in Article 52 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013, unless such limitation or prohibition should be considered as an event of default by the entities subject to the Authority's supervision;

11° Require the reduction of the risk inherent in the activities, products and systems of credit institutions, investment firms and finance companies;

12° To suspend one or more executives of the supervised entity;

[…]

II. - Where the Autorité de contrôle prudentiel et de résolution considers that the early intervention measures taken in application of Article L. 511-41-5 are not sufficient either to put an end to serious violations by a credit institution, an investment firm mentioned in 2° of B of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 of the regulations applicable to it or the provisions of its articles of association, or to restore its financial position, it may dismiss one or more persons mentioned in Article L. 511-13 or in 4 of Article L. 532-2, or all or some of the members of the board of directors, the supervisory board or any other body exercising equivalent supervisory functions.

III. - The Autorité de contrôle prudentiel et de résolution may suspend the persons referred to in Article L. 612-23-1 when they no longer meet the conditions of good repute, competence, experience or, where applicable, knowledge required by their position and when urgency justifies this measure in order to ensure sound and prudent management.

IV. - In the event of failure to comply with the rules intended to ensure customer protection with regard to the marketing of structured deposits, the Autorité de contrôle prudentiel et de résolution may suspend the marketing or sale of structured deposits when the conditions of Article 42 of Regulation (EU) No. 600/2014 of May 15, 2014 are met or when a credit institution has not developed or applied a genuine product approval process, or has not complied with the requirements of Article L. 3 of II. 533-10, article L. 533-24 and the 3 and 4 of article L. 533-24-1 of the present code.

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
Article 65 of CRD 1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive. 2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, penalties may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach. 3. Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013 those powers shall include: (a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including	**Article L.612-23 of the MFC** The Secretary General of the Autorité de contrôle prudentiel et de résolution shall organise off-site and on-site inspections. The exercise of investigations relating to the provisions of the Consumer Code commissioned by the Autorité de contrôle prudentiel et de résolution shall be carried out without prejudice to the powers recognised to the staff referred to in Articles L. 511-3 and L. 511-21 of the Consumer Code, under the conditions laid down in Book V of the above-mentioned code. The Secretary General may appeal to, for inspections, external control bodies, auditors, experts or competent persons or authorities. In order to contribute towards investigations about the persons described in subparagraph II 1° et 3° of Article L.612-2, the Secretary General may appeal to a professional association, representing the interests of one or more categories of these persons, and of which the investigated person is a member. **Article L.612-24 of the MFC** The Autorité de contrôle prudential et de résolution determines the list, model, frequency and deadlines for the transmission of documents and information that must be submitted to it periodically. The Secretary General of the Autorité de contrôle prudential et de résolution may, therewith, request from the entities subject to its investigations all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may ask said entities to provide the reports of the statutory auditors and, more	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes: (i) institutions established in the Member State concerned; (ii) financial holding companies established in the Member State concerned; (iii) mixed financial holding companies established in the Member State concerned; (iv) mixed-activity holding companies established in the Member State concerned; (v) persons belonging to the entities referred to in points (i) to (iv); (vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities; (b) the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including: (i) the right to require the submission of documents; (ii) to examine the books and records of the persons referred to in points(a)(i) to (vi) and take copies or extracts from such books and records; (iii) to obtain written or oral explanations from any person referred to in points (a) (i) to (vi) or their representatives or staff; and (iv) to interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;	generally, with any accounting document and may, where necessary, request certification thereof. The Secretary General of the Autorité de contrôle prudentiel et de résolution may request subsidiaries of credit institutions, investment firms, financing companies, financial holding companies, mixed financial holding companies, mixed holding companies, parent undertakings of financing companies, mixed parent undertakings of financing companies and to third parties to which these persons have outsourced operational functions or activities all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may for the supervision of a credit institution, a financing company or an investment firm that is not included in the scope of consolidation, request to the parent undertaking of this credit institution, financing company or investment firm to provide all the required information under the conditions provided for in the previous paragraph. The Autorité de contrôle prudential et de résolution collects from the persons referred to in subparagraph I B of Article L. 612-2, on behalf of the National Institute of Statistics and Economic Studies and the Statistical Services of the Ministry of Social Security, data related to the supplementary social protection fixed by a decree adopted under the conditions laid down by the Law of 7 June 1951 on the obligation, coordination and confidentiality related to statistics after advice of the High Council of Mutuality and the Advisory Committee of financial legislation and regulation. The Secretary General of the Autorité de contrôle prudential et de résolution or his representative may summon and hear any entity	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
(c) the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a)(i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.	subject to its supervision or which it needs to hear in order to perform its supervisory duties. The Secretary General of the Autorité de contrôle prudential et de resolution or its representative may, in addition, for the persons referred to in Article L.612-2, participate in the management board, the supervisory board or any body exercising equivalent functions, or summon or hear collectively the members or the executive board, the supervisory board or any body exercising equivalent functions. Subject to the exercise of the rights provided by adversary procedures or the requirements of jurisdictional procedures, the Secretary General of the Autorité de contrôle prudential et de resolution shall not be required to disclose to entities subject to its supervision or to third parties the documents concerning them that it has produced or received, notably when such communication would breach business secrets or professional secrecy to which the Autorité de contrôle prudential et de resolution is bound. When the persons or entities referred to in subparagraph I to II of Article L. 612-2 provide their services over the internet, banking supervisors may, to access to information and elements available on the services, use of a borrowing identity without being criminally liable. **Article L.612-26 of the MFC** The Secretary General of the Autorité de contrôle prudential et de resolution mays decide to extend onsite inspection of a entity subject to its supervision to: 1° its subsidiaries;	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	2° the legal entities that directly or indirectly control it within the meaning of Article L. 233-3 of the Commercial Code; 3° the subsidiaries of these legal entities; 4° any other company or legal entity belonging to the same group; 5° the entities and organisations of any kind that have directly or indirectly entered into a management or reinsurance agreement with said company or any other type of agreement liable to alter its operational or decision-making autonomy concerning any of its business areas; 6° any company which is affiliated to it within the meaning of 4 ° of Article L. 356-1 of the Insurance Code to parent companies mentioned in 1 ° of the same article; 7° the mutual societies and unions falling under Book III of the mutual insurance code which are linked to it; 8° the supplementary pension management institutions linked to it; 9° agents and persons entrusted with operational functions or activities. The facts gathered during this extension of inspection may be communicated by the Secretary General to the entity referred to in the first paragraph of this Article nonwithstanding the professional secrecy referred to in Article L. 612-17. On-site inspection may thereby be extended to branches or subsidiaries located abroad of entities subject to the control of the authority or, for inspections in a State party to the Agreement on the European Economic Area, pursuant to Article L. 632-12, or, for the other States, within the framework of the bilateral agreements provided for in Article L. 632-13 or with an express agreement for the conduct of this extension obtained from the	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	competent authority responsible for a similar mission to that entrusted, in France, to the Autorité de contrôle prudentiel et de resolution, provided that that authority is itself subject to professional secrecy. For the countries with which one of the bilateral conventions provided for in the same article L. 632-13 has not been concluded, the Secretary General shall be responsible for obtaining the agreement of the competent authority concerned and for specifying with it, where appropriate, the conditions for extending the on-site inspections of a specified taxable entity to its subsidiaries or branches. These conditions shall be brought to the attention of that person and of those entities. **Article L.612-27 of the MFC** In case of onsite inspections, a report shall be drawn up. The draft report shall be brought to the attention of the officers of the entity inspected, who may make their observations known for inclusion in the definitive report. In the event of an emergency or any other requirement to proceed without delay with statements of findings for facts or misconducts likely to constitute violations of the provisions applicable to entities supervised, the inspectors of the Autorité de contrôle prudentiel et de resolution may draw up minutes. The follow-up to on-site inspections shall be communicated to the Executive board, the Supervisory Board or any other body exercising equivalent supervisory functions of the entities inspected.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	They may be sent to its statutory auditors and to the specialised real-estate credit company and housing loan company inspectors. They may be sent to the company that controls it within the meaning of Article I of L. 511-20, to the central body to which it is affiliated, and to the parent company within the meaning of Article L. 356-1 of the Insurance Code. These follow-ups, and any other information transmitted to the entities inspected or to the entities referred to in the preceding subparagraph, including an assessment of their situation, cannot be provided to third parties, except in cases where permitted by the law, without the agreement of the Autorité de contrôle prudentiel et de resolution. **Article L. 612-39 of the MFC** Subject to the provisions of Article L. 612-40, if any of the entities referred to paragraph I of Article L. 612-2, with the exception of those mentioned in subparagraphs A-4 bis, A-5° and A- 11° and subparagraph B-4°, has breached a European, legislative or regulatory provision that the Autorité is responsible for monitoring or the approved conduct of business rules applicable to its profession and has not submitted to the Autorité the requested recovery programme or training plan referred to in paragraphe V of Article L. 612-23-1, failed to heed a warning, failed to comply with a demand or failed to comply with the specific conditions or commitments made at the time of an application for approval, authorisation or exception envisaged in the applicable laws or regulations, the Enforcement Commission	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	may impose one or more of the following disciplinary sanctions, depending on the seriousness of the violation: 1° a warning; 2° a reprimand; 3° a prohibition on execution of certain transactions and any other restriction on the conducting of its business; 4° The temporary suspension of one or more senior managers or of any other person referred to in Article L. 612-23-1 or, in the case of a payment institution or an electronic money institution engaged in hybrid activities, of the individuals declared responsible, respectively, for the management of the payment services activities or electronic money issuance and management activities, with or without the appointment of a provisional administrator; 5° The dismissal without consultation of one or more senior managers or of any other individual referred to in Article L. 612-23-1 or, in the case of a payment institution or an electronic money institution engaged in hybrid activities, of individuals declared responsible, respectively, the management of payment services activities or electronic money issuance and management activities, with or without the appointment of a provisional administrator; 6° a partial withdrawal of approval; 7° complete withdrawal of approval or deletion from the list of approved individuals, with or without appointment of a liquidator. The sanctions mentioned in 3° and 4° cannot exceed ten years.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	For credit institutions, the sanction provided for in 6° may be imposed only for services not covered by the approval issued by the European Central Bank. For the same institutions and for activities falling within the scope of the approval issued by the European Central Bank, the penalties provided for in 6° and 7°, respectively, take the form of a partial or total prohibition of conservatory activity. When the Enforcement commission of the Autorité de contrôle prudentiel et de résolution pronounces the total prohibition of the activity of a credit institution, the Autorité de contrôle prudentiel et de résolution proposes to the European Central Bank to declare the withdrawal of the authorisation. Where the European Central Bank does not declare the withdrawal of authorisation, the Sanctions Committee may deliberate again and impose another sanction among those provided for in this Article. Where the disciplinary proceedings initiated may lead to the imposition of sanctions to senior managers, the Autorité de contrôle prudentiel et de resolution session which decided to initiate the procedure shall expressly indicate, in the notice of complaints, that the sanctions referred to in 4° and 5° are likely to be imposed against the senior manager it designates, specifying the elements likely to establish their direct and personal responsibility in the breaches or infractions in question, and the Enforcement commission shall ensure that the procedure is adversarial. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead or in addition to these sanctions, a financial penalty not exceeding EUR 100 million or 10 % of the net annual turnover within the meaning	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	of Article V of Article L. 612-40 of this Code for breaches of Articles L. 113-5, L. 132-5, L. 132-8, L. 132-9-2 and L. 132-9-3 of the Insurance Code, Articles L. 223-10, L. 223-10-1, L. 223-10-2 and L. 223-19-1 of the Mutuality Code, in Chapters I and II of Title VI of Book V of this Code and in European provisions relating to obligations relating to the fight against money laundering and the financing of terrorism and restrictive measures. Where a withdrawal of approval is made under this Article, the Enforcement commission may cancel the certificates subscribed by the person concerned pursuant to Article L. 312-7. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may join a coercive fine to the sanction, the amount of which it shall fix and the effective date. A decree following consultation with the Conseil d'Etat shall determine the procedure applicable, the maximum daily amount of the coercive fine and the procedure according to which, in the event of total or partial non-performance or delay in execution, the coercice fine shall be collected. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may also impose the sanctions referred to in this Article if the injunctions provided for in Articles L. 511-41-3, L. 522-15-1 and L. 526-29 and to the additional requirements provided for in the second paragraph of Article L. 334-1 of the Insurance Code, in the first paragraph of Article L. 352-3 of the same Code or in the second paragraph of Article L. 385-8 of the same Code have not been complied with. The decision of the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall be made public in the publications, newspapers or media it designates, in a format	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	proportionate to the fault committed and the penalty imposed. The costs are borne by the sanctioned persons. However, where the publication could seriously disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide not to publish the decision. For defaults relating to the marketing of structured deposits by credit institutions, sanctions shall be imposed under the conditions mentioned in paragraphs X and XII of Article L. 612-40. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a financial penalty not exceeding EUR 100 million or a tenfold increase in the amount of the benefit derived from the default, if that benefit can be determined. Where direct and personal responsibility for the breaches or infractions in question is established against individuals who actually direct, within the meaning of Article L. 511-13, the activity of a credit institution, or within the meaning of Article L. 322-3-2 of the Insurance Code, the activity of an insurance or reinsurance undertaking or within the meaning of Article L. 211-13 of the Mutual Code, the activity of a mutual or union, or within the meaning of Article L. 931-7-1 of the Social Security Code, the activity of a provident institution or a union, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a financial penalty on the individuals concerned not more than EUR 5 million or tenfold of the amount of the benefit derived from the infringement, whether that benefit can be determined. The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may also impose the sanctions	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	referred to in this Article if it has not been referred to the measures taken pursuant to Article IV L. 612-33. For breaches of the obligations provided for in Articles L. 516-1, L. 521-1 to L. 521-6 and L. 522-1 to L. 522-6 of the Insurance Code by persons mentioned in 1° to 5° of B of I of Article L. 612-2 of this Code where they distribute individual life insurance contracts with redemption values, capitalisation contracts or optional group contracts with a redemption or transfer value referred to in Articles L. 132-5-3 of the Insurance Code, L. 223-8 of the Mutual Code and L. 932-15 of the Social Security Code or of the contracts referred to in Articles L. 441-1 of the Insurance Code, L. 222-1 of the Mutual Code and L. 932-24 of the Social Security Code, the Sanctions Committee may pronounce, instead, or in addition to the penalties mentioned in 1° to 7°, a financial penalty the amount of which does not exceed the higher of the following three limits: one hundred million euro, or 5 % of the net annual turnover within the meaning of Article V of Article L. 612-40 or double the amount of the benefit derived from the default, if that benefit can be determined. **Article L.612-40 of the MFC** I. - If a credit institution, investment firm or financing company has breached a provision of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, a provision of Title I and Title III of Book V of the MFC or of a regulation made for its application or any other legislative or regulatory provision the lack of which leads to the failure to comply with the above provisions to these provisions or to an injunction provided for in Articles L. 511-41-3 and L. 511-41-4, the	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose one or more of the following disciplinary sanctions, depending on the seriousness of the breach: 1° a warning; 2° a reprimand; 3° a prohibition of certain operations and any other restrictionon the conducting of its business; 4° a partial withdrawal of approval; 5° a complete withdrawal of approval or deletion from the list of approved individuals, with or without appointment of a liquidator. The sanction mentioned in 3° cannot exceed ten years. For credit institutions, the sanction provided for in paragraph 4 may be imposed only for activities not covered by the approval issued by the European Central Bank. For the same institutions and for activities falling within the scope of the approval issued by the European Central Bank, the penalties provided for in 4° and 5°, respectively, take the form of a partial or total prohibition of conservatory activity. When the Enforcement commission of the Autorité de contrôle prudentiel et de résolution pronounces the total prohibition of activity of a credit institution, the Autorité de contrôle prudentiel et de résolution proposes to the European Central Bank to declare the withdrawal of the approval. Where the European Central Bank does not declare the withdrawal of approval, the Enforcement	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	commission may deliberate again and impose another sanction among those provided for in this Article. II. – If a financial holding company, a mixed financial holding company or a financing company parent company has breached a provision of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, a provision of Title I and Title III of Book V of the MFC or of a regulation made for its application or any other legislative or regulatory provision the lack of which leads to the failure to comply with the provisions referred to above, or comply with these provisions, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may issue a warning or reprimand against it, depending on the seriousness of the breach. III. – If a mixed holding company or a mixed parent undertaking of a financing company has not submitted to a periodic injunction pursuant to Article L. 612-25 or is not subject to an on-the-spot control provided for in Article L. 612-26, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a 1 exceeding one million euros. IV. – If any of the persons or entities mentioned in Article I or II of Article L. 613-34 has contravened a provision of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, a provision of Section 4 of Chapter III of this Title or any other legislative or regulatory provision the lack of which leads to the lack of knowledge of the aforementioned provisions or where it has not submitted to formal notice to comply with these provisions or with an injunction under Article L. 312-6-1, Article I, II and III of Article L. 511-41-5, Article III and V of Article L. 613-36, Article II of Article L. 613-42, Article L. 613-45 and Article 3 of	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article L. 613-46-7, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose on that person or entity one or more of the disciplinary sanctions referred to in I above. V. - The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead or in addition to the penalties provided for in paragraphs I, II and IV, a financial penalty of a maximum amount of 10% of the net annual turnover, including the gross income of the undertaking consisting of interest and similar income, income from shares, units and other variable or fixed-income securities and commissions received in accordance with Article 316 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 during the previous financial year. Where the entity is a subsidiary of a parent undertaking, the gross income to be taken into account shall be that which emerges from the consolidated accounts of the ultimate parent undertaking during the preceding financial year. Where the benefit derived from the infraction can be determined, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall impose a penalty of a maximum amount of twice. Where a withdrawal of approval is made under this Article, the Enforcement commission may cancel the certificates subscribed by the person concerned pursuant to Article L. 312-7. VI. – The Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose a penalty payment, the amount and date of which it shall fix.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	VII. – Where direct and personal responsibility for the breaches or infringements referred to in paragraphs I, II and IV is established against individuals who effectively direct the business of the entity within the meaning of Articles L. 511-13 or L. 532-2, members of the management board, the supervisory board, or any other body exercising equivalent functions within a credit institution, an investment firm, a financing company, a financial holding company, a mixed financial holding company, a parent undertaking of a financing company or any other entity referred to in paragraph I and, where applicable, paragraph II of Article L. 613-34, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may, depending on the seriousness of the infringement, declare their temporary suspension or resignation. Such sanctions cannot exceed 10 years. VIII. – Where direct and personal responsibility for the breaches or infractions in question is established against the individuals who actually direct, within the meaning of Articles L. 511-13 or L. 532-2, the business of a credit institution, an investment firm, a financing company, a financial holding company, a mixed financial holding company, a parent undertaking of a financing company or any other entity referred to in I and, where appropriate, in Article II of Article L. 613-34, the Enforcement commission of the Autorité de contrôle prudentiel et de résolution may impose, either instead of or in addition to the sanctions referred to in Article VII, a financial penalty not exceeding EUR 5 million. Where the benefit derived from the breach can be determined, it shall impose a penalty of a maximum amount of twice.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	IX. – The termination of duties in respect of which the liability of an individual is established, if it occurs within a period less than or equal to one year before the initiation of disciplinary proceedings, does not constitute an obstacle to the imposition of any of the sanctions provided for in this Article. X. – The amount and type of the sanction imposed under this Article shall be determined taking into account, in particular, where appropriate: 1° The seriousness and duration of the breaches committed and, where appropriate, their potential systemic consequences; 2° The degree of responsibility of the perpetrator of the defaults, of his financial situation, of the extent of the gains he has obtained or of the losses he has avoided, its level of cooperation with the Autorité de contrôle prudentiel et de résolution and its previous breaches; 3° Damages suffered by third parties as a result of breaches, if they can be determined. XI. – Where sanction procedures are instituted against an individual pursuant to the provisions of this Article, the session of the Autorité de contrôle prudentiel et de résolution which decides to initiate the procedure shall notify the individual of the objections, by specifying the elements likely to justify its direct and personal responsibility in the breaches or offences in question. A copy of the statement of objections shall be sent to the management board, the supervisory board or any other body exercising equivalent functions of the undertaking in which the individual performs his functions and, where appropriate, the	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	management board, the supervisory board or any other body exercising equivalent functions of the parent undertaking or the central body of the undertaking in which the individual carries out his functions. XII. – Under the conditions laid down by a decree with consultation of the Conseil d'Etat, the decision of the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall be made public in the publications, newspapers or media it designates, in a format proportionate to the infraction committed and the penalty imposed. The costs are borne by the sanctioned persons; However, the decisions of the Enforcement commission of the Autorité de contrôle prudentiel et de résolution shall be published anonymously in the following cases: 1° Where, in the case of a sanction imposed on a individual, it emerges from a prior assessment carried out on the basis of the information provided by the person concerned that publication of the personal data concerning him or her would cause him or her disproportionate harm; 2° Where the non-discretised publication would jeopardize the stability of the financial markets or an ongoing criminal investigation; 3° Where it appears from objective and verifiable evidence provided by the accused person that the harm that would result for him or her from an anonymous publication would be disproportionate. Where the situations mentioned in 1° to 3° are likely to cease to exist within a short period of time, the Enforcement commission	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	of the Autorité de contrôle prudentiel et de résolution may decide to defer publication during that period. XIII. – The provisions of this Article shall apply to persons who have not complied with the injunction provided for in Articles L. 511-12-1 and L. 531-6.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 66 of CRD 1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties and other administrative measures at least in respect of: (a) carrying out the business of taking deposits or other repayable funds from the public without being a credit institution in breach of Article 9; (b) commencing activities as a credit institution without obtaining authorisation in breach of Article 9; (c) acquiring, directly or indirectly, a qualifying holding in a credit institution or further increasing, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or so that the credit institution would become its subsidiary, without notifying in writing the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of Article 22(1); (d) disposing, directly or indirectly, of a qualifying holding in a credit institution or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25 or so that the credit institution would cease to be a subsidiary, without notifying in writing the competent authorities.	**Article L.613-24 MFC** : When a credit institution, a financing company, an electronic money institution, a payment institution or one of the entities referred to in 2° A of Article L. 612-2 has been the subject of a total prohibition of activity or where an enterprise irregularly carries on the activity defined in Article L. 311-1, II of Article L. 314-1 and Article L. 511-1 infringes any of the prohibitions set out in Article L. 511-5, Article L. 521-2 or Article L. 525-3, the Autorité de contrôle prudentiel et de résolution may, under the conditions laid down in Article L. 612-35, appoint a liquidator to whom are transferred all the powers of administration, management and representation of the legal person. When the situation raises concerns that the credit institution or one of the entities subject to the supervision of the Autorité de Contrôle Prudentiel et de Résolution may eventually be unable to pay the liquidator and the costs incurred by the liquidator, the deposit guarantee and resolution fund or the Treasury may, under the conditions and in the manner provided for in Article L. 612-34, decide to guarantee payment.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following: (a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach; (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct; (c) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year; (d) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013; (e) administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined; (f) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.		

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Where the undertaking referred to in point (c) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.		

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
Article 71 of CRD 1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to encourage reporting of potential or actual breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 to competent authorities. 2. The mechanisms referred to in paragraph 1 shall include at least: (a) specific procedures for the receipt of reports on breaches and their follow-up; (b) appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum; (c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with Directive 95/46/EC; (d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the institution, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings. 3. Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.	**Article L. 511-33 of the MFC** Staff of credit institutions, financing companies, financial holding companies, mixed financial holding companies and the financing company parent undertakings subject to the supervision of the Autorité de contrôle prudentiel et de résolution, as well as the staff of the external providers of such persons, may report to the Autorité de contrôle prudentiel et de resolution any potential breaches or breaches of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014, the provisions of this Title and Title III of this Book or of a Regulation taken for their application or any other legislative or regulatory provisions whose ignorance entails that of the above provisions. Reports shall be made in writing and shall be accompanied by any element to ascertain the facts of the facts reported. The Autorité de contrôle prudentiel et de résolution shall collect reports under conditions which ensure the protection of persons who report breaches, in particular with respect to their identity, and the protection of personal data relating to the persons concerned by reporting. **Article L. 511-41 of the MFC** III. - Credit institutions, investment firms, financing companies, financial holding companies, mixed	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
Such a channel may also be provided through arrangements provided for by social partners. The same protection as referred to in points (b), (c) and (d) of paragraph 2 shall apply.	financial holding companies and parent undertakings of financing companies shall establish procedures for their staff to report breaches or infractions to the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 to the competent officers and committees of their undertaking and to the Autorité de contrôle prudentiel et de résolution, of this Title or of Title III of this Book or of a regulation made for their application or of any other legislative or regulatory provision the infringement of which entails that of the abovementioned provisions, committed within them or likely to be committed within them, by a specific, independent and autonomous means. Credit institutions, investment firms, financing companies, finance holding companies, mixed financial holding companies and parent undertakings of financing companies must also ensure, by adopting all necessary provisions, that no person is excluded from a recruitment procedure or from access to a traineeship or period of in-company training and that no member of their staff is penalised, dismissed or subjected to any direct or indirect discriminatory measure, in particular with regard to compensation, incentive measures or share distributions, training, reclassification, assignment, qualification, classification, professional promotion, transfer or contract renewal, for having reported in good faith any breaches or infractions to the competent managers and committees of their company and to the Autorité de contrôle prudentiel et de résolution.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	In the event of a dispute relating to the application of the previous paragraph, if the person presents facts that give rise to a presumption that he has reported breaches or infringements in good faith, it is incumbent on the defendant, in the light of the evidence, to prove that his decision is justified by objective elements unrelated to the report made by the person concerned. The judge shall form his conviction after ordering, where necessary, all the investigative measures he deems appropriate. An order of the Minister responsible for the economy shall define the conditions for the application of this Article.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 73 of CRD	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 74 of CRD 1. Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management. 2. The arrangements, processes and mechanisms referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities. The technical criteria established in Articles 76 to 95 shall be taken into account. 3. EBA shall issue guidelines on the arrangements, processes and mechanisms referred to in paragraph 1, in accordance with paragraph 2.	**Article L. 511-55 of the MFC** Credit institutions and financing companies shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, an adequate internal control mechanism, sound administration and accounting procedures, remuneration policies and practices that are consistent with and promote sound and effective risk management and, if applicable, a recovery plan referred to in Article L. 613-35. Staff engaged in control functions shall be independent from the business units they control and have the necessary means for carrying out their tasks. The governance arrangement referred to in paragraph 1 shall be proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the credit institution or the financing company. **Article L. 511-56 of the MFC** The internal control mechanism referred to in paragraph 1 of Article L. 511-55 shall include outsourced functions or other essential or key operational tasks. **Art. L. 511-57 of the MFC**	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	I. – Where supervision shall be exercised on the basis of the consolidated financial situation, the financial or mixed-activity groups, as well as groups including at least one financing company, shall adopt adequate internal control procedures for the production of information and useful data for exercising this supervision. II. - Credit institutions and financing companies that are part of a mixed-activity group shall have in place adequate risk management processes and internal control mechanisms referred to in Article L. 511-55, including sound accounting and reporting procedures in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. III. - Credit institutions, financing companies and entities within a group supervised on a consolidated basis or on a sub-consolidated basis by the Autorité de contrôle prudentiel et de résolution shall be subject to the provisions of Articles L. 511-71 to L. 511-88 to the extent appropriate to their size, internal organisation and the nature, scope and complexity of their activity. If applicable, provisions relating to remuneration regulation with which these entities have to comply shall be taken into account as well.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 75 of CRD 1. Competent authorities shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h) and (i) of Article 450(1) of Regulation (EU) No 575/2013 and shall use it to benchmark remuneration trends and practices. The competent authorities shall provide EBA with that information. 2. EBA shall issue guidelines on sound remuneration policies which comply with the principles set out in Articles 92 to 95. The guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (11). ESMA shall cooperate closely with EBA to develop guidelines on remuneration policies for categories of staff involved in the provision of investment services and activities within the meaning of point 2 of Article 4(1) of Directive 2004/39/EC. EBA shall use the information received from the competent authorities in accordance with paragraph 1 to benchmark remuneration trends and practices at Union level. 3. Competent authorities shall collect information on the number of natural persons per institution that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and	**Article R. 511-18 of the MFC** The Autorité de contrôle prudentiel et de resolution shall collect the information disclosed in accordance with the criteria for disclosure established in points (g), (h) and (i) of Article 450(1) of Regulation (EU) No 575/2013, published by credit institutions, holding financial companies, mixed holding financial companies, financing companies, and financing company parent undertakings and shall use it to benchmark remuneration trends and practices. **Article R. 511-19 of the MFC** The information mentioned in article R. 511-18, as well as that concerning the results of the votes of the general meetings mentioned in article L. 511-78, are transmitted by the Autorité de contrôle prudentiel et de resolution to the European banking authority, with the exception of those relating to financing companies and parent undertaking of financing companies.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

pension contribution. That information shall be forwarded to EBA, which shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this paragraph and ensure the consistency of the information collected.		
Article 76 of CRD 1. Member States shall ensure that the management body approves and periodically reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. 2. Member States shall ensure that the management body devotes sufficient time to consideration of risk issues. The management body shall be actively involved in and ensure that adequate resources are allocated to the management of all material risks addressed in this Directive and in Regulation (EU) No 575/2013 as well as in the valuation of assets, the use of external credit ratings and internal models relating to those risks. The institution shall establish reporting lines to the management body that cover all material risks and risk management policies and changes thereof. 3. Member States shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a risk committee composed of members of	**Article L. 511-60 of the MFC** The management board, the supervisory board, or any other body performing equivalent supervisory functions shall approve and periodically review the strategies and policies governing the taking, management, monitoring and mitigating of the risks to which the credit institution or the financing company is or might be exposed to, including those generated by the economic environment. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 transmit, to the credit institution's body performing supervisory functions equivalent to those of a management board or a supervisory board, information enabling this body to approve and to periodically review the strategies and policies governing the taking, management, monitoring and mitigating of the risks to which the branch is or might be exposed, including those generated by the economic environment. **Article L. 511-61 of the MFC**	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
the management body who do not perform any executive function in the institution concerned. Members of the risk committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the institution. The risk committee shall advise the management body on the institution's overall current and future risk appetite and strategy and assist the management body in overseeing the implementation of that strategy by senior management. The management body shall retain overall responsibility for risks. The risk committee shall review whether prices of liabilities and assets offered to clients take fully into account the institution's business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the risk committee shall present a remedy plan to the management body. Competent authorities may allow an institution which is not considered significant as referred to in the first subparagraph to combine the risk committee with the audit committee as referred to in Article 41 of Directive 2006/43/EC. Members of the combined committee shall have the knowledge, skills and expertise required for the risk committee and for the audit committee.	The persons referred to in Article L. 511-13 are required to be actively involved in the management of all significant risks to the credit institution or financing company, as well as in the valuation of assets and the use of external credit ratings and internal models related to these risks. They shall ensure that adequate resources are devoted to this task. **Article L. 511-62 of the MFC** In order to pursue the task provided for in Article L. 511-60, the management board, the supervisory board or any other body exercising equivalent supervisory functions shall be informed, by the persons mentioned in Article L. 511-13, of all significant risks, risk management policies and changes thereto. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 shall transmit to the body of the credit institution to which that branch which has supervisory functions equivalent to those of a management board or a supervisory board, information on all significant risks, on risk management policies and changes to those policies, and any other information enabling that body to approve and periodically review the strategies and policies governing the risk taking, management, monitoring and reduction of the risks to which the branch is or might be exposed, including risks arising from the economic environment.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article L. 511-63 of the MFC The management board, the supervisory board or any other body exercising equivalent supervisory functions and the persons mentioned in Article L. 511-13 shall devote sufficient time to perform the duties mentioned in Articles L. 511-60 to L. 511-62. **Article L. 511-89 of the MFC** The management board, the supervisory board or any other body performing equivalent supervisory functions in a significant credit institutions and financing companies shall constitute a risk committee, a nomination committee and a remuneration committee. The significance of a credit institution or a financing company shall be assessed with respect to their size and internal organisation and the nature, scale and complexity of their activities. Significant branches of credit institutions mentioned in I of Article L. 511-10 shall justify the existence of a risk committee, or an equivalent arrangement, competent for these branches. The criteria of significant institutions that the committees are established are specified by order of the Minister of the Economy. **Article L. 511-90 of the MFC** Committees referred to in Article L. 511- 89 shall consist of members of the management board, supervisory board or any other body performing equivalent	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	supervisory functions which do not perform any executive functions within the credit institution or the financing company. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the committees and arrangements provided for in the second paragraph of Article L. 511-89 shall be composed of persons who are independent of those who actually conduct the business of the branch whithin the meaning of the second paragraph of Article L. 511-13. This independent shall be guaranteed in particular by the conditions of their appointment and remuneration. These persons are subject to professional secrecy under the conditions and penalties provided for in Article L. 511-33 and L. 571-4. The members of these committees shall have adequate knowledge and skills to carry out the tasks of the committee to which they participate. Within credit institutions and financing companies which are required, pursuant to the provisions of the Commercial Code, to have employee representatives to the board, supervisory board or any other body performing equivalent supervisory functions, the remuneration committee referred to in Article L. 511-102 shall include at least one employee representatives. **Article L. 511-91 of the MFC** Where the credit institutions and financing companies referred to in Article L. 511- 89 are part of a group	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	subject to the supervision of the Autorité de contrôle prudentiel et de resolution on a consolidated or subconsolidated basis, the management board, the supervisory board or any other body performing equivalent supervisory functions may decide in accordance with Article L. 511-41-3, except injunction of the Autorité de contrôle prudentiel et de resolution to comply with Article L. 511-89 on an individual basis, that the functions of the committees referred to in Article L. 511- 89 are exercised by the competent committee of the consolidating or sub-consolidating credit institution or financing company. In such case the management board, the supervisory board or any other body performing equivalent supervisory functions of the credit institution or the financing company shall be receiving the information relating to it contained in the annual review to which the credit institution or the financing company at the level of which supervision by the Autorité de contrôle prudentiel et de resolution is carried out on a consolidated basis. **Article L. 511-92 of the MFC** The members of the risk committee shall have appropriate knowledge, skills and expertise to understand and monitor the strategy and the risk appetite of the credit institution or financing company. **Article L.511-93 of the MFC**	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	The risk committee shall advise the management board, the supervisory board or any other body performing equivalent supervisory functions on the credit institution's or the financing company's overall strategy and on current and future risk appetite. The risk committee shall assist the management board, the supervisory board or any other body performing equivalent supervisory functions when the latter monitors the implementation of this strategy by the persons referred to in Article L. 511-13 and by the head of the risk management function. In the case of a branch of a credit institution referred to in I of Article L. 511-10, the risk committee or the process referred to in Article L. 511-89 communicate, to the credit institution's body performing supervisory functions equivalent to those of an administrative board or a supervisory board, the necessary information to determine the branch's strategy and its current and future risk appetite. The risk committee or the process referred to in Article L. 511-89 monitors the implementation of this strategy by the persons referred to in Article L. 511-13 and by the head of the risk management function. **Article L. 511-94 of the MFC** The risk committee shall review, as part of its duties, whether the prices of the regulated products and services referred to in Books II and III of the MFC are consistent with the risk strategy of the credit institution or the financing company.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	When these prices do not properly reflect risks, The risk committee shall present a remedy plan to the management board, the supervisory board or any other body performing equivalent supervisory functions. In the case of a branch of a credit institution referred to in I of Article L. 511-10, when the prices of the products and services referred to in Books II and III of the MFC do not properly reflect risks, the risk committee, or the arrangement referred to in Article L. 511-89, shall inform the credit institution's body performing supervisory functions equivalent to those of a management board or a supervisory board and shall present a remedy plan to it. **Article L. 511-96 of the MFC** The management board, the supervisory board, or any other body performing equivalent supervisory functions and, where applicable, the risk committee shall have any information concerning the risk situation of the credit institution or the financing company. They may, if necessary, use the services of risk management function referred to in Article L. 511-64 or call on external experts. **Article L. 511-97 of the MFC** Credit institutions and financing companies other than those referred to in Article L. 511-89 may entrust, subject to permission by the Autorité de contrôle prudentiel et de résolution, the tasks assigned to the	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	risk committee to the specialized committee referred to in Article L. 823-19 of the French commercial code.	
Article 79 of CRD Competent authorities shall ensure that: (a) credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established; (b) institutions have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital; (c) the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions, is operated through effective systems; (d) diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.	**Article 111 of the ministerial order on internal control** The lending decision procedures, the commitment procedures, the renewing procedures, notably when they are organized by way of delegation of powers, are based on specific criteria, clearly documented and appropriate to the features of the supervised entity, in particular its size, its organization and the nature of its activity. **Article 114 of the ministerial order on internal control** Covered entities shall have the internal methodologies that enable them to assess the credit risk of exposures to individual counterparties, securities or securitization positions, and credit risk at the portfolio level. Internal methodologies of assessment of the credit risk shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating calculated by an external credit rating institution or based on the fact that an exposure is unrated, the covered entities shall consider additionally other relevant information for assessing their allocation of internal capital. **Article 115 of the ministerial order on internal control**	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Systems of assessment and management of credit risks implemented by covered entities shall enable to, effectively, identify and manage problem credits, make adequate value adjustments and record appropriate amounts of provisions or impairment. **Article 106 of the ministerial order on internal control** Covered entities shall have a procedure for selecting credit risks and a system for measuring those risks which enables them in particular: (a) to identify centrally on- and off-balance-sheet risks in relation to a counterparty or counterparties regarded as a single group of connected customers in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013 ; (b) to capture different categories of risk levels on the basis of qualitative and quantitative information, including intraday credit risk, where it is material to the business of the reporting undertaking ; (c) to address and control concentration risk by means of written policies and procedures; (d) to address and control residual risk by means of written policies and procedures; (e) to verify the adequacy of the diversification of credit portfolios given their credit strategy.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 80 CRD of CRD Competent authorities shall ensure that the risk that recognised credit risk mitigation techniques used by institutions prove less effective than expected is addressed and controlled including by means of written policies and procedures.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article L. 511-41-1-C of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 106 of the ministerial order on internal control** Covered entities shall have a procedure for selecting credit risks and a system for measuring those risks which enables them in particular: (a) to identify centrally on- and off-balance-sheet risks in relation to a counterparty or counterparties	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	regarded as a single group of connected customers in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013 ; (b) to capture different categories of risk levels on the basis of qualitative and quantitative information, including intraday credit risk, where it is material to the business of the reporting undertaking ; (c) to address and control concentration risk by means of written policies and procedures; (d) to address and control residual risk by means of written policies and procedures; (e) to verify the adequacy of the diversification of credit portfolios given their credit strategy.	
Article 81 of CRD Competent authorities shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below].	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article L. 511-41-1-C of the MFC The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 106 of the ministerial order on internal control** Covered entities shall have a procedure for selecting credit risks and a system for measuring those risks which enables them in particular: (a) to identify centrally on- and off-balance-sheet risks in relation to a counterparty or counterparties regarded as a single group of connected customers in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013 ; (b) to capture different categories of risk levels on the basis of qualitative and quantitative information, including intraday credit risk, where it is material to the business of the reporting undertaking ; (c) to address and control concentration risk by means of written policies and procedures; (d) to address and control residual risk by means of written policies and procedures; (e) to verify the adequacy of the diversification of credit portfolios given their credit strategy.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article 10(s) of the ministerial order on internal control (s) Concentration risk shall mean the risk arising from the exposures to each counterparty, including central counterparties, groups of connected counterparties pursuant to Article 4(1)(39) of Regulation (EU) No 575/2013, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, including the use of collateral from the same issuer and including in particular risks associated with large indirect credit exposures such as a single collateral issuer	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 82 of CRD 1. Competent authorities shall ensure that the risks arising from securitisation transactions in relation to which the credit institutions are investor, originator or sponsor, including reputational risks, such as arise in relation to complex structures or products, are evaluated and addressed through appropriate policies and procedures, to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions. 2. Competent authorities shall ensure that liquidity plans to address the implications of both scheduled and early amortisation exist at institutions which are originators of revolving securitisation transactions involving early amortisation provisions.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below]. **Article L. 511-41-1-C of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 120 of the ministerial order on internal control** Where reporting undertakings are originators, sponsors or investors in securitisation arrangements or transactions, the risks, including reputational risks, associated with such arrangements or transactions shall be assessed and addressed through appropriate	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	procedures, in particular to ensure that the economic substance of such arrangements or transactions is fully taken into account in the risk assessment and management decisions. **Article 10(y) of the ministerial order on internal control** (y) Securitisation risk shall mean the risk arising from securitisation transactions in which the reporting entity acts as an investor, originator or sponsor ; these risks include reputational risks such as those arising in connection with complex structures or products ; **Article 121 of the ministerial order on internal control** Covered firms originating of revolving securitisation transactions on revolving exposures subject to early amortisation provisions shall have a liquidity plans to address the implications of both scheduled and early amortization.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 83 of CRD 1. Competent authorities shall ensure that policies and processes for the identification, measurement and management of all material sources and effects of market risks are implemented. 2. Where the short position falls due before the long position, competent authorities shall ensure that institutions also take measures against the risk of a shortage of liquidity. 3. The internal capital shall be adequate for material market risks that are not subject to an own funds requirement. Institutions, which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities. Institutions shall also have such adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
Where using the treatment in Article 345 of Regulation (EU) No 575/2013, institutions shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below]. **Article L. 511-41-1-C of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 10(v) of the ministerial order on internal control** (v) Basis risk shall mean risk of loss resulting from a change in the value of a futures contract on a stock market index or another derivative product of this	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	stock market index that does not fully match the value of the stocks that make it up ; **Article 122 of the ministerial order on internal control** Covered entities shall implement policies and processes for the identification, measurement and management of all material sources and effects of market risks. Where the short position falls due before the long position, institutions shall also take measures against the risk of a shortage of liquidity. **Article 130 of the ministerial order on internal control** Covered entities shall have internal capital to cover significant market risks that are not subject to an own funds requirement. **Article 131 of the ministerial order on internal control** Covered entities which have, for the purpose of calculating their own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product, shall have adequate internal capital to cover the basis risk of loss caused a divergent trend between the value of the	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	futures contract or other product and the value of the constituent equities. **Article 132 of the ministerial order on internal control** Covered entities shall have adequate internal capital where they hold opposite positions in stock-index futures, which are note identical in respect of either their maturity or their composition or both. **Article 133 of the ministerial order on internal control** Where covered entities make use of the treatment referred to in Article 345 of Regulation (EU) No 575/2013, they shall have sufficient internal capital against the risk of loss, which exists between the time of the initial commitment and the following working day.	
Article 84 of CRD Competent authorities shall ensure that institutions implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect an institution's non-trading activities.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below].	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article L. 511-41-1-C of the MFC The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 134 of the ministerial order on internal control** Covered entities shall have a system for measuring overall interest rate risk, where it is significant, enabling them in particular: (a) To control the positions and flows, certain or foreseeable, resulting from all transactions, both on- and off-balance sheet; (b) To control the various factors of overall interest rate risk to which these transactions expose them; (c) To periodically assess the impact of these various factors, where significant, on their total revenues and own funds.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
Article 85 of CRD 1. Competent authorities shall ensure that institutions implement policies and processes to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events. Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures. 2. Competent authorities shall ensure that contingency and business continuity plans are in place to ensure an institution's ability to operate on an ongoing basis and limit losses in the event of severe business disruption.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below]. **Article L. 511-41-1-C of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 214 of the ministerial order on internal control** Covered entities shall implement policies and processes to evaluate and manage their operational risk exposures. For the purposes of these policies and processes, covered entities specify what constitutes operational risk.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article 215 of the ministerial order on internal control In addition to Articles 88 to 93, covered entities shall: (a) Have contingency and business continuity plans; (b) Ensure that their organisation and their human, real estate, technical and financial resources are regularly assessed with regard to the risks associated with business continuity ; (c) Ensure the consistency and effectiveness of the business continuity plans as part of an overall plan defined by the supervisory body and implemented by the effective management. **Article 10(n) of the ministerial order on internal control** (n) Contingency and business continuity plan shall mean a set of measures designed to ensure, under various crisis scenarios, including in case of extreme shocks, the continuation, where appropriate, on a temporary basis in a degraded mode, of the provision of services or other essential or important operational tasks of the reporting undertaking, followed by the planned resumption of activities and the limitation of its losses ;	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 86 of CRD 1. Competent authorities shall ensure that institutions have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks. 2. The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the management body and reflect the institution's importance in each Member State in which it carries out business. Institutions shall communicate risk tolerance to all relevant business lines. 3. Competent authorities shall ensure that institutions, taking into account the nature, scale and complexity of their activities, have liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
Competent authorities shall monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations. Competent authorities shall take effective action where developments referred to in the second subparagraph may lead to individual institution or systemic instability. Competent authorities shall inform EBA about any actions carried out pursuant to the third subparagraph. EBA shall make recommendations where appropriate in accordance with Regulation (EU) No 1093/2010. 4. Competent authorities shall ensure that institutions develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk. 5. Competent authorities shall ensure that institutions distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also ensure that	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below]. **Article L. 511-41-1-C of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
institutions take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account and their eligibility and shall monitor how assets can be mobilised in a timely manner. 6. Competent authorities shall ensure that institutions also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area. 7. Competent authorities shall ensure that institutions consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly. 8. Competent authorities shall ensure that institutions consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. For those purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation	least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 148 of the ministerial order on internal control** Covered entities shall have robust strategies, policies, processes, systems, tools and limits in place for the identification, measurement, managements and monitoring of liquidity risk over an appropriate set of time horizons, from short-term, including intra-day, to	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
(EU) No 575/2013, in relation to which the institution acts as sponsor or provides material liquidity support. 9. Competent authorities shall ensure that institutions consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stress conditions shall be considered. 10. Competent authorities shall ensure that institutions adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraph 8. 11. Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 8, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. For credit institutions, such operational	long-term, in order to maintain adequate level of liquidity buffers and avoid excessive transformation. These time horizons, set by the covered entity, constitute the modellable time horizon. **Article 149 of the ministerial order on internal control** The strategies, policies, processes, systems, tools and limits of the covered entities referred to in Article 148 shall be specifically tailored to their business lines, the currencies in which they conduct significant business, their branches and legal entities, where applicable, and shall include adequate allocation mechanisms of liquidity costs, benefits and risks between these different entities. **Article 150 of the ministerial order on internal control** The strategies, policies, processes, systems, tools and limits referred to in Article 148 shall also be proportionate to the complexity, risk profile, scope of operation of the covered entities, the risk tolerance determined in accordance with Article 181 and shall reflect the importance of the covered entities in each of the Member States of the European Union or of the States party to the Agreement on the European Economic Area in which they carry out business, assessed in the light of the systemic repercussions which may result from their importance in those markets.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
steps shall include holding collateral immediately available for central bank funding. This includes holding collateral where necessary in the currency of another Member State, or the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.	**Article 151 of the ministerial order on internal control** The strategies, policies, processes, systems, tools and limits referred to in Article 148 shall be an integral part of the overall risk management framework and shall be effectively used in the measurement and management of liquidity risk in on going and stress situations. **Article 152 of the ministerial order on internal control** Covered entities shall adapt to their liquidity risk: - their strategies, policies, processes, systems, limits and tools referred to in Article 148 - their definition of the stock of liquid assets and diversification of source of financing to their liquidity risk. **Article 153 of the ministerial order on internal control** The limits referred to in Article 148 shall be consistent with the credit quality of the covered entities, with general market conditions and with the results of the stress scenarios set out in Article 168. **Article 154 of the ministerial order on internal control** Covered entities shall communicate to the Autorité de contrôle prudentiel et de résolution the level of liquidity risk tolerance and the limits, referred to in Articles 181 and 148 respectively, adopted for all relevant business lines.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article 155 of the ministerial order on internal control The information systems of covered entities shall enable them to monitor and control liquidity risk and, in particular, to measure their liquidity positions. The information systems of covered entities shall enable them to know at all times the stock of liquid assets that may constitute liquidity reserves for the time horizons mentioned in Article 148. The information systems of covered entities shall include tools for measuring the cost of liquidity, including the cost of internal liquidity, and mechanisms for managing liquidity costs. **Article 156 of the ministerial order on internal control** Covered entities shall develop methodologies for the identification, measurement, management and monitoring of funding positions, using the indicators and limits referred to in Article 148, with sufficiently prudent assumptions and in both a static and dynamic manner. **Article 157 of the ministerial order on internal control** Those methodologies shall include the current and projected material cash-flows in and arising from all assets, liabilities, off-balance sheet items, and other contingent liabilities, including liabilities of securitisation entities or other special purpose entities,	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	within the meaning of Regulation (EU) No 575/2013, for which covered entities act as sponsors or for which covered entities provide significant liquidity support. Those methodologies shall include the possible impact of reputational risk. Those methodologies shall also include the assessment of liquidity needs and resources of covered entities in relation with their business forecasts. **Article 158 of the ministerial order on internal control** Covered entities shall document their methodologies and explain the choices made. **Article 159 of the ministerial order on internal control** Covered entities distinguish between encumbered assets and unencumbered assets that are available at all times, in particular during emergency situations. They shall take into account the legal entity in which the assets reside, the country where the assets are legally recorded, either in a register or in an account, as well as their eligibility for central bank refinancing, and shall monitor how these assets can be mobilised both in normal and emergency situations. Covered entities shall have regard to legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, including outside the European Economic Area.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article 160 of the ministerial order on internal control In order to be able to cope with a range of different types of crises, covered firms shall rely on different liquidity risk mitigation tools, including a system of limits as referred to in Article 148 and liquidity buffers, which shall be available at any time. Covered entities shall diversify their funding structure and funding sources. Covered entities shall also define the modalities for the rapid mobilisation of complementary sources of funding. **Article 161 of the ministerial order on internal control** Covered entities shall take into account the foreseeable value of the use of the sources of financing mentioned in Article 160. They shall take into account haircuts that encompass risk of losses related to a squeeze-out within a short period of time or in the event of non-renewal of certain debt outstanding. **Article 162 of the ministerial order on internal control** Covered entities shall assess their capacity to raise funds from each sources of funding, both in normal and stress scenarios. To this end, they shall periodically test, directly or through their refinancing entity, their capacity to borrow from their counterparties. They shall test as	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	well their access to the central bank refinancing mechanism and other refinancing mechanisms. **Article 163 of the ministerial order on internal control** Covered entities shall regularly review the appropriateness of the criteria for the identification, valuation, liquidity and availability of assets and the measures taken for the application of Article 160. **Article 164 of the ministerial order on internal control** Covered entities shall also implement tools to measure and monitor their intraday liquidity risk. **Article 165 of the ministerial order on internal control** Covered entities shall implement alert procedures and action plans in case the limits referred to in Article 148 are exceeded. **Article 166 of the ministerial order on internal control** In order to establish their net borrowing, covered entities shall calculate liquidity shortfalls for all time horizons defined pursuant to Article 148 and shall determine the terms and conditions for their coverage. **Article 167 of the ministerial order on internal control**	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Liquidity shortfalls correspond to the balance, whether cumulative or not, of current and forecast cash receipts and disbursements. They are calculated, for each significant currency, according to the contractual or expected maturity of the transactions and according to the impact of contingent liabilities such as off-balance sheet transactions concluded in the form of guarantees, sureties or financing commitments not yet drawn down. **Article 168 of the ministerial order on internal control** Covered entities shall consider alternative scenarios on liquidity positions and on risk mitigants, based on assumptions different from those mentioned in Article 156. For these purposes, alternative scenarios shall cover both certain and probable inflows and outflows resulting from all assets, liabilities and off-balance-sheet items and other contingent liabilities, including those of securitisation entities or other special purpose entities, within the meaning of Regulation (EU) No 575/2013 referred to above, for which reporting undertakings act as sponsors or provide material liquidity support. **Article 169 of the ministerial order on internal control** Covered entities shall examine the potential impact of the alternative scenarios referred to in Article 168 on	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	the entities themselves, on the market as a whole and on a combination of the two, leading to a sudden deterioration in their financing conditions. Covered entities shall take into account periods of different durations and stress conditions of different intensity, including extremes, in the development of the alternative scenarios referred to in Article 168. **Article 170 of the ministerial order on internal control** Covered entities shall identify liquidity risk factors according to their size, the nature of their activities and their importance in each of the Member States of the European Union or the States party to the Agreement on the European Economic Area where they operate, assessed in the light of the systemic implications that may result from their importance in those markets. They shall establish the alternative scenarios referred to in Article 168 by adapting them to those risk factors. **Article 171 of the ministerial order on internal control** Where Covered entities develop scenarios specific to certain foreign locations, legal entities or business lines, they document and justify their choices. **Article 172 of the ministerial order on internal control** Covered entities shall test the alternative scenarios referred to in Article 168 on a regular basis in order to	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	ensure that their exposure to liquidity risk remains consistent with their defined risk tolerance. **Article 173 of the ministerial order on internal control** At least once a year, the covered entities shall review the assumptions underlying the decisions relating to financing and carry out a periodic review of the relevance and severity of the assumptions used to establish the alternative scenarios referred to in Article 168. **Article 174 of the ministerial order on internal control** The covered entities shall analyse the impact of the alternative scenarios mentioned in Article 168 on their liquidity position, on the level and sustainability of funding commitments received, confirmed and unconfirmed, and on the level and composition of their stock of liquid assets. **Article 175 of the ministerial order on internal control** They shall, taking into account the results of the scenarios referred to in Article 168, develop effective formalised contingency plans to prepare for crisis situations.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	The contingency plans shall specify the strategy and procedures to be followed to manage liquidity under the different alternative scenarios referred to in Article 168. **Article 176 of the ministerial order on internal control** The procedures referred to in Article 175 shall determine in particular : - the persons concerned, their level of responsibility and their tasks ; - the alternative solutions for access to liquidity to be implemented ; - the arrangements for communicating information to the public. **Article 177 of the ministerial order on internal control** Periodically, and at least once a year, covered entities shall test and update their contingency plans, in particular in the light of the results of the alternative scenarios referred to in Article 168, to ensure that they are effectively operational and appropriate. The contingency plans shall be communicated to and approved by the supervisory body. **Article 178 of the ministerial order on internal control** Covered entities shall have liquidity recovery plans setting out adequate strategies and appropriate	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	implementation measures to address possible liquidity shortfalls, including in respect of branches established in other Member States of the European Union or other States party to the Agreement on the European Economic Area. **Article 179 of the ministerial order on internal control** Covered entities shall take appropriate and anticipated operational measures to ensure the immediate implementation of the liquidity recovery plans referred to in Article 178, such as the holding of collateral immediately available for financing by central banks or the holding of collateral, denominated, where appropriate, in the currency of another State to which the covered entities is exposed and which is held, according to operational needs, in the territory of that State. **Article 180 of the ministerial order on internal control** Covered entities shall test at least once a year the liquidity recovery plans referred to in Article 178, updated taking into account the results of the scenarios referred to in Article 168. The results shall be communicated to the effective directors for adapting internal policies and processes accordingly. **Article 181 of the ministerial order on internal control**	

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	The effective directors determine the liquidity risk tolerance level of the covered entities, i.e. the level of risk-taking it accepts based on its risk profile, which is approved by the supervisory body. They shall determine the liquidity management policy appropriate to the risk tolerance level of the reporting undertaking and put in place the procedures, systems, limits and tools for identifying, measuring and managing liquidity risk as referred to in Article 148. **Article 182 of the ministerial order on internal control** The effective directors shall ensure the adequacy of those procedures, systems, tools and limits referred to in Article 148 by monitoring developments in the liquidity situation. They shall report the results of their analyses to the supervisory body and, where appropriate, to the risk committee at least twice a year. **Article 183 of the ministerial order on internal control** The Supervisory Body shall decide at least once a year on the level of risk tolerance referred to in Article 181 and on the strategies, policies, procedures, systems, tools and limits referred to in Article 148. The Supervisory Body shall approve any substantial changes to the elements referred to in the first subparagraph.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article 184 of the ministerial order on internal control The supervisory body is kept informed and, where appropriate, the Risk Committee, of the conclusions of the reviews and analyses of the liquidity risk mentioned in the preceding articles. It shall be kept informed and, where appropriate, the Risk Committee, of the results of the alternative stress scenarios conducted pursuant to Article 168 and of the actions taken, if any. **Article 185 of the ministerial order on internal control** The Risk Committee shall, where appropriate, regularly review the strategies, policies, procedures, systems, tools and limits referred to in Article 148 and the underlying assumptions and report its findings to the Supervisory Body. **Article 186 of the ministerial order on internal control** Covered entities shall immediately inform the Autorité de contrôle prudentiel et de résolution of any material change in their current or projected liquidity position and of any overshooting of the limits referred to in Article 148. They shall also communicate to the Autorité de contrôle prudentiel et de resolution information on their strategies, policies, procedures, systems, tools, contingency plans and the results of the scenarios referred to in Articles 148, 175 and 168 respectively.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Article 7 of the ministerial order on prudential supervision and risk assessment I.- The Autorité de contrôle prudentiel et de résolution shall determine whether the liquidity risk profiles implemented by the covered entity mentioned in Article 1, taking into account the nature, scale and complexity of their activities, comply with and do not exceed what is required by a sound and efficient system. The Autorité de contrôle prudentiel et de résolution shall monitor developments affecting liquidity risk profiles, including product design and volumes, risk management, funding policies and funding concentrations. The Autorité de contrôle prudentiel et de résolution may enjoin a covered entity to take corrective measures or to comply with a specific liquidity requirement, in accordance with the provisions of I and IV of Article L. 511-41-3 of the Monetary and Financial Code, when the developments mentioned in the previous paragraph could lead to instability in that entity or the system. The Autorité de contrôle prudentiel et de résolution shall inform the European Banking Authority of all corrective measures taken and all specific liquidity requirements imposed pursuant to the previous paragraph, except when these measures concern financing companies and parent undertakings of financing companies.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	II-The Autorité de contrôle prudentiel et de resolution shall assess whether it is necessary to impose a specific liquidity requirement to take account of the liquidity risks to which a covered etitiy referred to in Article 1 is or might be exposed, taking into account the following elements : 1° The particular business model of that entity ; 2° The arrangements, processes and mechanisms of the entity mentioned in I and Chapter VI of Title IV of the ministerial order of 3 November 2014; 3° The results of the monitoring and assessment carried out in accordance with Article 6 of this ministerial order; 4° A systemic liquidity risk constituting a threat to the integrity of financial markets in France. III. When a covered entity, with the exception of a financing company and a parent undertaking of a financing company, has significant branches in other Member States of the European Union or parties to the Agreement on the European Economic Area, the Autorité de contrôle prudentiel et de resolution shall consult the authorities of the host Member States on the operational measures required under Articles 178 to 180 of the aforementioned Order of 3 November 2014 whenever relevant with regard to liquidity risks in the currency of the host State. Where the Autorité de contrôle prudentiel et de résolution, in accordance with Article L. 613-32-1 of the Monetary and Financial Code, is the competent authority of the host Member State of a significant	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	branch, it may refer the matter to the European Banking Authority, in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 referred to above, in one of the following cases : 1° The Autorité de contrôle prudentiel et de résolution has not been consulted by the competent authority within the meaning of Articles L. 511-21 or L. 532-16 of the same Code ; 2° The Autorité de contrôle prudentiel et de résolution considers that the operational measures required within the meaning of Articles 178 to 180 of the ministerial order of 3 November 2014 are not adequate.	

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Article 87 of CRD 1. Competent authorities shall ensure that institutions have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 and mismatches between assets and obligations. 2. Competent authorities shall ensure that institutions address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the institution's own funds through expected or realised losses, depending on the applicable accounting rules. To that end, institutions shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.	**Article L. 511-41-1-B of the MFC** Credit institutions and financing companies shall put in place systems, strategies and procedures that are subject to regular internal control as referred to in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities. These risks include in particular credit and counterparty risk, including residual risk, concentration risk, securitisation risk, market risk, interest risk arising from non-trading book activities, operational risk, liquidity risk, risk of excessive leverage and risks identified in the context of regular stress tests. Credit institutions and financing companies, taking into account their size, internal organisation and activities, shall develop internal specific risk assessment capacity. They shall, if authorised by the Autorité de contrôle prudentiel et de résolution, use an internal approach to determine the own funds requirements appropriate to their situation. The systems, strategies and procedures referred to in the first paragraph may also be designed to enable credit institutions and financing companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed. Credit institutions and financing companies must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	adequate level of liquidity buffers and have in place liquidity recovery plans. Parent undertakings of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated. The conditions for the application of this Article shall be set by order of the Minister for the Economy [see below]. **Article L. 511-41-1-C of the MFC** The Autorité de contrôle prudentiel et de résolution evaluates and monitors the systems, strategies and procedures implemented by credit institutions and financing companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1-B. The Autorité de contrôle prudentiel et de resolution shall monitor the use by credit institutions and financing companies of internal approaches for calculating the own funds requirements, ensuring in particular that that they do not solely or mechanistically rely on external credit ratings. The Autorité de contrôle prudentiel et de resolution shall, on the basis of the information submitted by credit institutions and financing companies, assess at	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	least once a year the quality of the internal approaches used for the calculation of own funds requirements. The Autorité de contrôle prudentiel et de resolution shall carry out a comparative analysis of the internal approaches. If the Autorité de contrôle prudentiel et de resolution finds, as a result of that analysis, that the internal approach of a credit institution or financing company leads to an underestimation of its own funds requirements, it may impose corrective measures on the credit institution or financing company. Those measures shall not lead to standardisation or preferred methods, create wrong incentives or cause herd behaviour. Where the Autorité de contrôle prudentiel et de resolution finds that credit institutions or financing companies with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner. The conditions for the application of this Article shall be set by order of the Minister for the Economy. [see below] **Article 211 of the ministerial order on internal control** Covered entities have policies and processes in place to detect, manage and monitor excessive leverage risk. Indicators for excessive leverage risk include the leverage ratio determined in accordance with Article	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	429 of Regulation (EU) No 575/2013 referred to above and mismatches between assets and liabilities. **Article 212 of the ministerial order on internal control** Covered entities shall take prudent measures with regard to the risk of excessive leverage that take into account possible increases in the risk of excessive leverage resulting from a reduction in their own funds due to expected or realised losses, in accordance with the applicable accounting rules. To that end, covered entities shall be able to withstand a range of stress situations with respect to excessive leverage risk.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	

Article 88 of CRD 1. Member States shall ensure that the management body defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of an institution, including the segregation of duties in the organisation and the prevention of conflicts of interest. Those arrangements shall comply with the following principles: (a) the management body must have the overall responsibility for the institution and approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance; (b) the management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards; (c) the management body must oversee the process of disclosure and communications; (d) the management body must be responsible for providing effective oversight of senior management; (e) the chairman of the management body in its supervisory function of an institution must not exercise simultaneously the functions of a chief executive officer within the same institution, unless justified by the institution and authorised by competent authorities. Member States shall ensure that the management body monitors and periodically assesses the	**Article L. 511-13 of the MFC** The registered office and head office of any credit institution or financing company approved in accordance with Article L. 511-10 shall be located in France. These provisions do not apply to branches of credit institutions mentioned in I of Article L. 511-10. The effective management of credit institutions or financing companies shall be ensured by at least to persons. **Article L. 511-58 of the MFC** The chair of the management board or any other body performing equivalent supervisory functions of a credit institution or a financing company shall not be exercised by the managing director or a person exercising equivalent managerial functions. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, this prohibition shall target the exercise of effective management functions of that branch, whitin the meaning of the second paragraph of Article L. 511-13, and the chairmanship of the organ of the credit institution to which the branch belongs, that performs supervisory functions equivalent to those of a management board or a supervisory board. However, the Autorité de contrôle prudentiel et de résolution may authorise the combination of these functions, provided that the credit institution or the financing company produced reasoned justifications.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
effectiveness of the institution's governance arrangements and takes appropriate steps to address any deficiencies. 2. Member States shall ensure that institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a nomination committee composed of members of the management body who do not perform any executive function in the institution concerned. The nomination committee shall: (a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies, evaluate the balance of knowledge, skills, diversity and experience of the management body and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected. Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013; (b) periodically, and at least annually, assess the structure, size, composition and performance of the	**Article L. 511-59 of the MFC** The management board, the supervisory board or any other body performing equivalent supervisory functions shall review the governance arrangements provided for in Article L. 511-55, assess periodically its effectiveness and ensure that corrective actions to remedy any failure have been taken. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 shall transmit to the body of the credit institution to which that branch reports the information necessary for an examination of the governance arrangements provided for in Article L. 511-55, the periodic assessment of its effectiveness and the monitoring, where appropriate, of the corrective measures taken to remedy any failure. The body of the credit institution to which the information is transferred shall performs supervisory functions equivalent to those of a management board or a supervisory board. **Article L. 511-60 of the MFC** The management board, the supervisory board, or any other body performing equivalent supervisory functions shall approve and periodically review the strategies and policies governing the taking, management, monitoring and mitigating of the risks to which the credit institution or the financing company is	

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management body and make recommendations to the management body with regard to any changes; (c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly; (d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body. In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole. The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect. Where, under national law, the management body does not have any competence in the process of selection and appointment of any of its members, this paragraph shall not apply.	or might be exposed to, including those generated by the economic environment. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 transmit, to the credit institution's body performing supervisory functions equivalent to those of a management board or a supervisory board, information enabling this body to approve and to periodically review the strategies and policies governing the taking, management, monitoring and mitigating of the risks to which the branch is or might be exposed, including those generated by the economic environment. **Article L. 511-67 of the MFC** The management board, the supervisory board or any other body performing equivalent supervisory functions shall define the orientations and shall control the implementation of the governance arrangements by the persons referred to in article L. 511-13, in order to ensure an efficient and prudent management of the institution, including the segregation of duties in the organisation of the credit institution or the financing company as well as the prevention of conflicts of interest. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 implement governance arrangements in order to ensure efficient	

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	and prudent management of their branch, including the segregation of duties in the organisation of the branch as well as the prevention of conflict of interest. **Article L. 511-68 of the MFC** The persons referred to in Article L. 511- 13 shall ensur e the integrity of the accounting and financial information reporting systems. **Article L. 511-69 of the MFC** The management board, the supervisory board or any other body performing equivalent supervisory functions shall control the publication and communication process, the quality and the reliability of information to be published and communicated by the credit institution or the financing company. **Article L. 511-89 of the MFC** The management board, the supervisory board or any other body performing equivalent supervisory functions in a significant credit institutions and financing companies shall constitute a risk committee, nomination committee and remuneration committee. The significance of a credit institution or a financing company shall be assessed with respect to their size and internal organisation and the nature, scale and complexity of their activities.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	Significant branches of credit institutions mentioned in I of Article L. 511-10 shall justify the existence of a risk committee, or an equivalent arrangement, competent for these branches. The criteria of significant institutions that the committees are established are specified by order of the Minister of the Economy. **Article L. 511-90 of the MFC** Committees referred to in Article L. 511- 89 shall consist of members of the management board, supervisory board or any other body performing equivalent supervisory functions which do not perform any executive functions within the credit institution or the financing company. In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the committees and arrangements provided for in the second paragraph of Article L. 511-89 shall be composed of persons who are independent of those who actually conduct the business of the branch whithin the meaning of the second paragraph of Article L. 511-13. This independent shall be guaranteed in particular by the conditions of their appointment and remuneration. These persons are subject to professional secrecy under the conditions and penalties provided for in Article L. 511-33 and L. 571-4. The members of these committees shall have adequate knowledge and skills to carry out the tasks of the committee to which they participate.	

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	Within credit institutions and financing companies which are required, pursuant to the provisions of the Commercial Code, to have employee representatives to the board, supervisory board or any other body performing equivalent supervisory functions, the remuneration committee referred to in Article L. 511-102 shall include at least one employee representatives. **Article L. 511-91 of the MFC** Where the credit institutions and financing companies referred to in Article L. 511- 89 are part of a group subject to the supervision of the Autorité de contrôle prudentiel et de resolution on a consolidated or subconsolidated basis, the management board, the supervisory board or any other body performing equivalent supervisory functions may decide in accordance with Article L. 511-41-3, except injunction of the Autorité de contrôle prudentiel et de resolution to comply with Article L. 511-89 on an individual basis, that the functions of the committees referred to in Article L. 511- 89 are exercised by the competent committee of the consolidating or sub-consolidating credit institution or financing company. In such case the management board, the supervisory board or any other body performing equivalent supervisory functions of the credit institution or the financing company shall be receiving the information relating to it contained in the annual review to which the credit institution or the financing company at the level of which supervision by the Autorité de contrôle	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	prudentiel et de resolution is carried out on a consolidated basis. **Article L. 511-98 of the MFC** The nomination committee provided for in Article L. 511- 89 shall identify and recommend for the approval of the management board, supervisory board or any other body performing equivalent supervisory functions, candidates suitable for the exercise of the functions of managing director, board member or any other body performing equivalent supervisory functions, with a view to offering their application to the general meeting. The nomination committee shall assess the balance and diversity of the individual and collective knowledge, skills and experience of members of the management board, supervisory board or any other body performing equivalent supervisory functions. The nomination committee shall specify the tasks and qualifications necessary for the functions performed in these body and shall assess the time to be devoted to those functions. **Article L. 511-99 of the MFC** Without prejudice to other relevant provisions, the nomination committee shall decide on a target for a balanced representation of women and men within the management board, the Supervisory Board or any other body performing equivalent functions. The	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	nomination committee shall develop a policy to achieve this objective. The target, the policy of credit institutions and its implementation shall be made public in accordance with paragraph 2 of Article 435 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013. Financing companies shall comply with the provisions of the preceding subparagraph. **Article L. 511-100 of the MFC** The nomination committee shall assess periodically and at least annually the structure, size, composition and performance of the management board, supervisory board or any other body performing equivalent supervisory functions with respect to the tasks assigned to it and shall submit any useful recommendations to that board or body. It shall periodically assess, and at least annually, the knowledge, skills and experience of members of the management board, supervisory board or any other body exercising equivalent supervisory functions, both individually and collectively, and shall report thereon to it. It shall periodically review the policies of the management board, the supervisory board or any other body performing equivalent supervisory functions in the selection and nomination of the persons referred to in Article L. 511-13, the delegated managing directors	

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	and the head of the risk management function, and shall make recommendations in this regard. **Article L. 511-101 of the MFC** In carrying out its tasks, the nomination committee shall ensure that the management board, supervisory board or any other body exercising equivalent supervisory functions is not controlled by a person or small group of persons under conditions prejudicial to the interests of the credit institution or the financing company. The nomination committee shall have the necessary resources for carrying out its tasks and call on external advice.	

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Article 89 of CRD 1. From 1 January 2015 Member States shall require each institution to disclose annually, specifying, by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year: (a) name(s), nature of activities and geographical location; (b) turnover; (c) number of employees on a full time equivalent basis; (d) profit or loss before tax; (e) tax on profit or loss; (f) public subsidies received. 2. Notwithstanding paragraph 1, Member States shall require institutions to disclose the information referred to in paragraph 1(a), (b) and (c) for the first time on 1 July 2014. 3. By 1 July 2014, all global systemically important institutions authorised within the Union, as identified internationally, shall submit to the Commission the information referred to in paragraph 1(d), (e) and (f) on a confidential basis. The Commission, after consulting EBA, EIOPA and ESMA, as appropriate, shall conduct a general assessment as regards potential negative economic consequences of the public disclosure of such information, including the impact on competitiveness, investment and credit availability and the stability of the financial system. The Commission	**Article L. 511-45 of the MFC** I. – Under the conditions laid down by order of the Minister of the Economy, credit institutions and financing companies shall, in an annex to their annual accounts, disclose information on their establishments and activities in the non-cooperative States or Territories as defined in Article 238-0 A of the French General Tax Code. II. – From the accounting periods beginning on or after 1 January 2014, credit institutions, financial holding companies and mixed financial holding companies and investment firms other than portfolio management companies shall publish annually, in an annex to their annual accounts or, where appropriate, their consolidated annual accounts or management report, information on their institutions and their activities, included in the consolidation defined in Articles L. 233-16 and below of the Commercial Code, in each State or Territory. III. – The following information shall be published for each State or Territory: 1 ° Name of establishments, nature of activity and geographical location; 2 ° Net bank income and turnover; 3 ° Full time equivalent; 4 ° Profit or loss before tax;	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
shall submit its report to the European Parliament and to the Council by 31 December 2014. In the event that the Commission report identifies significant negative effects, the Commission shall consider making an appropriate legislative proposal for an amendment of the disclosure obligations set out in paragraph 1 and may, in accordance with point (h) of Article 145, decide to defer those obligations. The Commission shall review the necessity to extend deferral annually. 4. The information referred to in paragraph 1 shall be audited in accordance with Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned. 5. To the extent that future Union legislative acts for disclosure obligations go beyond those laid down in this Article, this Article shall cease to apply and shall be deleted accordingly.	5. Amount of taxes on profits the establishments of which are liable to pay, distinguishing between the current taxes on deferred taxes; 6 ° Government grants received. For the information mentioned in 2 ° to 6 °, the data shall be aggregated at the scale of those States or Territories. IV. – The Autorité de contrôle prudentiel et de resolution shall ensure that the disclosure obligations of this Article are met. In determining the absence of publication or omission in the information published by an entity referred to in I, it shall initiate the penalty procedure under Article L. 612-25. V. – The information defined in II and III is available to the public for five years under conditions defined by decree in the Conseil d'Etat. The auditors confirm the sincerity of this information and their consistency with the accounts.	

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Article 91 of CRD 1. Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experiences. Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8. 2. All members of the management body shall commit sufficient time to perform their functions in the institution. 3. The number of directorships which may be held by a member of the management body at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Unless representing the Member State, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships at the same time: (a) one executive directorship with two non-executive directorships; (b) four non-executive directorships. 4. For the purposes of paragraph 3, the following shall count as a single directorship:	**Article L. 511-51 of CRD** Within credit institutions or financing companies, shall at all times possess of good repute, knowledge, skills and experience necessary for the exercise of their functions: 1° the members of the management board, the supervisory board and the executive board, the managing director and the delegated managing directors, as well as any other person or member of a body performing equivalent functions; 2° persons who effectively conduct the business within the meaning of Article L. 511-13 and are not mentioned in 1°; 3° all persons responsible for the procedures, arrangements and policies referred to in Article L. 511-55, the tasks of which are specified by the ministerial order adopted pursuant to Article L. 511-70 and which are likely to report directly to the management board, supervisory board or any other body operating directly equivalent supervisory functions. The competence of the members of the management board, the supervisory board or any other body performing equivalent functions shall be assessed on the basis of their training and experience with respect to their duties. Where similar mandates have been exercised previously, the competence shall be presumed in respect of the experience acquired. For the new members, the teaching they will benefit from throughout their mandate shall be taken into account. The competence and responsibilities of the other	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
(a) executive or non-executive directorships held within the same group; (b) executive or non-executive directorships held within: (i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled; or (ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding. 5. Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 3. 6. Competent authorities may authorise members of the management body to hold one additional non-executive directorship. Competent authorities shall regularly inform EBA of such authorisations. 7. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks. 8. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. 9. Institutions shall devote adequate human and financial resources to the induction and training of members of the management body.	members of the body to which it belongs shall also be taken into account in the assessment of each person. The members of the management board or the supervisory board, of the one part, and the members of the executive board or any persons who effectively direct the activity of the enterprise within the meaning of Article L. 511-13, shall collectively possess the necessary knowledge, skills and experience to apprehend activities of the undertaking, including the main risks to which it is exposed. **Article R. 511-16-3 of the MFC** Each of the persons who effectively manage the activity of the credit institution or the financing company within the meaning of Article L. 511- 13, as well as each member of the management board, supervisory board, executive board or any other body performing equivalent functions, shall act with honesty, integrity and independence of mind to effectively assess and, where necessary, challenge the management decisions taken and to effectively oversee and monitor management decision-making.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
10. Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body. 11. Competent authorities shall collect the information disclosed in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 and shall use it to benchmark diversity practices. The competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level. 12. EBA shall issue guidelines on the following: (a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution; (b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 7; (c) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 8; (d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 9;		

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(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 10. EBA shall issue those guidelines by 31 December 2015. 13. This Article shall be without prejudice to provisions on the representation of employees in the management body as provided for by national law.		

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Article 92 of CRD 1. The application of paragraph 2 of this Article and of Articles 93, 94 and 95 shall be ensured by competent authorities for institutions at group, parent company and subsidiary levels, including those established in offshore financial centres. 2. Competent authorities shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, institutions comply with the following principles in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities: (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the institution; (b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the institution, and incorporates measures to avoid conflicts of interest; (c) the institution' s management body in its supervisory function adopts and periodically reviews	**Article L. 511-55 of the MFC** Credit institutions and financing companies shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, an adequate internal control mechanism, sound administration and accounting procedures, remuneration policies and practices that are consistent with and promote sound and effective risk management and, if applicable, a recovery plan referred to in Article L. 613-35. Staff engaged in control functions shall be independent from the business units they control and have the necessary means for carrying out their tasks. The governance arrangement referred to in paragraph 1 shall be proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the credit institution or the financing company. **Article L. 511-57 of the MFC** I. – Where supervision shall be exercised on the basis of the consolidated financial situation, the financial or mixed-activity groups, as well as groups including at least one financing company, shall adopt adequate internal control procedures for the production of information and useful data for exercising this supervision.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
the general principles of the remuneration policy and is responsible for overseeing its implementation; (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function; (e) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control; (f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 95 or, if such a committee has not been established, by the management body in its supervisory function; (g) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting: (i) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and (ii) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the	II. - Credit institutions and financing companies that are part of a mixed-activity group shall have in place adequate risk management processes and internal control mechanisms referred to in Article L. 511-55, including sound accounting and reporting procedures in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. III. - Credit institutions, financing companies and entities within a group supervised on a consolidated basis or on a sub-consolidated basis by the Autorité de contrôle prudentiel et de résolution shall be subject to the provisions of Articles L. 511-71 to L. 511-88 to the extent appropriate to their size, internal organisation and the nature, scope and complexity of their activity. If applicable, provisions relating to remuneration regulation with which these entities have to comply shall be taken into account as well. **Article L. 511-71 of the MFC** The total compensation policy, including salaries and discretionary pension benefits defined in paragraph 73 of paragraph 1 of Article 4 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, credit institutions and finance companies shall apply to the persons referred to in Article L. 511-13 and to categories of staff, including risk takers, persons exercising a supervisory function and any employee who, in view of its overall income, is in the same remuneration bracket, whose professional	

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employee's job description as part of the terms of employment.	activities have a significant impact on the risk profile of the company or group. This policy is consistent with the economic strategy, objectives, values and long-term interests of the credit institution or the financing company. It includes measures to avoid conflicts of interest. It is designed to promote sound and effective risk management. It shall not encourage risk-taking beyond the level of risk defined by the credit institution or the financing company. **Article L. 511-72 of the MFC** The management board, the supervisory board or any other body exercising equivalent supervisory functions shall regularly adopt and review the general principles of the remuneration policy and monitor its implementation. In the case of a branch of a credit institution referred to in Article L. 511-10, the persons referred to in the second paragraph of Article L. 511-13 transmit to the body of the credit institution which exercises supervisory functions equivalent to those of a executive board or a board of supervisors, information enabling that body to adopt and regularly review the general principles of the remuneration policy applicable by the branch and to monitor its implementation. **Article L. 511-74 of the MFC**	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	The implementation of the remuneration policy shall be subject, at least once a year, to a central and independent internal evaluation to ensure compliance with the remuneration policy and procedures adopted by the management board, the supervisory board or any other body exercising equivalent supervisory functions. In the branches of credit institutions referred to in Article L. 511-10, the implementation of the remuneration policy shall be subject, at least once a year, a central and independent internal assessment to ensure compliance with the compensation policy and procedures adopted by these branches. **Article L. 511-75 of the MFC** Employees performing supervisory duties shall be remunerated for the achievement of the objectives of their duties, irrespective of the performance of the areas of activity under their control. **Article L. 511-76 of the MFC** The remuneration policy of credit institutions and financing companies establishes a distinction based on clear criteria between basic fixed remuneration and variable remuneration. The basic fixed remuneration shall primarily reflect professional experience related to the function and responsibilities as stipulated in the contract of employment or mentioned in the job card.	

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	Variable compensation reflects sustainable performance in line with risk policy. It also reflects the performance beyond the stipulations of the employment contract or the forecast of the job description. **Article L. 511-87 of the MFC** The Autorité de contrôle prudentiel et de résolution shall be competent to examine the remuneration policies and practices of credit institutions and financing companies with regard to the persons referred to in Article L. 511-71. **Article L. 511-89 of the MFC** The management board, the supervisory board or any other body performing equivalent supervisory functions in a significant credit institutions and financing companies shall constitute a risk committee, nomination committee and remuneration committee. The significance of a credit institution or a financing company shall be assessed with respect to their size and internal organisation and the nature, scale and complexity of their activities. Significant branches of credit institutions mentioned in I of Article L. 511-10 shall justify the existence of a risk committee, or an equivalent arrangement, competent for these branches.	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	The criteria of significant institutions that the committees are established are specified by order of the Minister of the Economy. **Article L. 511-102 of the MFC** That remuneration committee or, failing that, the management board, the supervisory board or any other body exercising equivalent supervisory functions shall directly monitor the remuneration of the person responsible for the risk management function referred to in Article L. 511-64 and, if applicable, the head of compliance.	

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Article 104 of CRD 1. For the purposes of Article 97, Article 98(4), Article 101(4) and Articles 102 and 103 and the application of Regulation (EU) No 575/2013, competent authorities shall have at least the following powers: (a) to require institutions to hold own funds in excess of the requirements set out in Chapter 4 of this Title and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation; (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 73 and 74; (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements; (g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base; (h) to require institutions to use net profits to strengthen own funds; (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; (l) to require additional disclosures.	**Article L. 511-41-3 of the MFC** I. The Autorité de contrôle prudentiel et de résolution may require an entity mentioned in 1°, a of 2°, 4°, 9°, and 10°, A of I of Article L. 612-2 or I and, where appropriate, II of Article L. 613-34 to take, within a specified period, any measures to restore or strengthen its financial or liquidity position, improve its management methods or ensure that its organization is in line with its activities or development objectives, or where the information received or requested by the Autorité de contrôle prudentiel et de résolution is such as to establish that that person is likely to breach) within 12 months the obligations laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, by a provision of this Title and Title III of this Book or of a regulation made for its application or by any other legislative or regulatory provision the lack of which leads to a breach of that provision. II. - The Autorité de contrôle prudentiel et de résolution may thereby require the entity to hold capital in excess of the minimum amount provided for in the applicable regulations and may require the application of a specific policy to the assets of provisioning or specific treatment with regard to own funds requirements. The Autorité de contrôle prudentiel et de résolution shall impose the additional own funds requirement provided for in the preceding subparagraph, in particular in one of the following cases: 1° The company does not have adequate processes in place to maintain the amount, type and allocation of	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
2. The additional own funds requirements referred to in paragraph 1(a) shall be imposed by the competent authorities at least where, (a) an institution does not meet the requirement set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013; (b) risks or elements of risks are not covered by the own funds requirements set out in Chapter 4 of this Title or in Regulation (EU) No 575/2013; (c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe; (d) the review referred to in Article 98(4) or Article 101(4) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements; (e) the risks are likely to be underestimated despite compliance with the applicable requirements of this Directive and of Regulation (EU) No 575/2013; or (f) an institution reports to the competent authority in accordance with Article 377(5) of Regulation (EU) No 575/2013 that the stress test results	internal capital it deems appropriate at all times, nor does it have effective processes for detecting, managing and monitoring its risks; 2° Risks or risk elements are not covered by the own funds requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 or by the additional own funds obligations referred to in Articles L. 511-41-1 A or L. 533-2-1. 3° The Autorité de contrôle prudentiel et de résolution considers that the implementation of other measures would not be likely to sufficiently improve the company's systems, mechanisms and strategy within an appropriate period of time; 4° It is clear from the monitoring and assessment of the prudential situation of the entity that the failure to comply with the requirements governing the use of internal risk assessment approaches provided for in the Regulation (EU) no 575/2013 of the European Parliament and of the Council of 26 June 2013, risk of causing inadequate own funds requirements; 5° Risks are likely to be underestimated, despite compliance with the requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013; 6° The entity declares to the competent authority, in accordance with paragraph 5 of Article 377 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the results of the stress tests referred to in this Article	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio. 3. For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following: (a) the quantitative and qualitative aspects of an institution's assessment process referred to in Article 73; (b) an institution's arrangements, processes and mechanisms referred to in Article 74; (c) the outcome of the review and evaluation carried out in accordance with Article 97 or 101; (d) the assessment of systemic risk.	significantly exceed the capital requirements for the correlation trading portfolio. III. – Where the soundness of the financial situation of a credit institution, an investment firm or a financing company is compromised or likely to be so, the Autorité de contrôle prudentiel et de résolution may require the undertaking in question to: 1° Allocates all or part of its net profits to strengthening its own funds; 2° Limits variable remuneration as a percentage of total net income; 3° Publishes additional information. IV. – The Autorité de contrôle prudentiel et de résolution may thereby require a credit institution, an investment firm or a financing company to comply with a specific liquidity requirement, including restrictions on maturity mismatches between assets and liabilities. The Autorité de contrôle prudentiel et de résolution shall determine the specific liquidity requirement it imposes, in particular in view of: 1° To the extent and characteristics of the liquidity risks to which this person is exposed, taking into account his particular business model; 2° The arrangements, processes and mechanisms implemented by this person, relating in particular to liquidity risk; 3° The results of the monitoring and assessment of its prudential situation;	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	4° A systemic liquidity risk posing a threat to the integrity of the French financial markets. V. – The Autorité de contrôle prudential et de resolution shall take the measures provided for in this Article, taking into account, where appropriate, the provisions of the fourth and fifth paragraphs of Articles L. 511-41-1 C and L. 533-2-3. The Autorité de contrôle prudentiel et de résolution may require any person subject to its supervision to submit to its approval a recovery strategy including all appropriate measures to restore or strengthen its financial or liquidity position, improve its management methods or ensure that its organization is in line with its activities or development objectives, received or requested by the Autorité de contrôle prudentiel et de résolution for the exercise of the supervision are such as to establish that this person is likely to breach, within 12 months, the obligations provided for in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, by a provision of Title I or Title III of Book V of the MFC or of a regulation made for its application or by any other legislative or regulatory provision the lack of which leads to a breach of that provision. The Autorité de contrôle prudentiel et de résolution may require the person to submit to its approval the changes made to the programme during its	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	implementation, in particular with regard to its scope and time limit for implementation. **Article R.612-32 of the MFC** Where the Autorité de contrôle prudentiel et de résolution temporarily suspends, restricts or prohibits the free disposal of all or part of the assets of a person subject to its control, pursuant to Article L. 612-33, the Autorité de contrôle prudentiel et de résolution may, in accordance with the procedures provided for in Article R. 612-9, require any company or issuing entity or depositary to refuse to carry out any transaction relating to accounts or securities belonging to the person concerned, and the payment of interest and dividends on such securities, or subject the execution of such transactions to the prior approval of a controller. The Autorité de contrôle prudentiel et de résolution may require the deposit to the Caisse des dépôts et des consignations of enforceable copies of mortgages granted by the said person. Finally, the Autorité de contrôle prudentiel et de résolution may require all funds, securities and securities held or owned by the person in question to be transferred to the Banque de France within the time and under the conditions it fixes to be deposited in a blocked account opened in the name of the controlled person. This account may be debited on the order of its holder only on the express authorization of the Autorité	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	de contrôle prudentiel et de résolution or of any person designated by it, and only for a specified amount. **Article L.612-24 of the MFC** The Autorité de contrôle prudential et de résolution determines the list, model, frequency and deadlines for the transmission of documents and information that must be submitted to it periodically. The Secretary General of the Autorité de contrôle prudential et de résolution may, therewith, request from the entities subject to its investigations all information, documents, on whatever medium, and obtain a copy as well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may ask said entities to provide the reports of the statutory auditors and, more generally, with any accounting document and may, where necessary, request certification thereof. The Secretary General of the Autorité de contrôle prudentiel et de résolution may request subsidiaries of credit institutions, investment firms, financing companies, financial holding companies, mixed financial holding companies, mixed holding companies, parent undertakings of financing companies, mixed parent undertakings of financing companies and to third parties to which these persons have outsourced operational functions or activities all information, documents, on whatever medium, and obtain a copy as	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	well as any clarifications or justifications required to perform its duties. The Secretary General of the Autorité de contrôle prudential et de résolution may for the supervision of a credit institution, a financing company or an investment firm that is not included in the scope of consolidation, request to the parent undertaking of this credit institution, financing company or investment firm to provide all the required information under the conditions provided for in the previous paragraph. The Autorité de contrôle prudential et de résolution collects from the persons referred to in subparagraph I B of Article L. 612-2, on behalf of the National Institute of Statistics and Economic Studies and the Statistical Services of the Ministry of Social Security, data related to the supplementary social protection fixed by a decree adopted under the conditions laid down by the Law of 7 June 1951 on the obligation, coordination and confidentiality related to statistics after advice of the High Council of Mutuality and the Advisory Committee of financial legislation and regulation. The Secretary General of the Autorité de contrôle prudential et de résolution or his representative may summon and hear any entity subject to its supervision or which it needs to hear in order to perform its supervisory duties. The Secretary General of the Autorité de contrôle prudential et de resolution or its representative may, in addition, for the persons referred to in Article L.612-2, participate in the management board, the supervisory board or any body exercising equivalent functions, or	

Relevant articles of Capital Requirements Directive (CRD IV)	Implementation of these articles into French law	
	summon or hear collectively the members or the executive board, the supervisory board or any body exercising equivalent functions. Subject to the exercise of the rights provided by adversary procedures or the requirements of jurisdictional procedures, the Secretary General of the Autorité de contrôle prudential et de resolution shall not be required to disclose to entities subject to its supervision or to third parties the documents concerning them that it has produced or received, notably when such communication would breach business secrets or professional secrecy to which the Autorité de contrôle prudential et de resolution is bound. When the persons or entities referred to in subparagraph I to II of Article L. 612-2 provide their services over the internet, banking supervisors may, to access to information and elements available on the services, use of a borrowing identity without being criminally liable.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
Article 11 MLD 4 Member States shall ensure that obliged entities apply customer due diligence measures in the following circumstances: (a) when establishing a business relationship; (b) when carrying out an occasional transaction that: (i) amounts to EUR 15 000 or more, whether that transaction is carried out in a single operation or in several operations which appear to be linked; or (ii) constitutes a transfer of funds, as defined in point (9) of Article 3 of Regulation (EU) 2015/847 of the European Parliament and of the Council (12), exceeding EUR 1 000 ; (c) in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; (d) for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to EUR 2 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; (e) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold; (f) when there are doubts about the veracity or adequacy of previously obtained customer identification data.	**Article L. 561-5 of the MFC** I. – Before entering into a business relationship with their client or assisting them in the preparation or completion of a transaction, the persons mentioned in Article L. 561-2 shall: 1° Identify their client and, where applicable, the beneficial owner within the meaning of Article L. 561-2-2 ; 2° Verify these identification elements on presentation of any written document of an evidentiary nature. II. - They shall identify and verify under the same conditions as those provided for in I the identity of their occasional customers and, where applicable, their beneficial owners, when they suspect that a transaction could be involved in money laundering or terrorist financing or when the transactions are of a certain nature or exceed a certain amount. III. - When the customer takes out or subscribes to a life insurance or capitalisation contract, the persons concerned shall also identify and verify the identity of the beneficiaries of such contracts and, where appropriate, the beneficial owners of such beneficiaries. IV. - By way of derogation from I, when the risk of money laundering or terrorist financing appears to be low and it is necessary in order not to interrupt the normal exercise of the activity, the obligations mentioned in 2° of the said I may be met during the establishment of the business relationship. V. - The conditions for application of this Article shall be specified by decree with consultation of the Conseil d'Etat.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	Article L. 561-5-1 of the MFC Before entering into a business relationship, the persons mentioned in Article L. 561-2 shall collect information relating to the purpose and nature of this relationship and any other relevant information. They shall update this information throughout the duration of the business relationship. The procedures for applying this article shall be specified by decree with consultation of the Conseil d'Etat. **Article L. 561-6 of the MFC** Throughout the duration of the business relationship and in accordance with the conditions laid down by decree wiith consultation of the Conseil d'Etat, these persons shall, within the limits of their rights and obligations, exercise constant vigilance and carefully examine the transactions carried out, ensuring that they are consistent with their up-to-date knowledge of their business relationship. **Article R. 561-10 of the MFC** II. - The persons mentioned in Article L. 561-2 are required, before carrying out the operation or assisting in its preparation or execution, to identify and verify the identity of their occasional client and, where applicable, of the beneficial owner of the latter, in accordance with the procedures defined in Articles R. 561-5, R. 561-5-1 and R. 561-7, respectively, in the following cases: 1° A transaction mentioned in Article L. 561-15;	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	2° A transaction for the transmission of funds; 3° a safe-deposit box rental service; 4° a manual foreign exchange transaction or related transactions in excess of 1,000 euros and any manual foreign exchange transaction when the customer or his legal representative is not physically present for identification purposes; 5° A transaction or related transactions carried out with a person mentioned in 7° bis and 7° quater of Article L. 561-2 or a subscription with a person mentioned in 7° ter of the same Article, and whose amount, or, in the case of an exchange between digital assets, the higher of the countervalues in legal tender, exceeds 1,000 euros; 6° A gambling operation or related operations when the amount of bets or winnings is equal to or greater than 2,000 euros per session for gaming clubs or when the amount of the exchange of all payment methods, plates, tokens, tickets is equal to or greater than 2,000 euros per session for casinos; 6° bis An operation or related operations of gambling outside the player's account when the player bets or wins sums equal to or greater than 2,000 euros per transaction for the persons mentioned in 9° bis of Article L. 561-2 ; 7° A transaction or related transactions settled in cash or electronic money for an amount exceeding 10,000 euros	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
Article 13 of MLD4 1. Customer due diligence measures shall comprise: (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council (14) or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authorities; (b) identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer. Where the beneficial owner identified is the senior managing official as referred to in Article 3(6)(a) (ii), obliged entities shall take the necessary reasonable measures to verify the identity of the natural person who holds the position of senior managing official and shall keep records of the actions taken as well as any difficulties encountered during the verification process; (c) assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship; (d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk	**Article L. 561-4-1 of the MFC** The persons referred to in Article L. 561-2 shall apply the vigilance measures intended to implement their obligations under this chapter based on the assessment of the risks presented by their activities with regard to money laundering and terrorist financing. To this end, they shall define and set up systems for identifying and assessing the money laundering and terrorist financing risks to which they are exposed and a policy adapted to these risks. In particular, they shall draw up a classification of the risks in question according to the nature of the products or services offered, the transaction conditions proposed, the distribution channels used, the characteristics of the customers, and the country or territory of origin or destination of the funds. When they belong to a group within the meaning of Article L. 561-33, and the parent undertaking of the group has its registered office in France, they shall set up a system for identifying and assessing the risks existing at group level and an appropriate policy defined by the group. In identifying and assessing the money laundering and terrorist financing risks to which they are exposed, the above-mentioned persons take into account factors inherent to customers, products, services, transactions and distribution channels, as well as geographical factors, as specified by order of the Minister of the Economy, as well as the recommendations of the European Commission resulting from the report provided for in Article 6 and the risk factors mentioned in Annexes II and III of Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
profile, including where necessary the source of funds and ensuring that the documents, data or information held are kept up-to-date. When performing the measures referred to in points (a) and (b) of the first subparagraph, obliged entities shall also verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person. 2. Member States shall ensure that obliged entities apply each of the customer due diligence requirements laid down in paragraph 1. However, obliged entities may determine the extent of such measures on a risk-sensitive basis. 3. Member States shall require that obliged entities take into account at least the variables set out in Annex I when assessing the risks of money laundering and terrorist financing. 4. Member States shall ensure that obliged entities are able to demonstrate to competent authorities or self-regulatory bodies that the measures are appropriate in view of the risks of money laundering and terrorist financing that have been identified. 5. For life or other investment-related insurance business, Member States shall ensure that, in addition to the customer due diligence measures required for the customer and the beneficial owner, credit institutions and financial institutions conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:	of money laundering or terrorist financing, as well as from the risk analysis carried out at national level under the conditions laid down by decree. **Article L. 561-5 of the MFC** I. – Before entering into a business relationship with their client or assisting them in the preparation or completion of a transaction, the persons mentioned in Article L. 561-2 shall: 1° Identify their client and, where applicable, the beneficial owner within the meaning of Article L. 561-2-2 ; 2° Verify these identification elements on presentation of any written document of an evidentiary nature. II. - They shall identify and verify under the same conditions as those provided for in I the identity of their occasional customers and, where applicable, their beneficial owners, when they suspect that a transaction could be involved in money laundering or terrorist financing or when the transactions are of a certain nature or exceed a certain amount. III. - When the customer takes out or subscribes to a life insurance or capitalisation contract, the persons concerned shall also identify and verify the identity of the beneficiaries of such contracts and, where appropriate, the beneficial owners of such beneficiaries. IV. - By way of derogation from I, when the risk of money laundering or terrorist financing appears to be low and it is necessary in order not to interrupt the normal exercise of the activity, the obligations mentioned in 2° of the said I may be met during the establishment of the business relationship.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
(a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person; (b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institutions or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout. With regard to points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned. 6. In the case of beneficiaries of trusts or of similar legal arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary to satisfy the obliged entity that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.	V. - The conditions for application of this Article shall be specified by decree with consultation of the Conseil d'Etat. **Article L. 561-5-1 of the MFC** Before entering into a business relationship, the persons mentioned in Article L. 561-2 shall collect information relating to the purpose and nature of this relationship and any other relevant information. They shall update this information throughout the duration of the business relationship. The procedures for applying this article shall be specified by decree with consultation of the Conseil d'Etat. **Article L. 561-6 of the MFC** Throughout the duration of the business relationship and in accordance with the conditions laid down by decree wiith consultation of the Conseil d'Etat, these persons shall, within the limits of their rights and obligations, exercise constant vigilance and carefully examine the transactions carried out, ensuring that they are consistent with their up-to-date knowledge of their business relationship. **Article R. 561-5 of the MFC** For the application of 1° of I of Article L. 561-5, the persons mentioned in Article L. 561-2 shall identify their client under the following conditions: 1° When the client is a natural person, by collecting his or her surname and first names, as well as his or her date and place of birth;	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	2° When the customer is a legal entity, by collecting its legal form, its name, its registration number, as well as the address of its registered office and the address of the place of effective management of the activity, if this is different from the address of the registered office; 3° Where the customer intervenes within the framework of a trust or a comparable legal arrangement under foreign law, by collecting the information provided for in this article for the identification of the settlors, trustees, beneficiaries and, where applicable, the third party within the meaning of Article 2017 of the Civil Code or their equivalents for any other comparable legal arrangement under foreign law. Where beneficiaries are designated by particular characteristics or category, the persons referred to in Article L. 561-2 shall collect the information enabling them to be identified at the time benefits are paid or when they exercise their acquired rights ; 4° Where the client is a collective investment that is not a company, by collecting its name, legal form, approval number, international securities identification number, and the name, address and approval number of the management company that manages it. **Article R. 561-5-1 of the MFC** For the application of subparagraph I-2° of Article L. 561-5, the persons mentioned in Article L. 561-2 shall verify the identity of the customer in one of the following ways: 1° By using a means of electronic identification issued as part of a French electronic identification scheme notified to the European Commission under paragraph 1 of Article 9 of Regulation (EU) No. 910/2014 of the European Parliament and	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	of the Council of 23 July 2014 on electronic identification and trusted services for electronic transactions within the internal market, or a scheme notified by another Member State of the European Union under the same conditions and whose level of guarantee corresponds at least to the level of substantial guarantee set by Article 8 of the same Regulation ; 2° By using a presumed reliable means of electronic identification within the meaning of Article L. 102 of the French Post and Electronic Communications Code ; 3° When the customer is a natural person, physically present for identification purposes at the time the business relationship is established, by presenting the original of a valid official document containing his photograph and either by taking a copy of this document or by collecting the following information: the surname, forenames, date and place of birth of the person, the nature, date and place of issue of the document and the name and capacity of the authority or person who issued the document and, where appropriate, authenticated it ; 4° Where the client is a corporate body whose duly authorized representative is physically present for identification purposes at the time of establishment of the business relationship by communication of the original or a copy of any deed or extract from the official register dating less than three months or extract from the Journal officiel, recording the name, legal form, address of the registered office and the identity of the partners and corporate officers mentioned in 1° and 2° of Article R. 123-54 of the Commercial Code, the legal representatives or their equivalents under foreign law; Verification of the identity of the legal entity may also be carried out by obtaining a certified copy of the document	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	directly from the Registry of the commercial courts or an equivalent document under foreign law. 5° Furthermore, where the client is acting under a trust or an equivalent legal arrangement under foreign law, the persons mentioned in Article L. 561-2 shall, depending on the method of constitution of the arrangement, obtain a copy of the trust agreement drawn up pursuant to Article 2012 of the Civil Code, the extract from the Journal officiel of the Act establishing the trust pursuant to the same Article 2012 or any document or equivalent act relating to an equivalent legal arrangement under foreign law. **Article R. 561-5-2 of the MFC** For the application of subparagraph I-2° of Article L. 561-5, and when the measures provided for in 1° to 4° of Article R. 561-5-1 cannot be implemented, the persons mentioned in Article L. 561-2 shall verify the identity of their client by applying at least two of the following measures: 1° obtain a copy of a document mentioned in subparagraph 3 or 4 of article R. 561-5-1; 2° Implementing measures to verify and certify the copy of an official document or an extract from the official register mentioned in subparagraph 3 or 4 of Article R. 561-5-1 by a third party independent of the person to be identified ; 3° Require that the first payment for the transactions be made from or to an account opened in the customer's name with a person mentioned in subparagraphs 1° to 6° bis of Article L. 561-2 who is established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area or in a third country imposing equivalent	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	obligations with regard to the fight against money laundering and terrorist financing ; 4° Obtain confirmation of the customer's identity directly from a third party meeting the conditions set forth in subparagraphs I-1° orI- 2° of Article L. 561-7 ; 5° Use a service certified as compliant by the National Agency for Information Systems Security, or a certification body that this agency authorizes, at the level of substantial guarantee of the requirements relating to proof and verification of identity, provided for in the Annex to Implementing Regulation (EU) 2015/1502 of 8 September 2015. A joint order of the Prime Minister and the Minister in charge of the Economy specifies the modalities of application of this 5° ; 6° Collect an advanced or qualified electronic signature or a valid advanced or qualified electronic stamp based on a qualified certificate or use a qualified electronic registered mail service bearing the identity of the signatory or stamp creator and issued by a qualified trusted service provider registered on a national trusted list pursuant to Article 22 of Regulation (EU) No. 910/2014 of 23 July 2014. Among the measures mentioned above, the persons mentioned in Article L. 561-2 shall choose those that, combined, allow verification of all the customer identification elements mentioned in Article R. 561-5. These persons shall keep, in accordance with the procedures provided for in Article L. 561-12, the information and documents relating to the measures implemented under this Article, regardless of the medium. **Article R. 561-5-3 of the MFC**	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	For the application of subparagraph I-2° of Article L. 561-5, and by way of derogation from Article R. 561-5-2, when the measures provided for in subparagraphs 1° to 3° of Article R. 561-5-1 cannot be implemented: 1° The persons mentioned in 9° bis of Article L. 561-2 shall verify the identity and, where applicable, the address of their customer opening a player account by applying the measures provided for under Article 17 of Law No. 2010-476 of 12 May 2010 on the opening to competition and regulation of the online gambling sector; 2° The persons mentioned in 9° of Article L. 561-2 and those mentioned in 9° bis for their games and bets in physical distribution networks accessible without a player's account verify the identity of their customer by requesting a copy of a valid official document containing his photograph and proving his identity and date of birth. They shall also verify his address and, where their customer wishes to fund his account or receive his assets by transfer, shall carry out such transactions only from or to a single payment account opened in his name by the player with a payment service provider established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area or in a third country imposing equivalent obligations with regard to the fight against money laundering and terrorist financing. **Article R. 561-5-4 of the MFC** For the application of paragraph I of Article L. 561-5, the persons mentioned in Article L. 561-2 shall identify and verify the identity of the persons acting on behalf of the client in accordance with the procedures set out in Articles R. 561-5 to R. 561-5-3. They shall also verify their powers.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	They shall keep, in accordance with the procedures provided for in Article L. 561-12, information and documents relating to the measures implemented under this Article, regardless of the medium used.. **Article R. 561-7 of the MFC** For the application of paragraph I of Article L. 561-5, the persons mentioned in Article L. 561-2 shall identify the beneficial owner of the business relationship in accordance with the procedures defined in Article R. 561-5 and shall verify the identification information collected from the beneficial owner by means of measures adapted to the risk of money laundering and terrorist financing presented by the business relationship. To verify the identity of the beneficial owner, the persons mentioned in Article L. 561-2 shall, when the customer is a person or entity mentioned in Article L. 561-45-1, collect the information on the beneficial owner contained in the registers mentioned in Article L. 561-46 of this Code, in Article 2020 of the Civil Code and in Article 1649 AB of the General Tax Code. For the same purposes of verifying this identity, they shall, where appropriate, take additional measures based on a risk-based approach. The persons mentioned in Article L. 561-2 shall be able to justify to the supervisory authorities mentioned in Article L. 561-36 the implementation of these measures and their appropriateness to the risk of money laundering and terrorist financing presented by the business relationship. They are also able to justify that the measures taken to determine the beneficial owner comply with Articles R. 561-1 to R. 561-3-0.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	In accordance with the provisions of Article L. 561-12, they shall keep, as part of the documents and information relating to the identity of their customer, the documents and information relating to the identification and verification of the identity of the beneficial owner carried out in accordance with this Article, regardless of the medium. **Article R. 561-10-3 of the MFC** For the application of paragraph III of Article L. 561-5, the persons mentioned in paragraphs 2° to 2° sexies and 3° bis of Article L. 561-2 shall identify and verify the identity of the beneficiaries of life insurance or capitalisation contracts and, where applicable, their beneficial owners, when the annual premium exceeds the thresholds provided for these contracts in paragraph 1° of Article R. 561-16, under the following conditions: 1° Where the beneficiaries of the contracts are named persons or legal entities, they shall record their surname and first names or name; 2° Where the beneficiaries of contracts are designated by their characteristics, by category or by other means, they shall obtain information on these beneficiaries enabling them to establish their identity and, where applicable, that of their beneficial owner at the time of payment of benefits; 3° In the cases provided for in 1° and 2°, they shall verify the identity of the beneficiaries of the contracts and, where applicable, of their beneficial owner at the time of payment of the benefits on presentation of any written document in accordance with the procedures provided for in Articles R. 561-5-1 and R. 561-7, respectively.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	The beneficial owners of the beneficiaries of life insurance or capitalisation contracts are determined in accordance with the procedures set out in Articles R. 561-1 to R. 561-3-1. **Article R. 561-11-1 of the MFC** In the event of the transfer to a third party of a life insurance or capitalisation contract, the persons mentioned in paragraphs 2° to 2° sexies and 3° bis of Article L. 561-2, when they take note of the transfer or, where applicable, when it is notified to them, shall identify and verify the identity of the person to whose benefit the contract is transferred and, where applicable, of the beneficial owner of the contract, in accordance with the procedures defined in Articles R. 561-5, R. 561-5-1 and R. 561-7 respectively. They also identify, if applicable, the new beneficiary of the contract in accordance with the terms and conditions defined in 1° and 2° of Article R. 561-10-3. **Article R. 561-12 of the MFC** Gor the application of Article L. 561-5-1, the persons mentioned in Article L. 561-2 shall: 1° Before entering into a business relationship, collect and analyze the information necessary to understand the purpose and nature of the business relationship; 2° Throughout the duration of the business relationship, collect, update and analyse the information that enables them to maintain appropriate and up-to-date knowledge of their business relationship.	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	The nature and scope of the information collected, the frequency with which this information is updated and the scope of the analyses carried out shall be adapted to the risk of money laundering and terrorist financing presented by the business relationship. They shall also take into account relevant changes affecting the business relationship or the customer's situation, including when these changes are noted by the persons mentioned in Article L. 561-2 when reviewing any relevant information relating to beneficial owners, in particular pursuant to the regulations on the exchange of information in the tax field. The persons mentioned in Article L. 561-2 shall be able to justify to the supervisory authorities mentioned in Article L. 561-36 the implementation of these measures and their appropriateness to the risk of money laundering and terrorist financing presented by the business relationship. An order of the Minister for the Economy shall specify the procedures for applying this Article with regard to the information mentioned in 1° and 2°.	
Annexe II MDL4 The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in Article 16: (1) Customer risk factors: (a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;	**Article R. 561-15 of the MFC** The customers mentioned in paragraph 2° of article L. 561-9 are : 1° The persons mentioned in paragraphs 1° to 6° bis of Article L. 561-2 established in France, in another Member State of the European Union, in a State party to the Agreement on the European Economic Area ; 2° Companies whose securities are admitted to trading on a regulated market in France, in another Member State of the European Union, in another State party to the Agreement on	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
(b) public administrations or enterprises; (c) customers that are resident in geographical areas of lower risk as set out in point (3); (2) Product, service, transaction or delivery channel risk factors: (a) life insurance policies for which the premium is low; (b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral; (c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme; (d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes; (e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money); (3) Geographical risk factors — registration, establishment, residence in: (a) Member States; (b) third countries having effective AML/CFT systems; (c) third countries identified by credible sources as having a low level of corruption or other criminal activity; (d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or	the European Economic Area, or which are subject to disclosure requirements that comply with European Union law or which are subject to equivalent international standards guaranteeing adequate transparency of information about ownership of capital, which the person mentioned in Article L. 561-2 is able to justify to the supervisory authority mentioned in Article L. 561-36 ; 3° Public authorities or public bodies, designated as such under the Treaty on European Union, the Treaties establishing the Communities, secondary legislation of the European Union, the public law of a Member State of the European Union or any other international commitment of France, and which meet the following three criteria: (a) Their identity is publicly accessible, transparent and certain; (b) Their activities, as well as their accounting practices, are transparent; (c) They are either accountable to an institution of the European Union or to the authorities of a Member State, or subject to appropriate procedures for the control of their activities; 4° The beneficial owner of sums deposited in accounts held on behalf of third parties by notaries, bailiffs or members of another independent legal profession established in France, in a State party to the Agreement on the European Economic Area, provided that information relating to the identity of the beneficial owner is made available to institutions acting as custodians for these accounts, when they so request. **Article R. 561-16 of the MFC**	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.	The products and services mentioned in paragraph 2° of article L. 561-9 are : 1° Life insurance or capitalisation contracts whose annual premium does not exceed 1,000 euros or whose single premium does not exceed 2,500 euros; 2° Insurance contracts that do not cover the life and death or nuptiality and birth branches are not linked to investment funds, do not involve the formation of associations of members with a view to jointly capitalising their contributions and distributing the assets thus constituted either among the survivors or among the heirs of the deceased, or do not involve the capitalisation or management branches of collective funds or any collective operation as defined in Section 1 of Chapter I of Title IV of Book IV of the Insurance Code; 3° Retirement insurance contracts that do not include a surrender clause cannot be used as collateral and whose exit is made in the form of an annuity at the time of retirement, such as those mentioned in Articles L. 132-23, L. 143-1, L. 144-1, L. 144-2 and L. 441-1 of the Insurance Code, Articles L. 222-1, L. 222-2 and L. 223-22 of the Mutual Code and Articles L. 911-1, L. 932-1, L. 932-14 and L. 932-24 of the Social Security Code ; 4° The loan insurance contracts mentioned in Article L. 113-12-2 of the Insurance Code or in the second paragraph of Article L. 221-10 of the Mutual Code ; 5° The financing of tangible or intangible assets for professional use, the ownership of which is not transferred to the client or can only be transferred to the client upon termination of the contractual relationship and whose financial rent does not exceed 15,000 euros excluding tax per year on average over the term of the contract, whether the	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	transaction is carried out in a single operation or in several operations that appear to be linked and provided that repayment is made exclusively through an account opened in the client's name with a person mentioned in 1° to 6° of Article L. 561-2 established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area ; 6° The following credit transactions, provided that they are repaid exclusively from an account opened in the customer's name with a person mentioned in paragraphs 1° to 6° of Article L. 561-2 established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area: a) Credit transactions governed by Chapter II of Title I of Book III of the French Consumer Code, provided that the amount does not exceed 1,000 euros ; b) The credit transactions mentioned in Article L. 312-4, paragraph 5 of the same Code; 7° Sums paid into a company savings plan pursuant to Book III of Part III of the Labour Code, with the exception of voluntary payments by the beneficiaries of an employee savings plan mentioned in Article L. 8,000 or are not paid from an account opened in the name of the beneficiary or his employer with a person mentioned in paragraphs 1° to 6° of Article L. 561-2 established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area; 8° Sums paid into a collective retirement savings plan in application of Book III of Part III of the French Labour Code, with the exception of voluntary payments by beneficiaries of an employee savings plan mentioned in Article L. 8,000 or are not made from an account opened in the name of the	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
	beneficiary or his employer with a person mentioned in paragraphs 1° to 6° of Article L. 561-2 established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area; 9° Securities accounts for the purpose of benefiting from a reserved capital increase, free shares, subscription or purchase options granted in accordance with Articles L. 225-177 to L. 225-186-1 of the French Commercial Code and provided they do not exceed a value of 15,000 euros. 10° The service mentioned in subparagraph II-7° of Article L. 314-1.	
Annexe III MLD 4 The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 18(3): (1) Customer risk factors: (a) the business relationship is conducted in unusual circumstances; (b) customers that are resident in geographical areas of higher risk as set out in point (3); (c) legal persons or arrangements that are personal asset-holding vehicles; (d) companies that have nominee shareholders or shares in bearer form; (e) businesses that are cash-intensive; (f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;	**Article R. 561-18 of the MFC** I. - For the purposes of paragraph 1 of Article L. 561-10, a person exposed to special risks by reason of his or her duties is a person who performs or has ceased to perform one of the following duties for less than one year: 1° Head of State, Head of Government, member of a national government or member of the European Commission ; 2° Member of a national parliamentary assembly or of the European Parliament, member of the governing body of a political party or grouping subject to the provisions of Law n° 88-227 of 11 March 1988 or of a foreign political party or grouping ; 3° Member of a supreme court, a constitutional court or another high court whose decisions are not, save in exceptional circumstances, subject to appeal; 4° Member of a Court of Auditors;	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
(g) customer is a third country national who applies for residence rights or citizenship in the Member State in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in that Member State. (2) Product, service, transaction or delivery channel risk factors: (a) private banking; (b) products or transactions that might favour anonymity; (c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in Regulation (EU) No 910/2014 or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities; (d) payment received from unknown or unassociated third parties; (e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products; (f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species. (3) Geographical risk factors: (a) without prejudice to Article 9, countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;	5° Head or member of the management body of a central bank; 6° Ambassador or chargé d'affaires; 7° General officer or senior officer in command of an army; 8° Member of an administrative, management or supervisory body of a public enterprise; 9° Director, deputy director, member of the board of an international organization created by a treaty, or a person holding an equivalent position within it. An order of the Minister in charge of the Economy shall establish the list of functions to which the above-mentioned functions correspond at the national level. II. - The following are considered to be persons who are deemed to be direct family members of the persons mentioned in I : 1° The spouse or common-law partner; 2° The partner bound by a civil solidarity pact or by a registered partnership contract under a foreign law; 3° The children, as well as their spouse, their partner bound by a civil solidarity pact or by a registered partnership contract under a foreign law; 4° first-degree ascendants. III. - The following are considered to be persons closely associated with the persons mentioned in I : 1° Natural persons who, together with the person mentioned in I, are the beneficial owners of a legal person, a collective	

Relevant articles of Money Laundering Directive (MLD 4)	Implementation of these articles into French law	
(b) countries identified by credible sources as having significant levels of corruption or other criminal activity; (c) countries subject to sanctions, embargos or similar measures issued by, for example, the Union or the United Nations; (d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.	investment, a trust or a comparable legal arrangement under foreign law ; 2° natural persons who are the sole beneficial owners of a legal person, a collective investment, a trust or a comparable legal arrangement under foreign law known to have been established for the benefit of the person mentioned in section I; 3° Any natural person known to have close business ties with the person mentioned in I. **Article R. 561-19 of the MFC** The products and transactions mentioned in paragraph 2° of Article L. 561-10 are bonds, securities and bearer contracts as well as transactions involving these products. When a warrant, security or contract mentioned in the first paragraph is redeemed, the organisation identifies and verifies the identity of the bearer and, where applicable, of the beneficial owner, in accordance with the procedures provided for in Articles R. 561-5, R. 561-5-1 and R. 561-7 respectively. In addition, when the bearer is different from the subscriber, or when the subscriber is unknown, the organisation collects from the bearer information on the terms and conditions of entry into possession of the warrant, security or contract and, where applicable, documentary evidence to corroborate this information.	

EXTRACTS OF THE FRENCH FINANCIAL AND MONETARY CODE (*CODE MONÉTAIRE ET FINANCIER*), AS OF OCTOBER 29, 2020

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Book V: Service Providers (Articles L. 500-1 to L. 574-6)

Title I: Banking service providers (Articles L. 511-1 to L. 519-10)

Chapter I: General provisions (Articles L. 511-1 to L. 511-105)

Section 1: Definitions and Activities (Articles L. 511-1 to L. 511-4-3)

Article L. 511-1:

I. - Credit institutions are companies whose activity consists, for their own account and as their usual business, in receiving repayable funds from the public mentioned in article L. 312-2 and granting credits mentioned in article L. 313-1.

II. - Finance companies are legal entities, other than credit institutions, which carry out credit transactions as their usual business and for their own account under the conditions and within the limits defined by their license. They are financial institutions within the meaning of Article L. 511-21, section 4.

Article L. 511-2:

Credit institutions and finance companies may, in addition, under conditions defined by the Economy Minister, take and hold equity interests after, as the case may be, prior authorization from the *Autorité de contrôle prudentiel and resolution*, declaration or notification, as the case may be.

Article L. 511-3:

Credit institutions and finance companies may not engage, on a regular basis, in an activity other than those mentioned in Articles L. 311-1, L. 311-2 and L. 511-2 or governed by Chapter VIII of Title I of Book III under conditions defined by the Economy Minister.

These operations must, in any event, remain of limited importance in relation to the overall usual activities of the institution or company and must not prevent, restrict or distort competition on the relevant market.

Article L. 511-4:

Articles L. 420-1 to L. 420-4 of the Commercial Code apply to credit institutions and finance companies for their banking and related operations defined in Article L. 311-2, to electronic money institutions for the issuance and management of electronic money and their operations mentioned in Article L. 526-2, and to payment institutions for their payment and related services defined in Article L. 522-2. Violations of these provisions are prosecuted under the conditions set forth in articles L. 442-6, L. 442-9, L. 462-5 to L. 462-8, L. 463-1 to L. 463-7, L. 464-1 to L. 464-8, L. 490-1 to L. 490-12 of the Commercial Code. The notification of grievances provided for in Article L. 463-2 of the same code is sent to the *Autorité de contrôle prudentiel et de résolution*, which gives its opinion within two months. In the event that the

Competition Authority pronounces a sanction at the end of the procedure provided for in Articles L. 463-2, L. 463-3 and L. 463-5 of the Commercial Code, it shall indicate, where applicable, the reasons why it departs from the opinion of the *Autorité de contrôle prudentiel et de résolution.*

Article L. 511-4-1:

The credit institutions and finance companies referred to in this chapter indicate in their annual report the amount and characteristics of the loans they finance or distribute as defined in III of Article 80 of Law 2005-32 of 18 January 2005 on social cohesion programming and thereby benefiting from public guarantees.

Article L. 511-4-2:

The institutions referred to in this chapter that hold financial futures instruments for which the underlying consists, in whole or in part, of an agricultural commodity shall indicate in their annual report the means implemented to avoid having a significant effect on the price of these agricultural commodities. This report includes information, by category of underlying, on the financial futures instruments they hold for which the underlying consists of an agricultural commodity.

Article L. 511-4-3:

Article L. 533-22-1 is applicable to credit institutions and investment firms for their activities of portfolio management on behalf of third parties and investment consulting within the meaning of Article L. 321-1.

NOTA: In accordance with V of Article 29 of Law no. 2019-1147 of 8 November , 2019, these provisions come into force as of the date of application of Article 3 of the Regulation of the European Parliament and of the Council on disclosure of information on sustainable investments and sustainability risks and amending Directive (EU) 2016/2341.

Section 2: Prohibitions (Articles L. 511-5 to L. 511-8-2)

Article L. 511-5:

No person other than a credit institution or a finance company may carry out credit transactions on a regular basis.

No person other than a credit institution shall on a regular basis receive repayable funds from the public or provide payment banking services.

Article L. 511-6:

Notwithstanding the specific provisions applicable to them, the prohibitions defined in Article L. 511-5 do not apply to the institutions and services listed in Article L. 518-1, to companies governed by the Insurance Code, to reinsurance companies, to provident institutions governed by Title III of Book IX of the Social Security Code, to approved bodies subject to the provisions of Book II of the Mutual Code, or to the supplementary occupational retirement funds mentioned in Article L. 381-1 of the Insurance Code, nor the mutual insurance companies or unions for supplementary occupational retirement schemes mentioned in Article L. 214-1 of the Mutual Code, nor the institutions for supplementary occupational retirement schemes

mentioned in Article L. 942-1 of the Social Security Code, nor the investment firms, electronic money institutions, payment institutions, or an approved body mentioned in the second paragraph of Article L. 313-1 of the Construction and Housing Code for the operations provided for by the Construction and Housing Code, nor UCITS or FIAs falling within the scope of paragraphs 1, 2, 3 and 6 of subsection 2, and subsections 3, 4 and 5 of section 2 of Chapter IV of Title I of Book II, neither the FIAs that have been authorized to use the name "ELTIF" pursuant to Regulation (EU) 2015/760 of the European Parliament and of the Council of April 29, 2015 on European long-term investment funds, nor the management companies that manage them.

1. To non-profit organizations which, within the framework of their mission and for social reasons, grant, from their own resources, loans on preferential terms to certain of their nationals;

2. To organizations which, for operations defined in Article L. 411-1 of the Construction and Housing Code, and exclusively as an accessory to their activity as builders or service providers, grant to natural persons acquiring property the deferred payment of the price of housing acquired or subscribed to by them;

3. To companies that grant advances on salaries or loans of an exceptional nature granted for social reasons to their employees;

3 bis. To commercial companies whose financial statements for the last financial year have been certified by an auditor or which have voluntarily appointed an auditor under the conditions defined in II of Article L. 823-3 of the Commercial Code and which grant, as an accessory to their main activity, loans of less than three years to micro, small and medium-sized enterprises or to medium-sized enterprises with which they maintain economic ties justifying such loans. The granting of a loan should not result in imposing payment terms on a trading partner that do not comply with the legal thresholds defined in Articles L. 441-10 to L. 441-13 of the Commercial Code. A decree adopted in *Conseil d'Etat* sets the conditions and limits under which these companies may grant such loans.

Loans thus granted are formalized in a loan agreement, subject, as applicable, to Articles L. 225-38 to L. 225-40 or Articles L. 223-19 and L. 223-20 of the same Code. The amount of the loans granted is disclosed in the management report and is certified by a statutory auditor in accordance with the terms and conditions provided for by decree adopted in *Conseil d'Etat.*

Notwithstanding any contrary provision or stipulation, the claims held by the lender may not, at the risk of being void, be acquired by a securitization institution mentioned in Article L. 214-168 of the present code or a specialized professional fund mentioned in Article L. 214-154 or be the subject of contracts constituting financial futures instruments or transferring insurance risks to these same institutions or funds;

4. To entities and institutions governed by foreign law, assignees of claims that are not due or which are transferred or assigned such claims resulting from credit transactions concluded by credit institutions, by finance companies or by the UCITS and FIAs mentioned in the first paragraph of this article, with the exception, on pain of nullity, of claims of which the debtor is a natural person acting for non-professional purposes.

The entities and institutions of foreign law mentioned above are those whose object or activity is similar to that of the persons mentioned in the first paragraph of this article or to that of credit institutions or finance companies, collective investments mentioned in I of article L. 214-1, pension funds and securitization undertakings;

5. To non-profit associations and foundations recognized as being of public utility granting loans from their own resources and from borrowed resources for the creation, development and takeover of companies whose employed workforce does not exceed a threshold set by decree or for the implementation of integration projects by natural persons.

These associations and foundations are not authorized to offer financial instruments to the public. They may finance their activity with resources borrowed from credit institutions, finance companies and the institutions or services mentioned in Article L. 518-1. They may also finance their activity with resources borrowed, free of charge and for a period that may not be less than two years, from legal entities other than those mentioned in this paragraph or from natural persons, duly informed of the risks incurred.

These associations and foundations are authorized under conditions defined by decree adopted in *Conseil d'Etat.* In their annual report, they indicate the amount and characteristics of the loans they finance or distribute, which meet the definition referred to in III of Article 80 of Law No. 2005-32 of 18 January, 2005 on social cohesion programming and benefit thereby from public guarantees;

6. To legal entities for the equity loans they grant by virtue of Articles L. 313-13 to L. 313-17 and to the legal entities mentioned in Article L. 313-21-1 for the delivery of the guarantees provided for in this Article;

6 bis. To organizations and companies that constitute a group of social housing organizations mentioned in Article L. 423-1-1 of the Construction and Housing Code for the credit transactions they carry out among themselves;

7. To natural persons who, acting for non-professional or commercial purposes, grant loans within the framework of the participative financing of specific projects, in accordance with the provisions of Article L. 548-1 and within the limit of one loan per project. The conventional rate applicable to these loans is of a fixed nature and does not exceed the rate mentioned in Article L. 314-6 of the Consumer Code. A decree sets out the main characteristics of these loans, in particular their maximum term;

7 bis. To individuals acting for non-professional or commercial purposes and to companies acting as an accessory to their principal activity, who purchase or subscribe to the mini-bonds mentioned in Article L. 223-6;

8. To third-party financing companies as defined in Article L. 381-2 of the Construction and Housing Code, where the majority of the shareholders are local authorities or are attached to a supervisory local authority.

These third-party financing companies are not authorized to offer financial securities to the public or to collect reimbursable funds from the public. They may be financed by resources borrowed from credit institutions or finance companies or by any other means. A decree specifies the conditions under which they are authorized by the *Autorité de contrôle prudentiel*

et de résolution to engage in credit activities, as well as the internal control rules applicable to them in this respect.

The *Autorité de contrôle prudentiel et de résolution* shall rule on the application to carry on credit activities within two months of receipt of a complete file. Failure by the authority to notify its decision within this period shall be deemed to constitute acceptance.

When the Authority requests additional information, it shall notify it in writing, specifying that the requested elements must be provided within thirty days. Failure to receive this information within this period shall be deemed to be a rejection of the application for authorization. Upon receipt of all the information requested, the authority shall acknowledge receipt in writing. This acknowledgement of receipt shall specify a new period for examination, which may not exceed two months.

Third-party financing companies verify the borrower's creditworthiness based on a sufficient amount of information, including information provided by the borrower at their request. They consult the file provided for in Article L. 751-1 of the Consumer Code under the conditions provided for by the decree mentioned in Article L. 751-6 of the same code. They indicate in their annual report the amount and characteristics of the advances they grant in respect of their third-party financing activity and the resources they mobilize for this purpose.

Article L. 511-7:

I. - The prohibitions defined in article L. 511-5 do not prevent a company, regardless of its nature, from:

1. In the exercise of its professional activity, grant its contractors delays or advances in payment;

2. Conclude housing rental contracts with an option to purchase;

3. Carry out cash management transactions with companies having, directly or indirectly, capital ties with it that give one of the related companies effective control over the others;

4. Issuing financial securities and short-term notes mentioned in Chapter III of Title II of Book II if it does not carry out, as a regular occupation, credit transactions mentioned in Article L. 313-1;

5. Issue payment instruments issued for the purchase from it or from companies linked with it by a commercial franchise agreement, of a given good or service;

6. Provide cash as collateral for a transaction involving financial instruments or a securities lending transaction governed by the provisions of Articles L. 211-36 and L. 211-36-1;

7. Take or repurchase financial instruments and public securities mentioned in Articles L. 211-27 and L. 211-34.

I bis-The prohibitions set forth in Article L. 511-5 do not prevent the organizations and companies that constitute a group of social housing organizations mentioned in Article L. 423-1-1 of the Construction and Housing Code from carrying out cash transactions among themselves under the conditions set forth in Article L. 423-15 of the same code.

II. - The *Autorité de contrôle prudentiel et de résolution* may exempt from authorization a company providing payment banking services, for the acquisition of goods or services on the premises of that company or under a commercial agreement with it, applying to a limited network of persons accepting such payment banking services or for a limited range of goods or services.

In granting the exemption, the *Autorité de contrôle prudentiel et de résolution* must take into account, in particular, the safety of the means of payment, the procedures implemented to ensure the protection of users, the unit amount and the terms and conditions of each transaction.

Article L. 511-8:

No business other than a credit institution or a finance company may use a name, a corporate name, an advertisement or, in general, expressions suggesting that it is approved as a credit institution or a finance company respectively, or create confusion in this regard.

No credit institution or finance company may imply or create confusion as to whether it belongs to a category other than that under which it has obtained its authorization.

Article L. 511-8-1:

I. - Notwithstanding any contrary provision, any credit or financial institution mentioned in Article L. 511-22 or in Article L. 511-23 may, for the exercise of its activity in France, use the same corporate name as the one it uses on the territory of its Member State of origin.

However, where this name is likely to give the impression that the institution may provide services other than those for which it benefits from the freedom of establishment or the freedom to provide services, or to create confusion in this respect, it shall add an explanatory statement to its name. This statement specifies the type of authorization that the relevant credit or financial institution, if its registered office were located in France, would be required to obtain in order to carry out the transactions that it is authorized to carry out pursuant to article L. 511-22 or article L. 511-23. This mention appears on all media intended for customers or used for prospecting purposes.

II. - Notwithstanding any contrary provision, a branch of a credit institution mentioned in I of Article L. 511-10 may, for the exercise of its activity in France, use the same corporate name as the name of the credit institution on which it depends.

However, where that name is likely to give the impression that the branch may provide services other than those for which it is approved, or to create confusion in this respect, it shall add an explanatory statement to its name.

This statement shall specify the type of accreditation received. It appears on all customer media or used for prospecting purposes.

Article L. 511-8-2:

No credit institution operating on the markets for financial futures instruments whose underlying assets consist, in whole or in part, of an agricultural commodity may build up physical inventories of agricultural commodities in order to have a significant effect on the price of these agricultural commodity markets.

Section 3: Conditions of access to the profession (Articles L. 511-9 to L. 511-28)

Subsection 1: Authorization (Articles L. 511-9 to L. 511-20)

Article L. 511-9:

Credit institutions are authorized as banks, mutual or cooperative banks, specialized credit institutions or municipal credit unions.

Banks may carry out all banking transactions.

Mutual or cooperative banks, specialized credit institutions and municipal credit unions may carry out all banking operations within the limitations resulting from the laws and regulations governing them.

Article L. 511-10:

I. - Credit institutions must obtain an authorization before carrying on their activity. This authorization is issued to legal entities having their registered office in France or to branches established on French territory of credit institutions having their registered office in a State that is neither a member of the European Union nor a party to the Agreement on the European Economic Area.

Pursuant to Articles 4 and 14 of Council Regulation (EU) No. 1024/2013 of 15 October 2013, the authorization of credit institutions is granted by the European Central Bank, on the proposal of the *Autorité de contrôle prudentiel et de resolution*.

However, in the case of branches referred to in the first paragraph, the authorization is issued by the *Autorité de contrôle prudentiel et de résolution.* These branches are authorized as a bank or specialized credit institution other than a mortgage credit company or a housing finance company, within the limit of the operations that the credit institutions on which they depend are authorized to carry out.

Unless otherwise provided, when the word person in this code refers to a credit institution, it also refers to a branch mentioned in the first paragraph.

II. - Before carrying on their activity, finance companies must obtain an authorization issued by the *Autorité de contrôle prudentiel et de résolution* in application of 1° of II of Article L. 612-1.

III. - The *Autorité de contrôle prudentiel et de résolution* verifies whether the company meets the obligations set forth in Articles L. 511-11, L. 511-13, L. 515-1-1 or 93 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 and the suitability of the company's legal form for the activity of a credit institution or finance company, as the case may be. It takes into account the company's program of activities, its organization, the technical and financial resources it plans to implement and, under the conditions defined by order of the Economy Minister, the identity of the capital contributors and the amount of their participation.

The Authority also assesses the applicant company's ability to achieve its development objectives under conditions that are compatible with the proper functioning of the banking system and that provide customers with satisfactory safety.

In setting the conditions for authorization, the *Autorité de contrôle prudentiel et de résolution* may take into account the specific nature of certain credit institutions or finance companies belonging to the social economy sector. In particular, it assesses the interest of their action with regard to public interest missions relating to the fight against exclusion or the effective recognition of a right to credit.

The Authority may, depending on the case, limit or propose to the European Central Bank to limit authorization to the exercise of certain operations defined by the applicant's corporate purpose.

The Authority may, as appropriate, attach or propose to the European Central Bank to attach special conditions to the authorization in order to preserve the equilibrium of the financial structure of the firm and the proper functioning of the banking system, taking into account, where appropriate, the objectives of the supplementary supervision provided for in Chapter VII of Title I of Book V of this Code. It may also make or propose to the European Central Bank to make the granting of the authorization subject to compliance with commitments entered into by the applicant firm.

The *Autorité de de contrôle prudentiel et de résolution* shall grant authorization to a branch mentioned in I only if the credit institution to which the branch belongs undertakes to exercise, with regard to that branch, tasks equivalent to those entrusted, by Section 8 of this chapter, to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions, and to the general meeting.

IV. - The Authority shall refuse authorization where the exercise of the supervisory functions of the applicant firm is likely to be hindered either by the existence of direct or indirect capital or control relationships between the firm and other natural or legal persons, or by the existence of laws or regulations of a State which is not a party to the Agreement on the European Economic Area and to which one or more of those persons belong.

The Authority shall refuse authorization if the provisions of Articles L. 511-51 and L. 511-52 are not complied with.

The Authority shall refuse authorization if there are reasonable grounds for believing, in light of the assessment criteria provided for in I of Article L. 511-12-1, that the quality of the capital providers does not make it possible to guarantee sound and prudent management or if the information communicated is incomplete.

V. - The credit institution or finance company must at all times satisfy the conditions of its authorization.

Article L. 511-11:

Credit institutions and finance companies must have an initial paid-up capital or a paid-in endowment, the minimum amount of which, between one million and five million euros depending on the authorization issued, is defined by order of the Economy Minister. This order also defines the factors taken into account in determining this amount.

Article L. 511-12-1:

I. - Changes in the distribution of the capital of a credit institution or a finance company must be notified to the *Autorité de contrôle prudentiel et de résolution.*

Pursuant to Articles 4 and 15 of Council Regulation (EU) No. 1024/2013 of October 15, 2013, the acquisition or extension of direct or indirect shareholdings in a credit institution is subject, upon a proposal from the *Autorité de contrôle prudentiel et de résolution, to* a decision of opposition or non-opposition by the European Central Bank. The acquisition or extension of direct or indirect holdings in a credit institution subject to one or more of the measures referred to in subsections 9 and 10 of Section 4 of Chapter III of Title I of Book VI, Title I, or in a finance company must be authorized by the *Autorité de contrôle prudentiel et de résolution.*

When a direct or indirect reduction or transfer of a holding is notified to it, the *Autorité de contrôle prudentiel et de résolution* verifies that the operation does not call into question the conditions to which the authorization granted to the credit institution or finance company is subject.

Where the *Autorité de contrôle prudentiel et de résolution* is aware that a person, acting alone or in concert with others, has not complied with the obligation of notification provided for in the first paragraph, it may order that person to make the required notification without delay.

A decree adopted in *Conseil d'Etat* shall determine the conditions of application of this I, in particular the criteria for assessing the appropriateness of the proposed acquirer and the financial soundness of the acquisition, in the case of the transactions referred to in the second paragraph.

The terms of the procedures mentioned in this I are specified by the decree provided for in Article L. 611-1. This decree provides in particular for the conditions under which changes in the distribution of the capital of a credit institution or a finance company must be notified to the *Autorité de contrôle prudentiel et de résolution.*

The same decree specifies the conditions under which, in the case of finance companies or credit institutions subject to one or more of the measures referred to in subsections 9 and 10 of section 4 of Chapter III of Title I of Book VI, Title I, such changes must be authorized by the *Autorité de contrôle prudentiel et de résolution* and the time limits set for the Authority to give its opinion, the manner in which the interested parties are informed of the Authority's decision or may avail themselves of an implicit decision, the conditions under which the Authority may set a maximum period for the conclusion of the proposed acquisition and the information that must be transmitted to the Authority, in particular on the identity and amount of the shareholders or associates' holdings.

II. - Any other modification of the conditions to which the authorization granted to a credit institution or finance company was subject must be subject, as the case may be, to prior authorization by the *Autorité de contrôle prudentiel et de résolution* or the European Central Bank, to a declaration or notification, under the conditions set by an order of the Minister responsible for the economy.

In cases where an authorization must be issued, it may itself be subject to specific conditions meeting the purposes mentioned in the fifth paragraph of III of Article L. 511-10 or subject to compliance with commitments made by the company.

Article L. 511-12-2:

The establishment of branches in States that are not parties to the Agreement on the European Economic Area and the acquisition of all or part of a significant branch of activity by a credit institution mentioned in Article L. 611-1 must be authorized by the *Autorité de contrôle prudentiel et de résolution*.

Article L. 511-13:

The registered office and head office of any credit institution or finance company approved in accordance with Article L. 511-10 are located in France. These provisions do not apply to branches of credit institutions mentioned in I of Article L. 511-10.

The effective management of the business of credit institutions, including branches of credit institutions mentioned in I of Article L. 511-10, or finance companies is carried out by at least two persons.

Article L. 511-13-1:

Notwithstanding the provisions of Article L. 229-4 of the Commercial Code, the *Autorité de contrôle prudentiel et de résolution* also has jurisdiction to oppose to the transfer of the registered office of a credit institution constituted as a European Company registered in France and resulting in a change in the applicable law, as well as to the formation of a European Company by way of a merger involving a credit institution authorized in France, in accordance with the provisions of Article 8.14 and Article 19 of Council Regulation (EC) No. 2157/2001 of October 8, 2001 on the Statute for a European Company (SE). This decision is subject to appeal before the *Conseil d'Etat*.

Article L. 511-13-2:

Notwithstanding the provisions of Article 26-6 of Law no, 47-1775 of 10 September 1947 on the statute for cooperation, the *Autorité de contrôle prudentiel et de résolution* is competent to oppose to the transfer of the registered office of a credit institution constituted as a European cooperative society registered in France and resulting in a change in the applicable law, as well as the constitution of a European cooperative society by way of a merger involving a credit cooperative institution approved in France, in accordance with paragraph 14 of Article 7 and Article 21 of Council Regulation (EC) no, 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE). This decision is subject to appeal before the *Conseil d'Etat*.

Article L. 511-14:

The Authority decides on a request for the authorization mentioned in article L. 511-10 within a time limit set by decree in the *Conseil d'Etat*. Any refusal of authorization is notified to the applicant.

Article L. 511-15:

I. - Withdrawal of the authorization of a credit institution is pronounced by the European Central Bank at the request of the institution.

Pursuant to Articles 4 and 14 of Council Regulation (EU) No. 1024/2013 of 15 October 2013, such withdrawal may also be decided by the European Central Bank if the institution has obtained the authorization by means of false declarations or any other irregular means or if it no longer fulfils the conditions or commitments to which its authorization or a subsequent authorization was subject, or if the institution has not made use of its authorization within a period of twelve months or if it has not carried on business for at least six months.

II. - By way of derogation from the provisions of I, the withdrawal of the authorization of a branch of a credit institution mentioned in I of Article L. 511-10 is pronounced, under the same conditions, by the *Autorité de contrôle prudentiel et de résolution*.

III. - Withdrawal of authorization takes effect at the end of a period the duration of which is determined, as the case may be, by the European Central Bank or the *Autorité de contrôle prudentiel et de résolution*, as the case may be.

During this period:

1. The credit institution shall remain subject to supervision by the European Central Bank or the *Autorité de contrôle prudentiel et de résolution*, as the case may be, and, where appropriate, the *Autorité des marchés financiers*. The *Autorité de contrôle prudentiel et de résolution* may impose the disciplinary sanctions provided for in Articles L. 612-39 or L. 612-40.

2. A credit institution may only carry out the banking and investment services operations for which it is authorized, as well as the management of electronic money already issued and the payment services strictly necessary for the settlement of its situation, and must limit the other activities mentioned in Articles L. 311-2, I. 1 to 6 and L. 511-3 to those mentioned in Articles L. 311-2 and L. 511-3.

3. The institution may only state that it is a credit institution by specifying that its authorization is in the process of being withdrawn.

Article L. 511-15-1:

Withdrawal of the authorization of a finance company is pronounced by the *Autorité de contrôle prudentiel et de résolution* at the request of the company. It may also be decided automatically by the Authority if the company has obtained its authorization by means of false declarations or by any other irregular means or if it no longer meets the conditions or commitments to which its authorization or a subsequent authorization was subject, or if it has not made use of its authorization within a period of twelve months or if it has not carried on business for at least six months.

The *Autorité de contrôle prudentiel et de résolution* automatically declares the withdrawal of authorization of a finance company in the event of the transfer of its registered office or central administration outside France.

Withdrawal of authorization takes effect at the end of a period determined by the *Autorité de contrôle prudentiel et de résolution*.

During this period:

1. The finance company remains subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*. The *Autorité de contrôle prudentiel et de résolution* may impose

the disciplinary sanctions provided for in Articles L. 612-39 or L. 612-40, including the removal from the register.

2. The finance company may only carry out credit transactions for which it is authorized and must limit the other activities mentioned in II of Article L. 311-2 and in Articles L. 511-2 and L. 511-3.

3. The company may only state that it is a finance company by specifying that its authorization is in the process of being withdrawn.

Article L. 511-16:

In the cases provided for in Articles L. 511-15 and L. 511-15-1, the funds repayable from the public mentioned in Article L. 312-2 as well as the other repayable funds are repaid by the credit institution or finance company on their due date or, if this due date is later than the expiry of the period mentioned in III of Article L. 511-15 or in the third paragraph of Article L. 511-15-1, on the date set by the *Autorité de contrôle prudentiel et de résolution* or by the European Central Bank. At the end of this period, the company loses its status as a credit institution or finance company, as the case may be, and must have changed its corporate name. Banking operations other than the receipt of repayable funds from the public and payment services that the credit institution or finance company has concluded or has undertaken to conclude before the decision to withdraw its authorization may be completed.

By way of derogation from the provisions of 4° and 5° of Article 1844-7 of the Civil Code, the early dissolution of a credit institution or a finance company may only be pronounced after the withdrawal of its authorization by the *Autorité de contrôle prudentiel et de résolution* or by the European Central Bank. By way of derogation from Articles L. 123-1 and L. 237-3 of the Commercial Code, the publication and amending entry in the Trade and Companies Register concerning the pronouncement of such dissolution must mention the date of the decision to withdraw authorization by the *Autorité de contrôle prudentiel et de résolution* or by the European Central Bank. Until the completion of its liquidation, the credit institution or finance company remains subject to the power of control and, where appropriate, to sanction by the *Autorité de contrôle prudentiel et de résolution* or the European Central Bank. It may not state that it is a credit institution or a finance company without specifying that it is in liquidation.

Article L. 511-17:

I. - In the cases provided for in Articles L. 612-39 and L. 612-40 where, on the proposal of the *Autorité de contrôle prudentiel et de résolution*, the European Central Bank has pronounced the full withdrawal of the authorization of a credit institution, this decision shall result in the liquidation of the legal entity, where the legal entity has its registered office in France.

In cases where, pursuant to Articles L. 612-39 and L. 612-40, the Enforcement Committee of the *Autorité de contrôle prudentiel et de résolution* pronounces the full withdrawal of the authorization of a branch of a credit institution mentioned in I of Article L. 511-10, this decision results in the liquidation of the balance sheet and off-balance sheet items of the branch.

II. - In cases where, pursuant to Articles L. 612-39 and L. 612-40, the Enforcement Committee of the *Autorité de contrôle prudentiel et de résolution* pronounces the striking off of a finance company from the list of authorized finance companies, this decision results in the liquidation of the legal entity.

III. - In order to protect the interests of customers, the *Autorité de contrôle prudentiel et de résolution* may postpone the liquidation at the end of a period it sets.

IV. - Any credit institution or finance company that has been the subject of a decision to fully withdraw its authorization or to be removed from the register remains subject to the supervision of the *Autorité de contrôle prudentiel et de résolution* until the liquidation is completed. It may only carry out operations that are strictly necessary to clear its situation. It may only state its status as a credit institution or finance company by specifying that it has been the subject of a measure of total withdrawal of authorization or cancellation.

Article L. 511-18:

The Economy Minister specifies the conditions of application of articles L. 511-15 to L. 511-17. In particular, he determines the terms and conditions according to which:

1. Decisions to withdraw an authorization and to cancel an authorization are made public;

2. In addition to the right to use other legal means of transfer and enforceability against third parties, the transfer of claims resulting from the credit transactions referred to in Article L. 313-1 may be made enforceable against third parties by written agreement of the debtor or by a decision of the *Autorité de contrôle prudentiel et de résolution*;

3. Housing savings plans and accounts, company savings accounts, people's savings plans and passbooks, and share savings plans may be transferred, without prejudice to the rights of the holders or beneficiaries, to one or more other credit institutions;

4. Commitments by signature may be transferred, without prejudice to the rights of the beneficiaries, to one or more other credit institutions or finance companies;

5. Financial instruments registered in an account with the institution may be transferred to another investment services provider or to the issuer;

6. The transactions provided for in Articles L. 311-2 (1) to (6) and L. 511-2 and L. 511-3 are limited.

Article L. 511-19:

When credit institutions having their registered office abroad open offices with an information, liaison or representation activity, the opening of these offices must be notified in advance to the *Autorité de contrôle prudentiel et de résolution*.

These offices may state the name or corporate name of the credit institution they represent.

Article L. 511-20:

I. - A parent company is a company that exclusively controls, within the meaning of Article L. 233-16 of the Commercial Code, one or more other companies or that exercises a dominant influence over them due to the existence of significant and long-term solidarity ties resulting from financial commitments, management or shared services.

A subsidiary of a credit institution, a finance company, an investment firm, a parent company of a finance company, a financial holding company, a mixed financial holding company, a

mixed holding company or a mixed parent company of a finance company, is an undertaking over which is exercised exclusive control within the meaning of Article L. 233-16 of the Commercial Code, or which exercises a dominant influence due to the existence of significant and long-term ties of solidarity resulting from financial commitments, management or common services. A subsidiary of a subsidiary is considered to be a subsidiary of the parent company that is at the head of these companies.

II. - An interest is defined as the holding, directly or indirectly, of at least 20% of the voting rights or capital of an enterprise, or a set of rights in the capital of an enterprise which, by creating a long-term tie with the latter, is intended to contribute to the company's activity.

III. - A group is a set of companies consisting of a parent company, its subsidiaries and the entities in which the parent company or its subsidiaries hold equity interests, as well as entities linked in such a way that their administrative, management or supervisory bodies are composed of a majority of the same persons or are placed under a single management by virtue of a contract or clauses in the articles of association. Institutions and finance companies affiliated to a network and the central body within the meaning of Article L. 511-31 are considered to be part of the same group for the application of this code. The same applies to entities belonging to cooperative groups governed by similar provisions in the legislation applicable to them.

IV. - The expression "financial group" refers to any entity that does not constitute a financial conglomerate formed by the direct or indirect subsidiaries of a credit institution, an investment firm or a financial holding company, and by the financial undertakings over which the parent undertaking exercises joint control within the meaning of Article L. 233-16 of the Commercial Code.

The financial undertakings mentioned in the preceding paragraph are defined by regulation.

V. - The expression "mixed group" refers to the group formed by the direct or indirect subsidiaries of a mixed holding company.

Subsection 2: Freedom of establishment and freedom to provide services in the territory of the States party to the Agreement on the European Economic Area (Articles L. 511-21 to L. 511-28)

Article L. 511-21:

In this subsection and for the application of the provisions relating to freedom of establishment and freedom to provide services:

1. The expression: "banking service" means a banking transaction within the meaning of Article L. 311-1 or one of the related activities within the meaning of Article I of Article L. 311-2;

2. The expression: "competent authorities" means, as the case may be, the authority or authorities of a Member State responsible, in accordance with the law of that State, for approving or supervising credit institutions which have their head office there, or the European Central Bank;

3. The expression: "operation carried out under the freedom to provide services" means an operation whereby a credit or financial institution provides a banking service in a Member State

other than that in which its head office is situated, other than through a permanent presence in that Member State;

3 bis. The expression "significant credit institution" means a significant credit institution within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013;

3 ter. The expression "participating Member State" means a State participating in the single supervisory mechanism within the meaning of Article 2(1) of Council Regulation (EU) No 1024/2013 of 15 October 2013;

4. The expression "financial institution" means an entity, other than an institution, whose main activity is to acquire holdings or to carry on one or more of the activities mentioned in points 2 to 12 and point 15 of the list set out in Annex I to Directive 2013/36/EU, including in particular a financial holding company, a mixed financial holding company, a payment institution within the meaning of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market and a portfolio management company. Insurance holding companies and mixed insurance holding companies within the meaning of Article 212(1)(f) and (g) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) are not financial institutions.

For the purposes of this 4, on the one hand, the word "institution" and the words "portfolio management company" shall have the meanings given to them respectively in Article 4(1)(3) and (19) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and, on the other hand, the words "insurance holding companies" and the words "mixed insurance holding companies" refer respectively to insurance group companies and mixed insurance group companies within the meaning of paragraphs 1 and 2 of Article L. 322-1-2 of the Insurance Code.

4 bis. The word "branch" means a place of business that constitutes a part without legal personality of a credit institution or a financial institution and which directly carries out, in whole or in part, the operations inherent to the activity of a credit institution.

5. The Member States that are party to the Agreement on the European Economic other than France are assimilated to the Member States of the European Union.

The provisions of this sub-section are not applicable to the branches of credit institutions mentioned in I of Article L. 511-10.

Article L. 511-22:

Within the limits of the services that it is entitled to provide in the territory of a Member State other than France in which it has its head office and in accordance with the authorization it has received there, any credit institution may, in the territory of metropolitan France, the overseas departments, the Department of Mayotte and Saint-Martin, establish branches to provide banking services and operate under the freedom to provide services under the conditions defined in Article L. 511-24, provided, as the case may be, that the *Autorité de contrôle prudentiel et de résolution* has been informed in advance by the competent authority of the home Member State or by the European Central Bank.

An order of the Minister responsible for the economy determines, on the one hand, the information that the *Autorité de contrôle prudentiel et de résolution* must have received in advance from the competent authorities of the home Member State in order for the institution concerned to carry on its activities in France, including in the event of a change in its situation, and, on the other hand, the information that the Authority must transmit to these authorities and to the relevant institution. This decree also sets out the time limits from which the establishment may begin its activities in France.

Article L. 511-23:

Within the limits of the services which it is entitled to provide in the territory of a Member State other than France where it has its head office, any financial institution which has obtained from the competent authorities of that Member State a certificate stating that it fulfils the conditions required for that purpose by those authorities may, in the territory of metropolitan France, the overseas departments, the Department of Mayotte and Saint Martin, establish branches to provide banking services and operate under the freedom to provide services under the conditions laid down in Article L. 511-24, provided that the *Autorité de contrôle prudentiel et de résolution* has been informed in advance by the competent authority of the home Member State.

An order of the Minister responsible for the economy determines, on the one hand, the information that the *Autorité de contrôle prudentiel et de résolution* must have received in advance from the competent authorities of the home Member State in order for the institution concerned to carry on its activities in France, including in the event of a change in its situation, and, on the other hand, the information that the Authority must transmit to these authorities and to the relevant institution. This decree also sets out the time limits from which the establishment may begin its activities in France.

Article L. 511-24:

The institutions mentioned in Articles L. 511-22 and L. 511-23 and their branches established in France are subject to the following provisions of this chapter and to the regulatory provisions adopted for their application:

1° Within Section 1, Article L. 511-4;

2° Within section 2, I of Article L. 511-8-1 and Article L. 511-8-2;

3° Subsection 2 of section 3, with the exception of articles L. 511-27 and L. 511-28;

4° Within section 4, article L. 511-29, as regards branches;

5° Within section 5, I of article L. 511-33 and article L. 511-34.

An order of the Minister responsible for the economy specifies the rules that have not been the subject of coordination between Member States and are of a general interest nature applicable to the institutions mentioned in Articles L. 511-22 and L. 511-23 and to their branches established in France, as well as the conditions under which these rules are notified to these institutions.

Article L. 511-25:

For the purpose of exercising supervision of an establishment benefiting from the regime provided for in Article L. 511-24 and by way of derogation from the provisions of Article 1 bis of Act 68-678 of July 26, 1968, the competent authorities to which that institution is subject may require it and its branches established in France to communicate all information useful for the exercise of such supervision and, subject only to prior notification to the *Autorité de contrôle prudentiel et de résolution*, may carry out, themselves or through the intermediary of persons they appoint for that purpose, on-site inspections of the branches of that institution on the territory of the French Republic.

Article L. 511-26:

The institutions mentioned in Articles L. 511-22 and L. 511-23 are subject to supervision by the *Autorité de contrôle prudentiel et de résolution* under the conditions provided for in Articles L. 613-32 to L. 613-33, or by the European Central Bank, pursuant to Article 4 of Council Regulation (EU) No. 1024/2013 of October 15, 2013.

Article L. 511-27:

I. - Any credit institution having its head office in France and wishing to establish a branch in another Member State shall notify its project to the *Autorité de contrôle prudentiel et de résolution*, together with information, the nature of which shall be determined by the Minister responsible for the economy.

If it is not a significant credit institution and where it has no reason to doubt the adequacy of the administrative structures or the financial situation of the credit institution in the light of the plan, the *Autorité de contrôle prudentiel et de résolution* shall, within three months of receiving the information in question, communicate it to the competent authority of the host Member State and shall inform the institution concerned accordingly.

Where the *Autorité de contrôle prudentiel et de résolution* refuses to communicate the information referred to in the previous subparagraph to the competent authority of the host Member State, it shall give the reasons for its refusal to the institution concerned within three months of the regular receipt of that information.

Where the Member State in which the credit institution plans to establish a branch is a participating Member State, the three-month period referred to in the two preceding subparagraphs shall be reduced to two months.

II. - Credit institutions having their head office in France which wish to carry on business for the first time in the territory of another Member State under the freedom to provide services are required to make a declaration to the *Autorité de contrôle prudentiel et de résolution*. This declaration is accompanied by information, the nature of which is determined by the Minister responsible for the economy.

III. - An order of the Minister responsible for the economy determines, on the one hand, the information that must be communicated to the *Autorité de contrôle prudentiel et de résolution* prior to a change in the situation of the institution and, on the other hand, the conditions under which this information, as well as that mentioned in I and II, is communicated to the competent authority of the host Member State.

Article L. 511-28:

Any financial institution having its registered office in France and wishing to set up a branch on the territory of another Member State to offer banking services under the freedom of establishment shall notify its project to the *Autorité de contrôle prudentiel et de résolution*, together with information, the nature of which is determined by the Economy Minister.

The financial institution must also justify to the *Autorité de contrôle prudentiel et de résolution* that it meets the conditions set by the Economy Minister. These conditions relate to the activities carried on in France by these institutions, the terms and conditions under which they are placed under the control of credit institutions and the rules applicable to ensure the quality and control of their management and to the guarantee of their commitments by parent companies.

If the institution fulfils the conditions mentioned in the preceding subparagraph, the *Autorité de contrôle prudentiel et de résolution*, unless it has reason to doubt, in the light of the draft, the adequacy of the administrative structures or the financial situation of the financial institution, shall, within three months of receiving it, communicate the information concerning the draft to the competent authority of the host Member State and shall notify the institution concerned.

Financial institutions wishing to carry on business for the first time within the territory of another Member State under the freedom to provide services shall be required to make a declaration to the *Autorité de contrôle prudentiel et de résolution*. This declaration is accompanied by information, the nature of which is determined by an order of the Economy Minister.

They must also justify that they meet the conditions mentioned in the second paragraph of this article.

An order of the Economy Minister determines the information that must be communicated to the *Autorité de contrôle prudentiel et de résolution* prior to a change in the situation of the institution and that which must be communicated to the competent authority of the host Member State.

A financial institution carrying on its activities in another Member State within the framework of the provisions of this Article shall be subject to the provisions of Articles L. 511-13, L. 511-33, L. 511-39, L. 511-51 to L. 511-54, and, for those of them which provide that their scope of application includes this category of institution, to the orders adopted by the minister responsible for the economy. It is supervised by the *Autorité de contrôle prudentiel et de résolution* under the conditions set out in Articles L. 612-1 and L. 612-23 to L. 612-27; it may be subject to the measures and penalties provided for in Articles L. 511-41-3, L. 612-30 to L. 612-34, L. 612-39 and L. 612-40. The striking off provided for in 7° of Article L. 612-39 and 5° of I of Article L. 612-40 must be understood as the withdrawal of the benefit of the regime defined in this article.

A decree adopted in *Conseil d'Etat* shall determine, as necessary, the conditions of application of the present article and of article L. 511-27.

Section 4: Bodies of the profession (Articles L. 511-29 to L. 511-32)

Subsection 1: The French Association of Credit Institutions and Investment Firms and Other Professional Bodies (Article L. 511-29)

Article L. 511-29:

Any credit institution or finance company is required to belong to a professional body or a central body affiliated to the *Association Française des Établissements de Crédit et des Entreprises d'Investissement* (French Association of Credit Institutions and Investment Firms).

The purpose of the *Association française des établissements de crédit et des entreprises d'investissement* is to represent the collective interests of credit institutions, finance companies, electronic money institutions, payment institutions, portfolio management companies and investment firms, in particular vis-à-vis the public authorities, to inform its members and the public, to study any matter of common interest and to draw up recommendations relating thereto with a view, where appropriate, to promoting cooperation between networks and the organization and management of services of common interest. Its purpose is also to draw up codes of conduct applicable to credit institutions, finance companies, portfolio management companies and investment firms with a view to their approval under the conditions mentioned in Article L. 611-3-1.

The *Association Française des Établissements de Crédit et des Entreprises d'Investissement* also has the opportunity to engage in social dialogue on general issues concerning all credit institutions, finance companies, payment institutions, portfolio management companies and investment firms with the trade unions representing this sector.

Its statutes are subject to ministerial approval.

Subsection 2: Central bodies (Articles L. 511-30 to L. 511-32)

Article L. 511-30:

For the application of the provisions of the present code relating to credit institutions and finance companies, the following are considered as central bodies:

Crédit Agricole S.A., the central body of the savings banks and popular banks (*caisses d'épargne et banques populaires*), the *Confédération Nationale du Crédit Mutuel*.

Article L. 511-31:

The central bodies represent the credit institutions and finance companies affiliated to them before the *Banque de France* and the *Autorité de contrôle prudentiel et de résolution*.

They are responsible for ensuring the cohesion of their network and the effective operation of the institutions and companies affiliated to them. To this end, they take all necessary measures, in particular to guarantee the liquidity and solvency of each of these institutions and companies as well as of the network as a whole. They may also decide to prohibit or limit the distribution of a dividend to shareholders or a remuneration of shares to members of the credit institutions, finance companies or investment firms affiliated to them.

The securities referred to in the last paragraph of Article 19 tervicies of Law 47-1775 of 10 September 1947 on the status of cooperation, held directly or indirectly by a central body within the meaning of Article L. 511-30, are not taken into account for the calculation of the 50% limit on the capital of the credit institutions affiliated to them, referred to in the aforementioned Article 19 tervicies.

They ensure the application of the legislative and regulatory provisions specific to these institutions and companies and exercise administrative, technical and financial control over their organization and management. On-the-spot inspections of central bodies may be extended to their direct or indirect subsidiaries and to those of their affiliated establishments and companies.

Within the framework of these powers, they may take the sanctions provided for by their own laws and regulations.

The loss of the status of institution or affiliated company must be notified by the central body to the *Autorité de contrôle prudentiel et de résolution*, which decides on the authorization of the institution or company in question.

For the application of the provisions of Section 2 of Chapter V of Title II of Book II of the Commercial Code, corporate offices held within the central body, within the meaning of Article L. 511-30 of the present code, or the credit institutions and finance companies affiliated to it, must be counted for a single office.

After having informed the *Autorité de contrôle prudentiel et de résolution*, the central bodies may, when justified by the financial situation of the institutions and companies concerned, and notwithstanding any provisions or stipulations to the contrary, decide to merge two or more legal entities affiliated to them, to sell all or part of their business and to dissolve them. The governing bodies of the legal entities concerned must first have been consulted by the central bodies. The latter are responsible for the liquidation of credit institutions and finance companies affiliated to them or for the total or partial transfer of their business.

The central bodies shall notify any decision of affiliation or withdrawal of affiliation to the institution or company concerned and to the *Autorité de contrôle prudentiel et de résolution*.

Article L. 511-32:

Notwithstanding the powers of documentary and on-site supervision conferred on the *Autorité de contrôle prudentiel* and the powers of resolution on the institutions and companies affiliated to them, the central bodies shall contribute, each in so far as it is concerned, to the application of the directly applicable European provisions, laws and regulations governing credit institutions and finance companies.

In this respect, they refer violations of these provisions to the *Autorité de contrôle prudentiel et de resolution*.

II. - (Transferred under Article L. 615-1 of the Monetary and Financial Code)

Section 5: Professional secret (Articles L. 511-33 to L. 511-34)

Article L. 511-33:

I. - Any member of a board of directors and, as the case may be, of a supervisory board and any person who in any capacity whatsoever participates in the direction or management of a credit institution, a finance company or a body mentioned in Articles L. 511-6, 5 and 8, or who is employed by one of these bodies, is bound by professional secret.

Apart from cases where the law so provides, professional secret may not be invoked against the *Autorité de contrôle prudentiel et de résolution*, the *Banque de France*, the *Institut d'émission des départements d'outre-mer*, the *Institut d'émission d'outre-mer*, the judicial authority acting in the context of criminal proceedings, or the commissions of inquiry set up pursuant to Article 6 of Ordinance No. 58-1100 of November 17, 1958 relating to the functioning of parliamentary meetings.

Credit institutions and finance companies may also communicate information covered by professional secret, on the one hand, to rating agencies for the purposes of rating financial products and, on the other hand, to the persons with whom they negotiate, conclude or execute the operations set forth below, provided that such information is necessary for them:

1° Credit transactions carried out, directly or indirectly, by one or more credit institutions or finance companies;

2° Transactions on financial instruments, guarantees or insurance intended to cover a credit risk;

3° Acquisition of equity interests or control in a credit institution, investment firm or finance company;

4° Disposals of assets or business assets;

5° Sale or transfer of receivables or contracts;

6° Contracts for the provision of services concluded with a third party with a view to entrusting it with important operational functions;

7° During the study or preparation of any type of contract or transaction, provided that these entities belong to the same group as the author of the communication.

In the course of transactions involving financial contracts, credit institutions and finance companies may also communicate information covered by professional secret, where the legislation or regulations of a State that is not a member of the European Union provide for the declaration of such information to a central referential. When this information constitutes personal data subject to the Data Protection Act No. 78-17 of 6 January , 1978, the transmission of such information must be carried out under the conditions provided for by the same Act.

In addition to the cases set out above, credit institutions and finance companies may communicate information covered by professional secret on a case-by-case basis and only when the persons concerned have expressly allowed them to do so.

Persons receiving information covered by professional secret, which has been provided to them for the purposes of any of the operations set out above, must keep it confidential, whether or not the operation referred to above is successful. However, in the event that the above-

mentioned operation is successful, these persons may in turn communicate the information covered by professional secret under the same conditions as those referred to in this Article to the persons with whom they negotiate, conclude or execute the operations set out above.

II. - The staff of credit institutions, finance companies, financial holding companies, mixed financial holding companies and parent companies of finance companies subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*, as well as the staff of the external service providers of these persons, may report to the Authority potential or actual breaches and infringements of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014, of the provisions of this Title and Title III of this Book or of a regulation adopted for their implementation, or of any other legislative or regulatory provision, the breach of which leads to the infringement of the aforementioned provisions. Alerts shall be made in writing and shall be accompanied by any information capable of establishing the reality of the facts reported.

The *Autorité de contrôle prudentiel et de résolution* shall collect the alerts under conditions that guarantee the protection of the persons reporting the breaches, in particular with regard to their identity, and the protection of personal data relating to the persons concerned by the alerts.

Article L. 511-34:

Companies established in France and which are part of a financial group or a group comprising at least one finance company or, for the application of 2° of this article, of a group within the meaning of Article L. 356-1 of the Insurance Code, of a group within the meaning of III of Article L. 511-20 comprising at least one entity mentioned in 1° bis or 1° ter of Article L. 561-2, or of a mixed group or a financial conglomerate to which regulated entities within the meaning or Article L. 517-2 belong, having their registered office in a Member State of the European Union or in a State party to the Agreement on the European Economic Area or in a State where the agreements provided for in Articles L. 632-7, L. 632-13 and L. 632-16 of this Code are applicable are required, notwithstanding any provisions to the contrary, to transfer to companies of the same group having their registered office in one of these States:

1° The information relating to their financial situation necessary for the organization of the supervision on a consolidated basis and the complementary supervision of these regulated entities or finance companies;

2° Information necessary for the organization of the fight against money laundering and terrorist financing;

3° The information necessary for the organization of the detection of market abuse mentioned in Article 16 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;

4° The information necessary for the management of conflicts of interest within the meaning of 3° of I and 3° of II of Article L. 533-10.

The latter information may not be communicated to persons outside the group, with the exception of the competent authorities of the States referred to in the first paragraph. This

exception does not extend to the authorities of States or territories whose legislation is recognized as insufficient or whose practices are considered as impeding the fight against money laundering or terrorist financing by the international consultative and coordinating body for the fight against money laundering, the list of which is updated by order of the Economy Minister.

Persons receiving such information are bound by professional secret under the conditions and under the penalties mentioned in Article L. 511-33, for any information or documents they may receive or hold.

The provisions of this article do not prevent the application of the Law n° 78-17 of 6 January 1978 relating to data processing, files and freedoms.

Section 6: Accounting provisions (Articles L. 511-35 to L. 511-39)

Subsection 1: Financial statements and accounting documents (Articles L. 511-35 to L. 511-37)

Article L. 511-35:

The provisions of Article L. 232-1 of the Commercial Code are applicable to credit institutions, finance companies and investment firms under the conditions set by *the Autorité des normes comptables* (Accounting Standards Authority) after the opinion of the advisory committee on financial legislation and regulations. For the application of these provisions to the branches of credit institutions mentioned in I of Article L. 511-10, the obligations provided for in Article L. 232-1 of the Commercial Code are fulfilled by the persons mentioned in the second paragraph of Article L. 511-13 of the present code.

Article L. 225-102-1 of the Commercial Code is applicable, under the conditions provided for the companies mentioned in paragraph 1 of Article L. 225-102-1 of the Commercial Code, to credit institutions that take the corporate form of a public limited company (*société anonyme*), a partnership limited by shares (*société en commandite par actions*), a limited liability company (*société à responsabilité limitée*) or a simplified joint stock company (*société par actions simplifiée*), as well as to finance companies and investment firms, parent companies of finance companies and financial holding companies that take one of these corporate forms and whose securities are admitted to trading on a regulated market, when their balance sheet total or turnover and number of employees exceed, where applicable on a consolidated basis, the thresholds provided for the companies mentioned in 1° of I of the same article.

Article L. 225-102-1 of the Commercial Code is also applicable, under the conditions provided for the companies mentioned in 2° of its I, to credit institutions that do not take one of the corporate forms mentioned in the preceding paragraph, as well as to finance companies and investment firms, parent companies of finance companies and financial holding companies whose securities are not admitted to trading on a regulated market, when their balance sheet total or turnover and their number of employees exceed, where applicable on a consolidated basis, the thresholds provided for the companies mentioned in 2° of I of the same article.

NOTA: In accordance with Article 15 of Order no. 2017-1180 of 19 July 2017, these provisions are applicable to reports relating to financial years beginning on or after 1 August 2017.

Article L. 511-36:

When preparing their financial statements in consolidated form, credit institutions and finance companies do so in accordance with the rules defined by regulations issued by *the Autorité des normes comptables* after consulting the *Comité consultatif de la législation et de la réglementation financières* (Advisory Committee on Financial Legislation and Regulations). However, they are exempt from complying with these rules when they use international accounting standards adopted by European Commission regulation.

Article L. 511-37:

Any credit institution, finance company, investment firm or clearing house member mentioned in 3 of Article L. 440-2 must publish its annual financial statements under the conditions set by the *Autorité des normes comptables* following the opinion of *the Comité consultatif de la législation et de la réglementation financières*.

The *Autorité de contrôle prudentiel et de résolution* ensures that the publications provided for in this article, in Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 and, for finance companies, in Article L. 511-99, are regularly made. It may order the persons referred to in the previous paragraph to make corrective publications in the event that inaccuracies or omissions have been identified in the published documents.

It may bring to the public's attention any information it deems necessary.

Subsection 2: Statutory Auditors (Articles L. 511-38 to L. 511-39)

Article L. 511-38:

Control is exercised in each credit institution, finance company or investment firm by at least two statutory auditors, under the conditions defined in Book VIII of the Commercial Code. These statutory auditors must not represent or belong to firms with legal, professional, capital or organizational links between them. They carry out their activity under the conditions provided for in Book VIII of the Commercial Code and certify the annual financial statements. They verify the accuracy of the information intended for the public and its consistency with the said accounts.

However, when the total balance sheet of a credit institution, a finance company or an investment firm is below a threshold set by the *Autorité des normes comptables* following the opinion of the *Comité consultatif de la législation et de la réglementation financières*, the certification mentioned in the previous paragraph may be carried out by a single statutory auditor. When this condition is met, and the firm is subject either to public accounting rules or to a specific regime for the approval of its accounts presenting guarantees deemed sufficient by the *Autorité de contrôle prudential et de résolution*, the latter may decide to lift the certification obligation mentioned in the preceding paragraph. These exemptions are not applicable when the credit institution, finance company or investment firm is required to prepare consolidated financial statements.

The statutory auditors must present all guarantees of independence with respect to credit institutions, finance companies, investment firms, parent companies of finance companies, finance holding companies or controlled mixed finance holding companies. The provisions of

Book VIII of the Commercial Code are applicable to the statutory auditors of any credit institution, finance company, investment firm, parent company of finance company, finance holding company or mixed financial holding company.

Article L. 511-39:

I. - The provisions of Articles L. 225-38 to L. 225-43 of the Commercial Code are applicable to all credit institutions and finance companies.

For the application of article L. 225-40 of the same code, when these credit institutions or finance companies do not have a shareholders' meeting, the special report of the statutory auditors is submitted to the board of directors for final approval.

Where such credit institutions or finance companies are exempted, under the conditions provided for in the second paragraph of Article L. 511-38 of the present code, from the obligation of certification, the special report is drawn up, as the case may be, by the public accountant or by the body responsible for approving the accounts.

II. - In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 communicate to the body of the credit institution to which this branch belongs, which performs supervisory functions equivalent to those of a board of directors or a supervisory board, prior to their conclusion:

1° Any agreement entered into directly or through an intermediary between the credit institution to which that branch belongs and one of the persons mentioned in the second paragraph of Article L. 511-13, as well as any agreement in which one of those persons is indirectly interested;

2° Any agreement entered into between the credit institution to which the branch belongs and a company in which one of the persons mentioned in the second paragraph of Article L. 511-13 is owner, partner with unlimited liability, manager, director, member of the supervisory board or, in general, director.

The foregoing provisions do not apply to current transactions entered into under normal conditions.

The prohibition provided for in Article L. 225-43 of the Commercial Code applies to the persons mentioned in the second paragraph of Article L. 511-13, to the spouses, ascendants and descendants of these persons and to any intermediary.

Section 7: Prudential provisions (Articles L. 511-41 to L. 511-50-1)

Article L. 511-41:

I. - Credit institutions and finance companies are required to comply with management standards designed to guarantee their liquidity and solvency vis-à-vis depositors and, more generally, third parties, as well as the balance of their financial structure.

In particular, they must comply with coverage and risk division ratios.

To comply with solvency and liquidity standards, they may be authorized to use their internal risk assessment approaches.

Credit institutions and finance companies shall notify the *Autorité de contrôle prudentiel et de résolution* of significant transactions between the credit institutions or finance companies of a mixed group and the mixed holding company or its subsidiaries, under the conditions defined in Article L. 612-24.

II. - A branch of a credit institution mentioned in I of Article L. 511-10 may apply to the *Autorité de contrôle prudentiel et de résolution* for a total or partial exemption from the requirements of solvency, liquidity, leverage and large risks if the following conditions are met:

1° The relevant regulations and supervision in the country of the credit institution to which the branch belongs effectively take into account the risks assumed outside that country in a manner equivalent to the provisions in force in France;

2° The credit institution on which the branch depends undertakes to supervise the operations of the branch itself in France, in accordance with the regulations in force in its country and under the supervision of the competent authority in that country;

3° The credit institution on which the branch depends confirms that it will ensure that the branch has sufficient funds in France to cover its commitments, in particular to meet its short-term liquidity needs;

4° The credit institution on which the branch depends undertakes to inform the *Autorité de contrôle prudentiel et de résolution* of any relevant developments in order to verify that the conditions laid down in 1° to 3° continue to be met on a permanent basis;

5° The competent authority of the State of the credit institution on which the branch depends gives its consent to the exemption requested; it confirms the regularity of the situation of the credit institution on which the branch depends; it undertakes to inform the *Autorité de contrôle prudentiel et de résolution* of any significant change in the above conditions and to communicate to it, at its request, any information relating to the credit institution on which the branch depends that is useful for the supervision of the situation of the branch.

The *Autorité de contrôle prudentiel et de résolution* verifies that the above conditions are met and defines the terms and conditions for exempting the branch. It ensures, in particular in the light of an express attestation from the competent authority of the State of the credit institution to which the branch belongs, that French credit institutions may benefit from equivalent treatment by that authority. To define these exemption procedures, the *Autorité de contrôle prudentiel et de résolution* takes into account the characteristics of the activities of the branch in France as well as the characteristics of the regulations of the State of the credit institution on which the branch depends. The *Autorité de contrôle prudentiel et de résolution* may make exemption from the liquidity rules conditional on the nature and projected volume of the branch's program of operations, in particular with regard to transactions involving the receipt of repayable funds from the public.

The *Autorité de contrôle prudentiel et de résolution* may withdraw the benefit of this Article from a branch when it considers that one of the conditions is no longer met.

Where a branch benefits from this Article, the *Autorité de contrôle prudentiel et de résolution* may also exempt that branch from the disclosure requirements laid down in Part 8 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

The branch shall inform the *Autorité de contrôle prudentiel et de résolution* of any relevant developments to verify that the above conditions continue to be met on a permanent basis.

III. - Credit institutions, investment firms, finance companies, financial holding companies, mixed financial holding companies and parent undertakings of finance companies shall establish procedures enabling their staff to report to the competent officers and committees of their undertaking and to the *Autorité de contrôle prudentiel et de résolution* any breaches or infringements of the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, of the present title or title III of this book or of a regulation made for their application or of any other legislative or regulatory provision whose infringement leads to that of the aforementioned provisions, committed within them or likely to be committed, by a specific, independent and autonomous means.

Credit institutions, investment firms, finance companies, finance holding companies, mixed finance holding companies and parent companies of finance companies must also ensure, by adopting all necessary provisions, that no person is excluded from a recruitment procedure or from access to a work placement or training period in a company and that no member of their staff is penalized, dismissed or subjected to any direct or indirect discriminatory measure, in particular with regard to compensation, incentive measures or share distributions, training, reclassification, assignment, qualification, classification, professional promotion, transfer or contract renewal, for having reported in good faith any breaches or violations to the relevant managers and committees of their company and to the *Autorité de contrôle prudentiel and resolution authority.*

In the event of a dispute relating to the application of the preceding paragraph, once the person presents facts that give rise to a presumption that he or she has reported breaches or infractions in good faith, it is incumbent on the defendant, in the light of the facts, to prove that his or her decision is justified by objective elements unrelated to the report made by the interested party. The judge forms his or her conviction after ordering, if necessary, all the investigative measures he or she deems useful.

An order of the Economy Minister defines the conditions of application of the present article.

Article L. 511-41-1-A:

I. - Credit institutions and finance companies are subject to an additional capital requirement in addition to the requirements set forth respectively in the third part of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 for credit institutions or in the order of the Economy Minister mentioned in 6 of Article L. 611-1 for finance companies. This additional requirement constitutes the overall capital cushion requirement provided for by the above-mentioned regulation of 26 June 2013.

II. - The overall capital cushion requirement referred to above corresponds to the total amount of core capital defined in Article 26 of the Regulation (EU) of 26 June 2013 referred to in I, necessary to meet the capital cushion requirement, increased, where applicable:

1° the counter-cyclical capital cushion requirement specific to the credit institution or finance company;

2° the cushion requirement applicable to institutions of global systemic importance;

3° the cushion requirement applicable to other systemically important institutions;

4° the cushion requirement for systemic risk.

The core capital referred to above, necessary to meet the global capital cushion requirement, may not be used to meet capital requirements resulting from other core capital holding requirements.

III. - The capital cushion referred to in II is equal to 2.5% of the total amount of risk exposure of credit institutions and finance companies, calculated in accordance with paragraph 3 of Article 92 of the (EU) Regulation of 26 June 2013 referred to in I.

IV. - The *Haut Conseil de la stabilité financière* (French Financial Stability Board) provided for in Article L. 631-2-1 sets the counter-cyclical capital cushion rate, applicable to exposures located in France, on a quarterly basis. This rate is taken into account for the determination of the specific counter-cyclical capital cushion requirement mentioned in 1° of II.

V. - The institutions of global systemic importance and other institutions of systemic importance mentioned respectively in 2° and 3° of II may be:

1° Credit institutions within the meaning of I of Article L. 511-1;

2° Investment firms within the meaning of Article L. 533-2-1;

3° Finance companies within the meaning of II of Article L. 511-1;

4° Financial holding companies within the meaning of Article L. 517-1 and mixed financial holding companies within the meaning of Article L. 517-4;

5° Parent companies of finance companies within the meaning of Article L. 517-1.

VI. - The institutions of global systemic importance mentioned in V may not be subsidiaries within the meaning of I of Article L. 511-20 of credit institutions, investment firms as defined in 2 of paragraph 1 of Article 4 of Regulation (EU) no. 575/2013 of the European Parliament and of the Council of June 26, 2013, or financial holding companies or mixed financial holding companies within the European Union or the European Economic Area.

The list of institutions of global systemic importance is drawn up on a consolidated basis by the *Autorité de contrôle prudentiel et de résolutio*n with regard to the size of the group, the interconnection of the group with the financial system, the possibilities of substitution of the services or financial infrastructure provided by the group, the complexity of the group and its cross-border activities, including those between Member States and between a Member State and a third country.

The list of institutions of global systemic importance and the subcategory to which they belong is published by the *Autorité de contrôle prudentiel et de résolution*.

VII. - The other systemically important institutions mentioned in V may not be subsidiaries within the meaning of I of Article L. 511-20 of financial holding companies or mixed financial holding companies in France.

The list of these other systemically important institutions is drawn up on an individual, sub-consolidated or consolidated basis, as the case may be, by the *Autorité de contrôle prudentiel et de résolution* on the basis of at least one of the following criteria:

1° Their size;

2° Their importance for the economy of the European Union or the Member State concerned;

3° The importance of their cross-border activities;

4° The interconnection of the credit institution, finance company or group with the financial system.

VIII. - The *Autorité de contrôle prudentiel et de résolution* determines, within the list provided for in VI, subcategories within which it classifies institutions of global systemic importance. It may modify the classification of an entity in either of the lists provided for in VI and VII, or within the list provided for in VI in either of the subcategories, for the purposes of sound supervision.

IX. - Credit institutions and finance companies are required to comply with the systemic risk cushion rate set by the High Council for Financial Stability in application of 4° bis of Article L. 631-2-1, in order to prevent and mitigate long-term non-cyclical systemic or macro-prudential risks not covered by the (EU) Regulation of 26 June 2013 referred to in I. The qualification of systemic risk applies to a risk of disruption of the financial system likely to have serious consequences for the financial system and the real economy.

X. - A credit institution or finance company that meets the overall capital cushion requirement is prohibited from making a distribution of such magnitude that it would reduce its capital to a level that would no longer allow it to meet the overall capital cushion requirement.

A credit institution or finance company that does not comply with the overall capital cushion requirement under II:

1° To make a distribution in relation to the core capital defined in Article 26 of the (EU) Regulation of 26 June 2013 referred to in I;

2° To create an obligation to pay discretionary pension benefits or variable remuneration or to pay such pensions or remuneration, unless the obligation to pay arose prior to the breach of the overall capital cushion requirement;

3° To make payments linked to additional equity instruments as defined in Article 51 of the (EU) Regulation of 26 June 2013 referred to in I.

XI. - The distributions referred to in X include:

1° The payment of dividends in cash;

2° The distribution of bonuses in the form of shares, or other equity instruments mentioned in a of paragraph 1 of Article 26 of the EU Regulation of June 26, 2013 mentioned in I for credit institutions, fully or partially paid up;

3° The repayment or repurchase by a credit institution or a finance company of its own shares or other capital instruments mentioned in paragraph 1 (a) of Article 26 of the EU Regulation of June 26, 2013 mentioned in I above;

4° The repayment of sums paid in connection with the capital instruments mentioned in paragraph 1 (a) of Article 26 of the EU Regulation of 26 June 2013 referred to in I above;

5° Distributions of items mentioned in b to e of Article 26 of the EU Regulation of 26 June 2013 cited in I.

XII. - The prohibitions mentioned in X do not apply when their implementation is likely to be considered by the insolvency regime applicable to the credit institution or finance company as an event of default or a condition for initiating insolvency proceedings.

XIII. - A credit institution or finance company that does not meet the overall capital cushion requirement shall determine, in particular in relation to its profits, the maximum distributable amount applicable to it. The prohibition provided for in the second paragraph of X applies to credit institutions and finance companies that have not satisfied this requirement and, for the others, beyond this maximum amount as determined.

XIV. - Notwithstanding the provisions of X, when a credit institution or finance company does not meet the overall capital cushion requirement provided for in II, it shall draw up a capital conservation plan which it shall submit to the *Autorité de contrôle prudentiel et de résolution*.

The *Autorité de contrôle prudentiel et de résolution* shall approve the capital conservation plan if it considers that its implementation may reasonably enable the credit institution or finance company to meet the overall capital cushion requirement laid down in II. Otherwise, it imposes on the credit institution or finance company at least one of the measures provided for in Article L. 511-41-3 and in 9° and 10° of I of Article L. 612-33.

XV. - The conditions of application of this article are set by order of the Economy Minister.

NOTA: In accordance with Article 10 IV of Order no. 2014-158 of 20 February 2014, the provisions of Article L. 533-2-1 shall come into force in accordance with the terms and conditions set by order of the Economy Minister.

Order of 3 November 2014, Article 69: The provisions of Titles II, III and IV of this Order relating to the requirements of the capital conservation cushion, the counter-cyclical capital cushion, the cushion applicable to institutions of global systemic importance and the cushion applicable to other institutions of systemic importance come into force on 1 January 2016.

Article L. 511-41-1-B:

Credit institutions and finance companies set up systems, strategies and procedures subject to regular internal control mentioned in Article L. 511-55, enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities.

These risks include in particular credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate fluctuation risk, operational risk, liquidity risk, excessive leverage risk and risks identified in the context of regularly implemented stress tests.

Credit institutions and finance companies, taking into account their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the *Autorité de contrôle prudentiel et de résolution*, an internal approach to determine the capital requirements appropriate to their situation.

The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable credit institutions and finance companies to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed.

Credit institutions and finance companies must, depending on the nature of the risks incurred, establish contingency and business continuity plans, maintain adequate liquidity cushions and have plans for restoring their liquidity.

Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the systems, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated.

The conditions of application of this article are set by order of the Economy Minister.

Article L. 511-41-1-C:

The *Autorité de contrôle prudentiel et de résolution* evaluates and monitors the systems, strategies and procedures implemented by credit institutions and finance companies to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 511-41-1 B.

The Authority supervises the use by credit institutions and finance companies of internal approaches for determining the capital requirements imposed on them, ensuring in particular that they do not rely exclusively or mechanically on external credit ratings.

On the basis of the information provided by credit institutions and finance companies, it shall assess at least once a year the quality of the internal approaches used to calculate capital requirements.

The Authority carries out a comparative analysis of internal approaches. If the Authority determines, as a result of that analysis, that a credit institution's or finance company's internal approach leads to an underestimation of their capital requirement, it may impose corrective measures on them. These measures must not lead to standardisation or a propensity for certain methods, create unjustified incentives or provoke imitative behaviour.

Where the *Autorité de contrôle prudentiel et de résolution* finds that credit institutions or finance companies with similar risk profiles due to the similarity of their business models or the geographical location of their exposures are or could be exposed to similar risks or represent similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner.

The conditions of application of this article are set by order of the Economy Minister.

Article L. 511-41-1:

Where a credit institution or finance company has as its parent undertaking a credit institution, an investment firm, a financial holding company, a mixed financial holding company or a parent undertaking of a finance company which has its registered office in a State which is not a party to the Agreement on the European Economic Area, the *Autorité de contrôle prudentiel et de résolution* shall verify, on its own initiative or at the request of the parent company or of a regulated entity authorized in a Member State or another State party to the Agreement on the European Economic Area, that this credit institution or finance company is subject to consolidated supervision by a supervisory authority in a third country equivalent to that applicable in France.

For this purpose, the *Autorité de contrôle prudentiel et de résolution* consults the European Banking Authority and the relevant competent authorities of the other Member States of the European Union or of the other States party to the Agreement on the European Economic Area.

In the absence of equivalence, the provisions relating to consolidated supervision applicable in France shall be applied to the credit institution or finance company.

The *Autorité de contrôle prudentiel et de résolution* may also use other methods that ensure equivalent consolidated supervision, after approval by the competent authority likely to be responsible for consolidated supervision for the European Economic Area and consultation with the other relevant competent authorities in a Member State or another State party to the Agreement on the European Economic Area. In particular, it may require the formation of a financial holding company or a mixed financial holding company having its registered office in a Member State or in another State party to the Agreement on the European Economic Area. The *Autorité de contrôle prudentiel et de résolution* notifies the European Banking Authority and the European Commission of its method of consolidated supervision.

Article L. 511-41-2:

Credit institutions and finance companies which have as a subsidiary at least one credit institution, investment firm or financial institution, within the meaning of Article L. 511-21, or which hold a participation in such an institution or enterprise are required to comply, on the basis of their consolidated financial situation within the meaning of Article 4, paragraph 1 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013, with management standards determined by an order of the Economy Minister as well as the rules relating to the equity interests mentioned in Article L. 511-2.

Article L. 511-41-3:

I. - The *Autorité de contrôle prudentiel et de résolution* may enjoin a person mentioned in 1°, a of 2°, 4°, 9° and 10° of A of I of Article L. 612-2 or in I and, where applicable, II of Article L. 613-34 to take, within a specified period, all measures designed to restore or strengthen its financial or liquidity position, to improve its management methods or to ensure the adequacy of its organisation to its activities or its development objectives, or where the information received or requested by the Authority for the purpose of carrying out checks is such as to establish that such person is likely to fail within a period of twelve months to comply with the obligations laid down in Regulation (EU) No 575/2013 of the European Parliament and of the

Council of 26 June 2013, in any provision of this Title and Title III of this Book or of a regulation made for its implementation, or in any other legal or regulatory provision, the failure to comply with which would lead to a breach of the aforementioned provisions.

II. - The *Autorité de contrôle prudentiel et de résolution* may also require the company to hold capital in excess of the minimum amount provided for by applicable regulations and may require the application to assets of a specific provisioning policy or specific treatment with respect to capital requirements.

The Authority shall impose the additional capital requirement provided for in the previous paragraph, in particular in one of the following cases:

1° The undertaking does not have appropriate processes for maintaining at all times the amount, type and distribution of internal capital that it deems appropriate, or effective processes for detecting, managing and monitoring its risks;

2° Risks or risk components are not covered by the capital requirements set by Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 or by the additional capital requirements referred to in Articles L. 511-41-1 A or L. 533-2-1;

3° The Authority considers that the implementation of other measures would not be likely to sufficiently improve the company's systems, mechanisms and strategy within an appropriate timeframe;

4° It emerges from the monitoring and assessment of the company's prudential situation that failure to comply with the requirements governing the use of internal risk assessment approaches, provided for in Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013, could lead to inadequate capital requirements;

5° Risks are likely to be underestimated, despite compliance with the requirements of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013;

6° The firm declares to the competent authority, in accordance with paragraph 5 of Article 377 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, that the results of the stress tests referred to in this Article significantly exceed the capital requirements for the correlation trading book.

III. - Where the solidity of the financial situation of a credit institution, investment firm or finance company is compromised or likely to be compromised, the *Autorité de contrôle prudentiel et de résolution* may require the firm in question to:

1° Allocate all or part of its net profits to strengthening its equity capital;

2° Limit variable compensation as a percentage of total net income;

3° Publish additional information.

IV. - The *Autorité de contrôle prudentiel et de résolution* may also enjoin a credit institution, an investment firm or a finance company to comply with a specific liquidity requirement, including restrictions relating to maturity mismatches between assets and liabilities. The *Autorité de contrôle prudentiel et de résolution* determines the specific liquidity requirement that it imposes, in particular with regard to:

1° The extent and characteristics of the liquidity risks to which such a person is exposed, taking into account his or her particular business model;

2° the systems, processes and mechanisms implemented by this person, particularly those relating to liquidity risk;

3° the results of the control and evaluation of the person's prudential situation;

4° To a systemic liquidity risk constituting a threat to the integrity of the French financial markets.

V. - The *Autorité de contrôle prudentiel et de résolution* shall take the measures provided for in this article, taking into account, where applicable, the provisions of the fourth and fifth paragraphs of Articles L. 511-41-1 C and L. 533-2-3.

Article L. 511-41-4:

The *Autorité de contrôle prudentiel et de résolution* may require credit institutions, investment firms and finance companies to publish more than once a year, within the time limits it determines, the information referred to in Part 8 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and to use, for publications other than their financial statements, specific media and publication supports designated by it.

The *Autorité de contrôle prudentiel et de résolution* may require the parent undertakings of the entities mentioned in the previous paragraph to publish once a year, either in full or with reference to equivalent information, a description of their legal structure and the governance and organization of their group.

Article L. 511-41-5:

I. - Without prejudice to Articles L. 511-41-3, L. 612-30 to L. 612-34, the *Autorité de contrôle prudentiel et de résolution* may enjoin a credit institution, an investment firm mentioned in 2° of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 to take one or more of the early intervention measures referred to in II when, in particular because of a rapid deterioration in its financial or liquidity situation, including an increase in the level of leverage, non-performing loans or concentration of exposures, that person infringes or is likely in the near future to infringe the requirements resulting from the provisions:

1° Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June, 2013;

2° Articles 3 to 7, 14 to 17 and 24 to 26 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014;

3° Of this title and of title III of this book;

4° Any other legislative or regulatory provision, the breach of which entails that of the above-mentioned provisions.

II. - In the cases mentioned in I, a credit institution, an investment firm mentioned in 2° of I of Article L. 613-34 or a finance company mentioned in II of Article L. 613-34 may be enjoined to take at least one or more of the following early intervention measures:

1° To apply one or more of the measures set out in the preventive recovery plan referred to in Article L. 613-35, if necessary after having updated it if the circumstances leading to the implementation of the measures in question differ from the initial assumptions of the plan;

2° Submit to the approval of the *Autorité de contrôle prudentiel et de résolution*, in order to overcome the identified difficulties, a specific recovery plan under the formal and procedural conditions provided for in Article L. 612-32;

3° Terminate the functions or mandates of the persons mentioned in Article L. 511-13 or 4 of Article L. 532-2, members of the board of directors, the supervisory board or any other body performing equivalent supervisory functions, if such persons are no longer able to perform their functions in accordance with the requirements set forth in Articles L. 511-51, L. 511-52, L. 533-25 or L. 533-26;

4° To establish an action plan in order to achieve the restructuring of its debt with all or part of its creditors in accordance, where applicable, with the preventive recovery plan provided for in Article L. 613-35;

5° To modify its commercial strategy;

6° Modify its legal or operational structure.

Where the person referred to in the first paragraph is a parent undertaking or a subsidiary within the meaning of Article L. 511-20, Sections III and IV of Article L. 613-20-4, Articles L. 613-21-3 or L. 613-21-4, as the case may be, apply.

The *Autorité de contrôle prudentiel et de résolution* shall define the time limit for the implementation of the above-mentioned measures.

III. - The *Autorité de contrôle prudentiel et de résolution*, for the purposes of implementing the measures mentioned in II, may enjoin the persons mentioned in Article L. 511-13 or 4 of Article L. 532-2, the board of directors, the supervisory board or any other body exercising equivalent supervisory functions to convene a general meeting of a person mentioned in I. It sets the agenda for such a meeting. If such a meeting has not been convened by the end of the deadline set by the *Autorité de contrôle prudentiel et de résolution,* the latter shall convene the meeting itself.

IV. - The supervisory board shall inform the resolution college without delay of any measures taken pursuant to this article.

Article L. 511-42:

When it appears that the situation of a credit institution or a finance company justifies it, the Governor of the *Banque de France*, Chairman of the *Autorité de contrôle prudentiel et de résolution*, invites, after having, except in an emergency, taken the opinion of the *Autorité de contrôle prudentiel et de résolution*, the shareholders or members of this company to provide the necessary support to the company.

In cases where the credit institution is a major institution within the meaning of paragraph 4 of Article 6 of Council Regulation (EU) No. 1024/2013 of 15 October 2013, the Governor must have previously referred the matter to the European Central Bank for an opinion.

Article L. 511-43:

Credit institutions approved in France are members of the guarantee fund provided for in Articles L. 312-4 to L. 312-16.

Article L. 511-44:

The *Autorité de contrôle prudentiel et de résolution* prepares and updates the list of external credit assessment bodies whose assessments may be used by credit institutions, finance companies and investment firms for the purposes of implementing the regulations provided for in Article L. 511-41. It specifies for each organization the levels of credit quality to which the assessments made correspond.

An organization may only be included in this list if its activity and experience in credit assessment are such as to ensure the credibility of its assessments, if it regularly reviews them and if its methods meet conditions of objectivity, independence, consistency and transparency.

An order of the Economy Minister shall specify the methods of application of this Article.

Article L. 511-45:

I. - Under the conditions set by order of the Economy Minister, credit institutions and finance companies publish in an annex to their annual accounts information on their establishments and activities in non-cooperative States or territories within the meaning of Article 238-0 A of the General Tax Code.

II. - As from fiscal years beginning on or after 1 January 2014, credit institutions, financial holding companies and mixed financial holding companies, and investment companies other than portfolio management companies publish once a year, in the notes to their annual financial statements or, where applicable, to their consolidated financial statements or in their management report, information on their locations and activities, included in the scope of consolidation defined in Articles L. 233-16 et seq. of the Commercial Code, in each State or territory.

III. - The following information is published for each State or territory:

1° Names of locations, nature of business and geographical location;

2° Net banking income and revenues;

3° Number of employees, in full-time equivalent;

4° Profit or loss before tax;

5° Amount of income taxes payable by the establishments, distinguishing between current and deferred taxes;

6° Public subsidies received.

For the information mentioned in 2° to 6°, the data is aggregated at the level of these States or territories.

IV. - The *Autorité de contrôle prudentiel et de résolution* shall ensure the respect of the obligations of publication of the information provided for in the present article. When it notes the absence of publication or omissions in the information published by an entity mentioned in I, it initiates the injunction procedure under penalty payment provided for in Article L. 612-25.

V. - The information defined in II and III is kept available to the public for five years, under conditions defined by decree adopted in *Conseil d'Etat*. The statutory auditors certify the accuracy of this information and its consistency with the financial statements.

Article L. 511-47:

I. - In order to guarantee their financial stability, their solvency with regard to depositors, their absence of conflicts of interest with their clients and their ability to ensure the financing of the economy, credit institutions, financial holding companies and mixed financial holding companies, whose trading activities in financial instruments exceed thresholds defined by decree in *Conseil d'Etat*, are prohibited from carrying out the following operations other than through subsidiaries dedicated to these activities:

1° Trading activities on financial instruments involving their own account, with the exception of activities relating to:

a) The provision of investment services to clients;

b) Clearing of financial instruments;

c) Hedging the risks of the credit institution or the group, within the meaning of III of Article L. 511-20, with the exception of the subsidiary mentioned in this Article;

d) Market making. The Economy Minister may set, by order and after obtaining the opinion of the *Autorité de contrôle prudentiel et de résolution*, a threshold valid for all institutions or for one institution in particular, expressed in relation to the net banking income of the credit institution of the financial holding company or of the mixed financial holding company, beyond which the activities relating to market making of a credit institution no longer benefit from this exception;

e) To the sound and prudent management of the group's cash position, within the meaning of Article L. 511-20, and to financial transactions between credit institutions, financial holding companies and mixed financial holding companies, on the one hand, and their subsidiaries belonging to the same group, within the meaning of the same Article L. 511-20, on the other hand;

f) Group investment transactions, within the meaning of the said Article L. 511-20;

2° Any transaction entered into for its own account with leveraged collective investment schemes or other similar investment vehicles, meeting characteristics set by order of the Economy Minister, when the credit institution is not guaranteed by a security whose characteristics, controlled by the *Autorité de contrôle prudentiel et de résolution*, meet

requirements in terms of quantity, quality and availability, under conditions set by order of the Economy Minister. Undertakings for collective investment that are themselves invested or exposed, beyond a threshold specified by order, in leveraged undertakings for collective investment or other similar investment vehicles referred to in this 2° are assimilated to the latter. For this purpose, the credit institution shall transmit to the *Autorité de contrôle prudentiel et de résolution,* in accordance with the procedures that it shall define, information relating to its commitments to such undertakings.

II. - The exposure thresholds mentioned in the first paragraph of I are determined on the basis of the relative importance of market activities and, where appropriate, of the activities mentioned in the first paragraph of 1° and 2° of I in the overall activities of the credit institution, financial holding company or mixed financial holding company.

III. - For the purposes of this section, "provision of investment services to clients" means the activity of an institution:

1° Consisting in providing the investment services mentioned in article L. 321-1 and the related services mentioned in article L. 321-2 by engaging in transactions on financial instruments with the aim of meeting the hedging, financing or investment needs of its clients;

2° And whose expected profitability results from the revenues derived from the services provided to clients and from the sound and prudent management of the risks associated with these services. The associated risks must meet the strict need for management of the activity, under conditions set by order of the Economy Minister.

IV. - Within the meaning of the present article, "hedging" means the activity of an institution mentioned in I which engages in transactions on financial instruments with a view to reducing its exposure to risks of all kinds related to credit and market activities. The instruments used for these hedging transactions must have an economic relationship with the risks identified, under conditions defined by order of the Economy Minister.

V. - Within the meaning of this article, "market making" is understood to mean the activity of an institution which, as an intermediary, is a party to transactions in financial instruments:

1° Either consisting of the simultaneous communication of firm and competitive purchase and sale prices for volumes of comparable size, with the result of bringing liquidity to the markets on a regular and continuous basis;

2° Or necessary, within the framework of its usual activity, to execute purchase or sale orders from clients or in response to requests for purchases or sales from them.

The *Autorité de contrôle prudentiel et de résolution* verifies that the distinction between the market making activity, mentioned in 1° and 2°, and the other activities is well established, based, for the activities mentioned in 1°, in particular on indicators specifying the conditions of regular presence on the market, the minimum activity on the market, the requirements in terms of proposed quotation spreads and the internal organization rules including risk limits. The indicators are adapted according to the type of financial instrument traded and the trading venues on which the market-making activity is carried out. The market maker provides the indicators on a regular basis to the *Autorité de contrôle prudentiel et de résolution* and the *Autorité des marchés financiers*.

For the activities referred to in 2°, the institution must be able to demonstrate a link between the needs of clients and transactions carried out for its own account. The *Autorité de contrôle prudentiel et de résolution* verifies the existence of this link, particularly with regard to the frequency of transactions carried out and the internal organization set up to meet client needs. It informs the *Autorité des marchés financiers* of the conclusions of the controls carried out.

An order issued by the Economy Minister, after obtaining the opinion of the *Autorité de contrôle prudentiel et de résolution* and the *Autorité des marchés financiers*, establishes the list of indicators transmitted to these authorities.

VI. - Within the meaning of this article, "group investment transactions" means:

1° Purchase or sale transactions of financial securities acquired with the intention of keeping them on a long-term basis, as well as transactions in financial instruments related to the latter;

2° Transactions for the purchase or sale of securities issued by entities in the group.

Article L. 511-48:

I. - Subsidiaries dedicated to carrying out the activities mentioned in I of Article L. 511-47 are approved by the *Autorité de contrôle prudentiel et de résolution* as investment firms or, where applicable and by way of derogation from the provisions of the same Article L. 511-47, as credit institutions.

When they are approved by the *Autorité de contrôle prudentiel et de résolution* as credit institutions, these subsidiaries may neither receive guaranteed deposits within the meaning of Article L. 312-4 nor provide payment services to customers whose deposits benefit from the guarantee mentioned in the same Article L. 312-4.

The subsidiaries mentioned in I of Article L. 511-47 must comply, individually or in a sub-consolidated manner, with the management standards provided for in Article L. 511-41, under the conditions set by order of the Economy Minister.

Notwithstanding the provisions of article L. 511-41-2, the credit institutions, financial holding companies or mixed financial holding companies which control the subsidiaries mentioned in I of article L. 511-47 are required to comply with the management standards mentioned in article L. 511-41 on the basis of their consolidated financial situation excluding from it the subsidiaries mentioned in the present article, under the conditions laid down by order of the Economy Minister.

The subscription by the credit institutions, financial holding companies or mixed financial holding companies which control these subsidiaries to a capital increase of these subsidiaries is subject to the prior authorization of the *Autorité de contrôle prudentiel et de résolution*.

For the application of the risk division ratio, the subsidiaries mentioned in I of Article L. 511-47 are considered as one and the same beneficiary, distinct from the rest of the group. For the application of the regulation relating to the control of large risks by institutions not belonging to the group, the subsidiaries and the group to which they belong are considered as the same beneficiary.

The subsidiaries defined in this article must use corporate and commercial names that are distinct from those of the credit institutions of the group that control them, so as to avoid any confusion in the minds of their creditors and co-contractors.

The persons mentioned in article L. 511-13 or, as the case may be, in article L. 532-2 who ensure the effective management of the activity of these subsidiaries cannot ensure the effective management of the activity, within the meaning of these same articles, of the credit institution, the financial holding company or the mixed financial holding company which control them, or of their subsidiaries other than those mentioned in the present Article.

II. - The subsidiaries mentioned in I may not carry out the following operations:

1° High-frequency trading operations taxable under the terms of article 235 ter ZD bis of the general tax code;

2° Transactions on financial futures instruments whose underlying element is an agricultural commodity.

III. - Neither the State nor any other public person controlled, directly or indirectly, by the State may subscribe to a security or make any new financial commitment for the benefit of this subsidiary when the latter is the subject of one of the resolution measures mentioned in paragraph 2 of sub-section 10 of section 4 of Chapter III of Title I of Book VI of the present code.

Article L. 511-49:

Investment firms, credit institutions, financial holding companies and mixed financial holding companies, as well as their subsidiaries mentioned in Article L. 511-48 that carry out transactions in financial instruments, shall assign to their internal units in charge of such transactions organizational and operating rules to ensure compliance with Articles L. 511-47 and L. 511-48.

In particular, they ensure that the control of compliance with these rules is adequately ensured by the governance system provided for in Article L. 511-55 and that the rules of good conduct and other professional obligations assigned to their departments comply with III and IV of Article L. 621-7.

They shall communicate to the *Autorité de contrôle prudentiel et de résolution* and, as far as it is concerned, to the *Autorité des marchés financiers* the description of these units as well as the rules of organization and operation assigned to them in application of the first paragraph of the present article.

The *Autorité de contrôle prudentiel et de résolution* ensures that the rules of organization and operation include risk limits set for internal units carrying out transactions in financial instruments, which are consistent with their mandates.

The *Autorité de contrôle prudentiel et de résolution* also ensures that the remuneration of the staff in charge of these operations is set in a manner consistent with the rules of organization

and operation assigned to the internal units mentioned in this Article and does not encourage risk taking unrelated to their objectives.

Article L. 511-50:

The authorization referred to in Article L. 532-1 may be refused by the A*utorité de contrôle prudentiel et de résolution* if the organization and operation, as well as the internal control system, of a credit institution, a financial holding company or a mixed financial holding company and their subsidiaries referred to in Articles L. 511-47 and L. 511-48 do not adequately ensure compliance with these same articles.

Article L. 511-50-1:

I. - In the event of termination of the term of office of a member of the Board of Directors, the Supervisory Board or any other body exercising equivalent functions, following a decision of opposition taken by the *Autorité de contrôle prudentiel and resolution* pursuant to Article L. 612-23-1, this Board may, between two shareholders' meetings, make provisional appointments.

When the objection of the *Autorité de contrôle prudentiel et de résolution* results in the number of Board members falling below the legal minimum, the remaining Directors or the Board of Directors shall immediately convene the ordinary shareholders' meeting in order to complete the membership of the Board of Directors or the Supervisory Board.

When the opposition of the *Autorité de contrôle prudentiel et de résolution* results in the number of members of the Board falling below the statutory minimum without, however, being less than the legal minimum, the Board of Directors or the Supervisory Board shall, within a period of three months from the day on which the term of office ends, make provisional appointments to supplement its membership.

Appointments made by the Board, pursuant to the third paragraph of this I, shall be notified to the *Autorité de contrôle prudentiel et de résolution*, under the conditions set out in Article L. 612-23-1, and submitted for ratification by the next ordinary general meeting. In the absence of ratification, the decisions taken and acts performed previously by the Board shall nevertheless remain valid.

If the Board fails to make the required appointments or if the meeting is not convened, any interested party may apply to the courts for the appointment of a proxy to convene the shareholders' meeting in order to make the appointments or ratify the appointments provided for in the third paragraph of this I.

II. - In the event of termination of the term of office of the chairman, the Board of Directors or the Supervisory Board may delegate a director or a member of the Supervisory Board to act as chairman. This delegation is given for a limited period and is not renewable. It must be notified to the *Autorité de contrôle prudentiel et de résolution*, under the conditions set forth in Article L. 612-23-1.

A decree adopted in *Conseil d'Etat* shall specify the conditions of application of this article.

Section 8: Governance of credit institutions and finance companies (Articles L. 511-51 to L. 511-103)

Subsection 1: Officers (Articles L. 511-51 to L. 511-54)

Article L. 511-51:

Within credit institutions or finance companies, shall at all times have the honorability, knowledge, skills and experience necessary for the performance of their duties:

1° Members of the Board of Directors, the Supervisory Board and the Executive Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions;

2° The persons who effectively manage the company within the meaning of Article L. 511-13 and who are not mentioned in 1°;

3° All persons responsible for the procedures, systems and policies referred to in Article L. 511-55, whose duties are specified by the order issued pursuant to Article L. 511-70 and who are likely to report directly on the performance of their duties to the Board of Directors, the Supervisory Board or any other body exercising equivalent Supervisory functions.

The competence of the members of the Board of Directors, the Supervisory Board or any other body exercising equivalent functions is assessed on the basis of their training and experience, with regard to their duties. Where mandates have been previously exercised, competence is presumed on the basis of the experience acquired. For new members, account is taken of the training they may receive throughout their term of office. In the assessment of each person, account is also taken of the competence and powers of the other members of the body to which he or she belongs.

The members of the Board of Directors or the Supervisory Board, on the one hand, and the members of the Executive Board or any persons who effectively manage the business of the company within the meaning of Article L. 511-13, on the other hand, collectively have the knowledge, skills and experience necessary for an understanding of all of the company's activities, including the main risks to which it is exposed.

Article L. 511-52:

I. - The persons who effectively manage the business of the credit institution or finance company within the meaning of Article L. 511-13 as well as the members of the board of directors, the supervisory board, the executive board or any other body exercising equivalent functions devote sufficient time to the performance of their duties within the company.

II. - Where the credit institution or finance company is of significant importance by reason of its size, its internal organization and the nature, scale and complexity of its activities, the persons referred to in I may not simultaneously exercise, within any legal person:

1° more than one mandate for one of the functions mentioned in paragraph 1 of IV and two mandates for one of the functions mentioned in paragraph 2 of IV; or

2° More than four mandates for one of the functions mentioned in 2° of IV.

However, the *Autorité de contrôle prudentiel et de résolution* may, taking into account the particular situation and the nature, scale and complexity of the credit institution or finance company, authorize a person in one of the cases provided for in 1° or 2° above to exercise an additional mandate for one of the functions mentioned in 2° of IV.

The provisions of this II are not applicable to members appointed on the basis of Articles 4 or 6 of Ordinance No. 2014-948 of August 20, 2014 relating to the governance and capital operations of companies with public shareholdings within the board of directors, the supervisory board, the board of directors or any other body exercising equivalent functions of a credit institution or finance company.

III. - For the application of II, the following are considered as a single function:

1° Functions exercised within the same group within the meaning of Article L. 233-16 of the Commercial Code. Institutions and finance companies affiliated to a network and the central body within the meaning of Article L. 511-31 are considered to be part of the same group for the application of this Article. The same applies to entities belonging to cooperative groups governed by similar provisions in the legislation applicable to them;

2° Functions exercised within firms, including non-financial entities, in which the credit institution or finance company holds a qualifying holding within the meaning of Article 4(1)(36) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

No account is taken of functions exercised within entities whose purpose is not primarily commercial, including when they take the form of commercial companies.

IV. - The functions whose exercise is subject to the provisions of II are:

1° The functions of the persons mentioned in Article L. 511-13, the functions of chief executive officer, deputy chief executive officer, member of the board of directors, sole chief executive officer or any other person exercising equivalent functions;

2° The functions of members of the board of directors, the supervisory board or any other body performing equivalent functions.

NOTA: Pursuant to Article 34 I of Ordinance No. 2014-948 of August 20, 2014, the Board of Directors, the Supervisory Board or the deliberative body acting in lieu of the companies mentioned in Article 1 shall set the date of application of the provisions of Title II of this Ordinance, with the exception of those of Articles 17 and 21. This date may not be later than the day after the first ordinary shareholders' meeting following January 1, 2017. Until that date, the present provisions remain applicable in their wording prior to the entry into force of this Ordinance.

Article L. 511-53:

Credit institutions and finance companies dedicate the necessary human and financial resources to the training of the persons mentioned in I of Article L. 511-52.

Article L. 511-54:

A decree in *Conseil d'Etat* specifies the conditions of application of the present sub-section.

Subsection 2: Organization and Internal Control (Articles L. 511-55 to L. 511-70)

Article L. 511-55:

Credit institutions and finance companies shall have solid governance arrangements, including a clear organization ensuring a well-defined, transparent and consistent division of responsibilities, effective procedures for detecting, managing, monitoring and reporting the risks to which they are or could be exposed, an adequate internal control system, sound administrative and accounting procedures, compensation policies and practices that enable and promote sound and effective risk management and, where appropriate, a preventive recovery plan as referred to in Article L. 613-35.

The staff exercising control functions are independent of the operational units they control and have the necessary means to carry out their missions.

The governance arrangements referred to in the first paragraph shall be adapted to the nature, scale and complexity of the risks inherent in the business model and activities of the credit institution or finance company.

Article L. 511-56:

The internal control system referred to in the first paragraph of Article L. 511-55 includes functions or other essential or important operational tasks entrusted to third parties.

Article L. 511-57:

I. - When supervision is exercised on the basis of the consolidated financial situation, financial or mixed groups as well as groups comprising at least one finance company must adopt adequate internal control procedures for the production of information and intelligence useful for the exercise of such supervision.

II. - Credit institutions and finance companies that are part of a mixed-activity group shall put in place adequate risk management processes and internal control mechanisms referred to in Article L. 511-55, including sound accounting and reporting procedures, in order to detect, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries in an appropriate manner.

III. - Credit institutions, finance companies and entities belonging to a group subject to supervision on a consolidated or sub-consolidated basis by the Autorité de contrôle prudentiel et de résolution are subject to the provisions of Articles L. 511-71 to L. 511-88 to an extent that takes into account their size and internal organization as well as the nature, scale and complexity of their business. Account is also taken, where applicable, of the provisions governing compensation to which these entities are also bound.

Article L. 511-58:

The chairmanship of the Board of Directors or any other body exercising equivalent supervisory functions in a credit institution or finance company may not be exercised by the Chief Executive Officer or a person exercising equivalent management functions.

In the case of a branch of a credit institution referred to in I of Article L. 511-10, this prohibition shall mean the exercise of effective management functions, within the meaning of the second paragraph of Article L. 511-13, of that branch and of the chairmanship of the body of the credit institution to which that branch belongs that exercises supervisory functions equivalent to those of a Board of Directors or a Supervisory Board.

However, the *Autorité de contrôle prudentiel et de résolution* may authorize the cumulation of these functions in the light of the justifications produced by the credit institution or finance company.

Article L. 511-59:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions shall review the governance system provided for in Article L. 511-55, periodically assess its effectiveness and ensure that corrective measures to remedy any shortcomings have been taken.

In the case of a branch of a credit institution referred to in I of Article L. 511-10, the persons referred to in the second paragraph of Article L. 511-13 shall transmit, to the body of the credit institution to which that branch reports that performs supervisory functions equivalent to those of a Board of Directors or a Supervisory Board, the information necessary for an examination of the governance arrangements provided for in Article L. 511-55, the periodic assessment of its effectiveness and the monitoring, where appropriate, of the corrective measures taken to remedy any deficiencies.

Article L. 511-60:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions approves and regularly reviews the strategies and policies governing the taking, management, monitoring and reduction of the risks to which the credit institution or finance company is or could be exposed, including risks generated by the economic environment.

In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 shall transmit to the body of the credit institution to which that branch reports that performs supervisory functions equivalent to those of a Board of Directors or a Supervisory Board, the information enabling that body to approve and regularly review the strategies and policies governing the taking, management, monitoring and reduction of the risks to which the branch is or could be exposed, including the risks generated by the economic environment.

Article L. 511-61:

The persons mentioned in Article L. 511-13 are required to be actively involved in the management of all significant risks incurred by the credit institution or finance company, as well as in the valuation of assets and the use of external credit ratings and internal models related to these risks. They ensure that adequate resources are devoted to this task.

Article L. 511-62:

In order to enable it to carry out the mission provided for in Article L. 511-60, the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions shall be informed, by the persons mentioned in Article L. 511-13, of all significant risks, risk management policies and changes thereto.

In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the persons mentioned in the second paragraph of Article L. 511-13 shall transmit, to the body of the credit institution to which that branch that performs supervisory functions equivalent to those of a board of directors or a supervisory board reports, information on all significant risks, on risk management policies and changes made to them, as well as any other information enabling that body to approve and regularly review the strategies and policies governing the taking, management, monitoring and reduction of the risks to which the branch is or could be exposed, including risks arising from the economic environment.

Article L. 511-63:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions and the persons referred to in Article L. 511-13 are required to dedicate sufficient time to the performance of the tasks referred to in Articles L. 511-60 to L. 511-62.

Article L. 511-64:

Credit institutions and finance companies set up a risk management function that is independent of operational functions and has adequate resources to enable it to carry out its mission.

Credit institutions and finance companies shall appoint a head of the risk management function. Where the head of the risk management function is not a person referred to in Article L. 511-13, nor a Deputy Chief Executive Officer, nor a member of the Executive Board or of any other body exercising equivalent management functions in the credit institution or finance company, he shall have a sufficiently high hierarchical position to enable him to carry out his function independently. He is subject to the provisions of Article L. 511-51.

Article L. 511-65:

The head of the risk management function may not be removed from office without the prior approval of the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions. He may, if necessary, appeal on this point directly to the board of directors, the supervisory board or any other body exercising equivalent supervisory functions.

Article L. 511-66:

If necessary, in the event of changes in risks affecting or likely to affect the credit institution or finance company, the head of the risk management function may report directly to the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions, without referring to the persons mentioned in Article L. 511-13.

Article L. 511-67:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions determines the guidelines and monitors the implementation by the persons mentioned in Article L. 511-13 of the supervisory arrangements in order to ensure the efficient and prudent management of the institution, in particular the separation of functions within the organization of the credit institution or finance company and the prevention of conflicts of interest.

In the case of a branch of a credit institution referred to in I of Article L. 511-10, the persons referred to in the second paragraph of Article L. 511-13 shall implement supervisory arrangements to ensure the efficient and prudent management of their branch, in particular the separation of functions within the organization of that branch and the prevention of conflicts of interest.

Article L. 511-68:

The persons mentioned in Article L. 511-13 ensure the integrity of the accounting and financial reporting systems.

Article L. 511-69:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions controls the publication and communication process and the quality and reliability of the information intended to be published and communicated by the credit institution or finance company.

Article L. 511-70:

An order of the Economy Minister specifies the conditions of application of the present sub-section.

Subsection 3: Compensation Policy and Practices (Articles L. 511-71 to L. 511-88)

Article L. 511-71:

The overall compensation policy, including discretionary salary and pension benefits as defined in Article 4, paragraph 1, 73 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, of credit institutions and finance companies shall apply to the persons mentioned in Article L. 511-13 and to categories of staff, including risk takers, persons exercising a control function and any employee who, in view of his overall income, is in the same salary bracket, whose professional activities have a significant impact on the risk profile of the company or group.

This policy is consistent with the economic strategy, objectives, values and long-term interests of the credit institution or finance company. It includes measures to avoid conflicts of interest. It is designed to promote sound and effective risk management.

It does not encourage risk-taking that exceeds the level of risk defined by the credit institution or finance company.

Article L. 511-72:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions adopts and regularly reviews the general principles of the compensation policy and monitors its implementation.

In the case of a branch of a credit institution referred to in I of Article L. 511-10, the persons referred to in the second paragraph of Article L. 511-13 shall transmit to the body of the credit institution to which that branch reports that performs supervisory functions equivalent to those of a board of directors or a supervisory board, the information enabling that body to adopt and regularly review the general principles of the compensation policy applicable by the branch and to monitor its implementation.

Article L. 511-73:

The Ordinary General Meeting of credit institutions and finance companies is consulted annually on the total amount of compensation of all kinds paid during the past financial year to the persons mentioned in Article L. 511-71.

Article L. 511-74:

At least once a year, the implementation of the compensation policy is subject to a central and independent internal evaluation to ensure compliance with the compensation policy and procedures adopted by the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions.

In the branches of credit institutions mentioned in I of Article L. 511-10, the implementation of the compensation policy is subject to at least once a year to a central and independent internal evaluation in order to ensure compliance with the compensation policy and procedures adopted by these branches.

Article L. 511-75:

Staff performing control functions are remunerated on the basis of the achievement of objectives related to their functions, regardless of the performance of the areas of activity they control.

Article L. 511-76:

The compensation policy of credit institutions and finance companies makes a distinction based on clear criteria between fixed basic compensation and variable compensation.

Basic fixed compensation primarily reflects professional experience in relation to the position held and the responsibilities exercised as stipulated in the employment contract or mentioned in the job description.

Variable compensation reflects sustainable performance in line with the risk policy. It also reflects performance that goes beyond the stipulations of the employment contract or the forecasts in the job description.

Article L. 511-77:

When performance is taken into account, variable compensation is established on the basis of a combined assessment of the individual's performance, that of his or her business unit and the overall results of the credit institution or finance company. Performance measurement takes into account all the risks to which the credit institution or finance company is or is likely to be exposed, as well as liquidity requirements and the cost of capital.

Performance is assessed on a multi-year basis and the variable portion of compensation is paid over a period that takes into account the length of the business cycle of the credit institution or finance company.

Guaranteed variable compensation is prohibited. However, they may exceptionally be granted to newly recruited staff provided that the credit institution or finance company has a sound and solid financial base. They are limited to the first year of employment.

Variable compensation does not limit the credit institution's or finance company's ability to strengthen its capital base.

Article L. 511-78:

The variable portion of the total compensation of the persons mentioned in Article L. 511-71 may not exceed the amount of the fixed portion of such compensation.

By decision of the competent General Meeting of the credit institution or finance company, it may be increased to twice the amount of the fixed remuneration.

The competent General Meeting shall decide by a two-thirds majority provided that at least half of the shareholders or holders of equivalent property rights are represented. Failing this, it decides by a three-quarters majority.

The persons concerned by the caps on variable compensation are not authorized to exercise, directly or indirectly, the voting rights that they may have as shareholders or holders of equivalent property rights entitling them to participate in the vote.

Credit institutions and finance companies shall inform, without delay, the *Autorité de contrôle prudentiel et de résolution* on the cap proposed to the competent shareholders' meeting and justify their choice to the latter. They shall inform the *Autorité de contrôle prudentiel et de résolution* without delay of the result of the vote of the competent general meeting.

NOTA: In accordance with Article 10 VII of Ordinance no. 2014-158 of February 20, 2014, the provisions of Article L. 511-78 of the Monetary and Financial Code, as amended by this

Ordinance, apply to compensation paid in respect of fiscal years beginning on or after 1 January 2014.

Article L. 511-79:

Credit institutions or finance companies may apply a discount rate to no more than one-quarter of total variable compensation, provided that payment is made in the form of deferred instruments for a period of at least five years.

Article L. 511-80:

Payments linked to the early termination of a contract must correspond to effective performance assessed over time.

Overall remuneration linked to compensation or buy-out of previous employment contracts must be in line with the long-term interests of the credit institution or finance company.

Article L. 511-81:

At least half of the variable compensation is awarded in the form of shares or equivalent ownership rights and, if applicable, other instruments mentioned in Articles 52 or 63 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 or other instruments that can be fully converted into equity instruments or amortized.

Article L. 511-82:

Payment of at least 40% of the variable portion of total compensation is deferred for a period of at least three years. The duration of the deferral is set taking into account the nature of the company, the risks to which it is exposed and the activity of the person concerned within the credit institution or finance company.

In the case of particularly high variable compensation, the payment of at least 60% of the variable portion is deferred for a period of at least three years. In addition to the criteria mentioned in the previous paragraph, the duration of the deferral takes into account the business cycle of the credit institution or finance company.

In any case, the frequency of payment is no faster than *pro rata temporis.*

Article L. 511-83:

In all cases, the actual payment of the variable portion of compensation, including the portion carried forward pursuant to Article L. 511-82, takes into account the financial position of the credit institution or finance company and the actual performance mentioned in Article L. 511-77.

Article L. 511-84:

Notwithstanding Article L. 1331-2 of the Labor Code, the total amount of variable compensation may, in whole or in part, be reduced or refunded if the person concerned has disregarded the rules laid down by the institution with regard to risk-taking, in particular

because of his or her responsibility for actions that have led to significant losses for the institution or in the event of failure to comply with obligations of good repute and competence.

The payment of discretionary pension benefits is made in the form of financial instruments mentioned in Article L. 511-81 of the present code and is deferred for five years from the date of the person's departure from the credit institution or finance company.

Article L. 511-84-1:

For the application of articles L. 1226-15, L. 1234-9, L. 1235-3, L. 1235-3-1, L. 1235-11 and L. 1235-16 of the Labor Code, the determination of the indemnity to be paid by the employer does not take into account, for risk takers within the meaning of Articles 3 and 4 of the delegated regulation (EU) No. 604/2014 of the Commission of March 4, 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with technical regulatory standards as regards the appropriate qualitative and quantitative criteria for identifying the categories of staff whose professional activities have a significant impact on the risk profile of an institution, the portion of the variable portion of the compensation whose payment may be reduced or refunded pursuant to Article L. 511-84 of the present code.

Article L. 511-85:

The persons referred to in Article L. 511-71 are prohibited from using individual hedging or insurance strategies with respect to compensation or liability in order to limit the application of the provisions of this subsection.

The provisions of the preceding paragraph are of public order.

Article L. 511-86:

Variable compensation awarded by credit institutions and finance companies benefiting from exceptional public intervention is strictly limited when it is not compatible with their ability to maintain their equity capital at a sufficient level and to exit the public aid program in a timely manner.

Subject to compliance with the provisions of V of Article 4 of the 2011 Amending Finance Act no. 2011-1416 of 2 November, 2011, no variable compensation is paid to the persons mentioned in Article L. 511-13 as well as to the deputy chief executive officers, members of the board of directors and any persons holding equivalent management positions within a credit institution or finance company benefiting from exceptional public intervention unless justified.

Article L. 511-87:

The *Autorité de contrôle prudentiel et de résolution* is competent to examine the compensation policies and practices of credit institutions and finance companies with respect to the persons mentioned in Article L. 511-71.

Article L. 511-88:

A decree in *Conseil d'Etat* defines the conditions of application of the present sub-section.

Subsection 4: Specialized Committees (Articles L. 511-89 to L. 511-103)

Paragraph 1: Common Provisions (Articles L. 511-89 to L. 511-91)

Article L. 511-89:

Within credit institutions and finance companies of significant importance with regard to their size and internal organization and the nature, scale and complexity of their activities, the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions shall set up a risk committee, an appointments committee and a compensation committee.

The branches of credit institutions mentioned in I of Article L. 511-10, when they are of significant importance, are required to justify the existence of a risk committee and a compensation committee, or of a system for achieving the same purposes, competent for these branches.

The criteria of material importance according to which institutions are required to meet the obligations of this article are specified by order of the Economy Minister.

Article L. 511-90:

The committees referred to in Article L. 511-89 are composed of members of the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions and who do not exercise management functions within the credit institution or finance company.

In the case of a branch of a credit institution referred to in I of Article L. 511-10, the committees and arrangements provided for in the second paragraph of Article L. 511-89 are composed of persons independent of those who effectively direct the business of the branch within the meaning of the second paragraph of Article L. 511-13. This independence is notably guaranteed by the conditions of their appointment and remuneration. These persons are subject to professional secret under the conditions and under the penalties provided for in Articles L. 511-33 and L. 571-4.

The members of the committees referred to in Article L. 511-89 have knowledge and skills appropriate to the performance of the tasks of the committee in which they participate.

In credit institutions and finance companies that are required, pursuant to the provisions of the Commercial Code, to have employee representatives on the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions, the compensation committee referred to in Article L. 511-102 includes at least one of these employee representatives.

Article L. 511-91:

When the credit institutions and finance companies mentioned in Article L. 511-89 are part of a group subject to the supervision of the *Autorité de contrôle prudentiel et de résolution* on a consolidated or sub-consolidated basis, the Board of Directors, the Supervisory Board or any

other body exercising equivalent supervisory functions may decide, unless otherwise ordered by the *Autorité de contrôle prudentiel et de résolution*, in accordance with Article L. 511-41-3, that the functions devolved to the committees provided for in Article L. 511-89 are performed by the committee of the credit institution or finance company at the level of which supervision is exercised on a consolidated or sub-consolidated basis.

In this case, the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions over the credit institution or finance company shall receive the information concerning it contained in the annual review carried out within the credit institution or finance company at the level of which supervision is exercised on a consolidated or sub-consolidated basis by the *Autorité de contrôle prudentiel et de résolution*.

Paragraph 2: Risk Committees (Articles L. 511-92 to L. 511-97)

Article L. 511-92:

The members of the risk committee have knowledge, skills and expertise that enable them to understand and monitor the strategy and risk appetite of the credit institution or finance company.

Article L. 511-93:

The risk committee advises the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions on the overall strategy of the credit institution or finance company and its risk appetite, both current and future.

It assists the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions when the latter monitors the implementation of this strategy by the persons mentioned in Article L. 511-13 and by the head of the risk management function.

In the case of a branch of a credit institution referred to in I of Article L. 511-10, the risk committee or the system referred to in Article L. 511-89 communicates, to the body of the credit institution to which the branch belongs that performs supervisory functions equivalent to those of a Board of Directors or a Supervisory Board, the information necessary to determine the branch's strategy and its risk appetite, both current and future. The risk committee or the mechanism mentioned in Article L. 511-89 monitors the implementation of this strategy by the persons mentioned in the second paragraph of Article L. 511-13 and by the head of the risk management function.

Article L. 511-94:

As part of its mission, the Risk Committee examines whether the prices of the products and services mentioned in Books II and III offered to clients are compatible with the risk strategy of the credit institution or finance company.

When these prices do not adequately reflect the risks, it presents to the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions an action plan to remedy the situation.

In the case of a branch of a credit institution mentioned in I of Article L. 511-10, where the prices of the products and services mentioned in Books II and III offered to customers do not correctly reflect the risks, the risk committee, or the mechanism mentioned in Article L. 511-89, informs the body of the credit institution to which this branch belongs that exercises supervisory functions equivalent to those of a Board of Directors or a Supervisory Board and presents it with an action plan to remedy the situation.

Article L. 511-95:

Notwithstanding the missions of the compensation committee mentioned in Article L. 511-102, the risk committee examines whether the incentives provided for by the compensation policy and practices of the credit institution or finance company are compatible with the situation of the latter with regard to the risks to which they are exposed, their capital, their liquidity and the probability and timing of expected profits.

Article L. 511-96:

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions and, where applicable, the Risk Committee shall have access to all information on the risk situation of the credit institution or finance company.

They may, if necessary, call upon the services of the head of the risk management function mentioned in Article L. 511-64 or external experts.

Article L. 511-97:

Credit institutions and finance companies other than those mentioned in Article L. 511-89 may assign, with the authorization of the *Autorité de contrôle prudentiel et de résolution*, the tasks entrusted to the risk committee to the specialized committee mentioned in Article L. 823-19 of the Commercial Code.

Paragraph 3: Nomination Committees (Articles L. 511-98 to L. 511-101)

Article L. 511-98:

The appointments committee provided for in Article L. 511-89 identifies and recommends to the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions, candidates suitable for the performance of the duties of director, member of the Supervisory Board or any other body exercising equivalent supervisory functions, with a view to proposing their application to the shareholders' meeting.

It assesses the balance and diversity of knowledge, skills and experience available individually and collectively to the members of the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions.

It specifies the missions and qualifications required for the functions performed on these boards and assesses the time to be dedicated to these functions.

Article L. 511-99:

Notwithstanding other applicable provisions in this area, the appointments committee shall set an objective to be achieved with regard to the balanced representation of women and men on the Board of Directors, the Supervisory Board or any other body exercising equivalent functions. It develops a policy to achieve this objective.

The objective and policy of the credit institutions and the arrangements for its implementation shall be made public in accordance with Article 435(2)(c) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

Finance companies are required to comply with the provisions of the preceding paragraph.

Article L. 511-100:

The appointments committee periodically and at least once a year evaluates the structure, size, composition and effectiveness of the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions with regard to the tasks assigned to it and submits to this Board or body any useful recommendations.

It periodically and at least once a year evaluates the knowledge, skills and experience of the members of the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions, both individually and collectively, and reports to it.

It periodically reviews the policies of the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions with respect to the selection and appointment of the persons mentioned in Article L. 511-13, the Deputy Chief Executive Officers and the head of the risk management function and makes recommendations in this regard.

Article L. 511-101:

In carrying out its duties, the appointments committee ensures that the Board of Directors, the supervisory board or any other body exercising equivalent supervisory functions is not dominated by a person or a small group of persons in a manner prejudicial to the interests of the credit institution or finance company.

The appointments committee has the necessary resources to carry out its tasks and may call on external advice.

Paragraph 4: Compensation committees (Articles L. 511-102 to L. 511-103)

Article L. 511-102:

I. - The compensation committee prepares the decisions that the Board of Directors, the supervisory board or any other body exercising equivalent supervisory functions adopts concerning remuneration, in particular those affecting risk and risk management in the credit institution or finance company.

This committee or, failing that, the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions shall conduct an annual review:

1° Of the principles of the company's compensation policy;

2° Of the compensation, indemnities and benefits of all kinds granted to the company's corporate officers;

3° Of the compensation policy for employees who manage UCITS, FIAs falling within the scope of paragraphs 1, 2, 3, 5 and 6 of sub-section 2, sub-sections 3, 4 and 5 of section 2 of Chapter IV of Title I of Book II and categories of staff, including the persons mentioned in Article L. 511-13, risk takers, persons exercising a control function and any employee who, in view of his overall income, is in the same salary bracket, whose professional activities have a significant impact on the risk profile of the company or group.

This committee or, failing that, the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions directly controls the compensation of the head of the risk management function mentioned in Article L. 511-64 and, where applicable, the compliance officer.

The committee may be assisted by the internal control departments or external experts. It regularly reports on its work to the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions.

Credit institutions and finance companies include in the report presented to the General Meeting information on the compensation policy and practices set by order of the Economy Minister.

The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions for credit institutions and finance companies that are part of a group may decide to apply the compensation policy of the company controlling it within the meaning of Article L. 233-16 of the Commercial Code.

The provisions of this article apply to the venture capital companies mentioned in article 1-1 of the Law n° 85-695 of 11 July 1985 on various economic and financial provisions.

II. - In the case of a branch of a credit institution mentioned in I of Article L. 511-10, the compensation committee, or the mechanism mentioned in Article L. 511-89, communicates to the body of the credit institution to which that branch belongs, which performs supervisory functions equivalent to those of a board of directors or a supervisory board, the necessary information concerning compensation, in particular that which has an impact on the branch's risk and risk management.

This committee or mechanism conducts an annual review:

1° Of the principles of the branch's compensation policy;

2° Of the compensation policy for employees of the branch who manage undertakings for collective investment in transferable securities, alternative investment funds falling within the scope of paragraphs 1, 2, 3, 5 and 6 of sub-section 2, sub-sections 3, 4 and 5 of section 2 of

Chapter IV of Title I of Book II and categories of staff, including the persons mentioned in the second paragraph of Article L. 511-13, risk takers, persons exercising a control function and any employee who, in view of his overall income, is in the same salary bracket, whose professional activities have a significant impact on the branch's risk profile.

This committee or mechanism directly controls the compensation of the head of the risk management function referred to in Article L. 511-64 and, where applicable, the head of compliance.

This committee or mechanism may be assisted by the internal control departments or external experts. It regularly reports on its work to the body of the credit institution to which the branch that performs supervisory functions equivalent to those of a board of directors or a supervisory board reports regularly.

The persons referred to in the second paragraph of Article L. 511-13 shall prepare and transmit an annual report containing information on the branch's compensation policy and practices to the body of the credit institution to which the branch that performs functions equivalent to those of a general meeting reports.

Section 9: Permanent mission of public interest assigned to a credit institution or a finance company (Article L. 511-104)

Article L. 511-104:

The State may assign a permanent mission of public interest to a credit institution or a finance company, which may carry out banking operations relating to this mission under the conditions defined by a decree in *Conseil d'Etat*.

Book V: Service Providers (Articles L. 500-1 to L. 574-6)

Title III: Investment service providers (Articles L. 531-0 to L. 533-33)

Chapter III: Obligations of investment service providers (Articles L. 533-1 to L. 533-33)

Section 1: General provisions common to investment service providers (Article L. 533-1)

Article L. 533-1:

Investment service providers act in an honest, fair and professional manner that promotes the integrity of the market.

Section 2: Management standards applicable to investment service providers (Articles L. 533-2 to L. 533-4-1)

Article L. 533-2:

Investment service providers other than asset management firms shall have sound administrative procedures, internal control mechanisms, effective risk assessment techniques, effective control and back-up arrangements for their IT systems and risk mitigation techniques for OTC derivative contracts not cleared through a central counterparty that comply with Article 11 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

Investment service providers other than portfolio management companies are required, with respect to their investment service activities, to comply with the management standards designed to guarantee their liquidity, solvency and the balance of their financial structure defined by the Minister for the Economy in application of Article L. 611-3.

In particular, they must comply with coverage and risk division ratios.

Failure to comply with these obligations will result in the application of the procedure provided for in Articles L. 612-39, L. 612-40 and L. 621-15.

Article L. 533-2-1:

The provisions of Article L. 511-41-1 A shall apply to investment firms, with the exception of those:

1° Which are authorised exclusively to provide one or more of the investment services mentioned in 1, 2, 4 and 5 of Article L. 321-1 and which are not authorised to hold client funds or securities; or

2° Who are not authorized to provide one or more of the investment services mentioned in 3, 6.1 and 6.2 of Article L. 321-1.

Article L. 533-2-2:

Investment firms implement systems, strategies and procedures that are subject to regular internal control mentioned in Article L. 511-55 enabling them to detect, measure and manage the risks to which they are or could be exposed as a result of their activities.

These risks include credit and counterparty risk, including residual risk, concentration risk related to counterparty exposures, risk generated by securitization transactions, market risk, interest rate risk, operational risk, liquidity risk and excessive leverage risk.

Investment firms, particularly in view of their size, internal organization and activities, develop an internal capacity to assess the risks in question. They use, if authorized by the *Autorité de contrôle prudentiel et de résolution*, an internal approach to determine the capital requirements appropriate to their situation.

The arrangements, strategies and procedures referred to in the first subparagraph may also be designed to enable investment firms to assess and maintain adequate amounts and structures of internal capital to cover some of the risks to which they are or might be exposed.

Investment firms must, depending on the nature of the risks involved, establish contingency and business continuity plans, maintain adequate liquidity cushions and have plans for restoring their liquidity.

Parent companies of groups subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 shall ensure that the arrangements, strategies and procedures referred to in the first paragraph that are put in place by their subsidiaries are consistent with each other and well integrated.

The conditions of application of this Article are set by order of the Economy Minister.

Article L. 533-2-3:

The *Autorité de contrôle prudentiel et de résolution* evaluates and monitors the systems, strategies and procedures implemented by investment firms to detect, measure and manage the risks to which they are or could be exposed, as defined in Article L. 533-2-2.

The Authority supervises the use by investment firms of internal approaches for determining the capital requirements imposed on them, ensuring in particular that they do not rely exclusively or mechanically on external credit ratings.

On the basis of the information provided by investment firms, it shall assess at least once a year the quality of the internal approaches used for the calculation of capital requirements.

The Authority shall carry out a comparative analysis of internal approaches. If the Authority determines, as a result of that analysis, that an investment firm's internal approach leads to an underestimation of its capital requirement, it may impose corrective measures. These corrective measures must not lead to standardisation or a propensity for certain methods, create unjustified incentives or provoke imitative behaviour.

Where the *Autorité de contrôle prudentiel et de résolution* finds that investment firms with similar risk profiles due to the similarity of their business models or the geographical location of their exposures are or could be exposed to similar risks or represent similar risks to the financial system, it shall apply the provisions of this Article to them in a similar or identical manner.

The conditions of application of this Article are set by order of the Economy Minister.

Article L. 533-3:

Investment service providers other than portfolio management companies shall notify the *Autorité de contrôle prudentiel et de résolution* of significant intra-group transactions, under the conditions defined in Article L. 612-24.

Article L. 533-4:

Where an investment service provider other than a portfolio management company has as its parent company a credit institution, an investment firm, a financial holding company, a mixed financial holding company which has its head office in a State which is not a member of the European Union nor a party to the Agreement on the European Economic Area, the *Autorité de contrôle prudentiel et de résolution* shall verify, on its own initiative or at the request of the parent company or a regulated entity authorized in a Member State of the European Union or in another State party to the Agreement on the European Economic Area, that this investment service provider is subject to consolidated supervision by a supervisory authority of the third country equivalent to that applicable in France.

For this purpose, the *Autorité de contrôle prudentiel et de résolution* consults the European Banking Authority and the relevant competent authorities of other Member States of the European Union or other States party to the Agreement on the European Economic Area.

In the absence of equivalent consolidated supervision, the provisions relating to consolidated supervision applicable in France shall be applied by analogy to investment services providers other than portfolio management companies.

The *Autorité de contrôle prudentiel et de résolution* may also use other methods that ensure equivalent consolidated supervision, after approval by the competent authority likely to be responsible for consolidated supervision for the European Economic Area and consultation with the other competent authorities concerned in a Member State or another State party to the Agreement on the European Economic Area. In particular, it may require the formation of a financial holding company having its registered office in a Member State of the European Union or in another State party to the Agreement on the European Economic Area.

Article L. 533-4-1:

Investment firms that have as a subsidiary at least one credit institution, investment firm or financial institution within the meaning of Article L. 511-21 or that hold a stake in such an institution or firm are required to comply, on the basis of their consolidated financial position within the meaning of Article 4(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013, with management standards determined by an order of the Economy Minister as well as the rules relating to shareholdings mentioned in Article L. 531-5.

Section 3: Accounting and reporting obligations applicable to investment service providers (Articles L. 533-5 to L. 533-9)

Article L. 533-5:

Investment firms are bound by the obligations set out in Articles L. 511-35, L. 511-36, L. 511-37 and L. 511-39. They have sound accounting procedures.

The preceding paragraph is applicable to portfolio management companies, except for Article L. 511-37.

Article L. 533-6:

Investment service providers, market undertakings and clearing houses must provide the *Banque de France* with the information needed to compile monetary statistics.

Article L. 533-7:

Companies established in France and which are part of a group to which one or more portfolio management companies belong that have their registered office in a Member State of the European Union or in another State party to the Agreement on the European Economic Area or in a State where the agreements provided for in Article L. 632-16 are applicable are required, notwithstanding any provisions to the contrary, to transmit to companies in the same group the information necessary for the organization of the fight against money laundering and terrorist financing. The provisions of the sixth paragraph of Article L. 511-34 are applicable to such information.

Article L. 533-8:

Investment service providers shall keep, under the conditions laid down in the General Regulation of the *Autorité des marchés financiers*, the relevant information relating to all transactions in financial instruments that they have concluded.

Article L. 533-9:

Where investment service providers other than portfolio management companies trade over-the-counter financial instruments that are economically equivalent to commodity derivatives, units mentioned in Article L. 229-7 of the Environmental Code or to financial contracts having the latter as underlying assets, they provide, in accordance with Article 26 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and, where applicable, in Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on Integrity and Transparency in the Wholesale Energy Market, at least once a day, to the competent authority of the trading venue where these instruments or units are traded or to the competent authority designated in the first paragraph of Article L. 420-13 when these instruments or units are traded on trading platforms located in more than one Member State of the European Union or party to the Agreement on the European Economic Area, a full breakdown:

1° The positions they have taken on these instruments or units;

2° The positions of their clients;

3° The positions of their clients' clients up to the final client.

Section 4: Rules of organization (Articles L. 533-10 to L. 533-10-8)

Subsection 1: Provisions applicable to investment service providers (Articles L. 533-10 to L. 533-10-2)

Article L. 533-10:

I.- Portfolio management companies:

1° Establish rules and procedures to ensure compliance with the provisions applicable to them, including those provided for in Article 11 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of July 4, 2012 on over-the-counter derivatives, central counterparties and trade repositories;

2° Establish rules and procedures to ensure compliance by persons placed under their authority or acting on their behalf with the provisions applicable to the portfolio management companies themselves and to such persons, in particular the conditions and limits under which the latter may carry out personal transactions for their own account. These conditions and limits are included in the internal regulations and integrated into the companies' programme of operations;

3° Take all reasonable measures to prevent conflicts of interest from adversely affecting the interests of their clients. Such conflicts of interest are those which arise between, on the one hand, the portfolio management companies themselves, persons under their authority or acting on their behalf or any other person directly or indirectly linked to them by a control relationship and, on the other hand, their clients, or between two clients, in the provision of any investment or related services or a combination of such services. Where these measures are not sufficient to ensure, with reasonable certainty, that the risk of damage to the interests of clients will be avoided, portfolio management companies shall, before acting on their behalf, clearly disclose to clients the general nature or source of such conflicts of interest;

4° Take reasonable steps using appropriate and proportionate resources and procedures to ensure continuity and regularity in the provision of investment services, in particular when entrusting third parties with important operational functions;

5° Keep a record of any services they provide and any transactions they carry out, enabling the *Autorité des marchés financiers* to monitor compliance with their obligations and, in particular, all their obligations to clients, including potential clients.

II- Investment service providers other than portfolio management companies:

1° Establish rules and procedures to ensure compliance with the provisions applicable to them, including those provided for in Article 11 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of July 4, 2012 on over-the-counter derivatives, central counterparties and trade repositories;

2° Establish rules and procedures to ensure compliance by persons placed under their authority or acting on their behalf with the provisions applicable to investment service providers themselves and to such persons, in particular the conditions and limits under which the latter may carry out personal transactions for their own account. These conditions and limits are set out in the internal rules and incorporated into the programme of operations of the providers;

3° Maintain and apply effective organizational and administrative arrangements, with a view to taking all reasonable measures to prevent conflicts of interest from adversely affecting the

interests of their clients. To this end, they shall take all appropriate measures to detect and avoid or manage conflicts of interest. Conflicts of interest are those arising between providers themselves, persons under their authority or acting on their behalf or any other person directly or indirectly linked to them by control and their clients, or between two clients, in the provision of any investment or related services or a combination of such services, including those arising from the receipt of benefits from third parties or from the remuneration and other incentive structures of providers.

Where these measures are not sufficient to ensure with reasonable certainty that the risk of harm to clients' interests will be avoided, providers shall, before acting on their behalf, clearly disclose to clients the general nature and source of such conflicts of interest and the measures taken to mitigate such risks. This information shall be provided in a durable medium and shall include sufficient detail, taking into account the nature of the client, to enable the client to make an informed decision regarding the service in which the conflict of interest arises;

4° Take reasonable steps, using appropriate and proportionate systems, resources and procedures, to ensure continuity, regularity and satisfactory provision of investment services, in particular when entrusting third parties with essential or important operational functions or other tasks. In such cases, they shall take reasonable steps to avoid undue heightening of operational risk;

5° Have robust security mechanisms to ensure the security and authentication of the means of information transfer, minimize the risk of data corruption and unauthorized access and prevent information leaks in order to maintain data confidentiality at all times;

6° Keep a record of any services they provide and any transactions they carry out, enabling the *Autorité des marchés financiers* to carry out its supervisory duties and to monitor compliance by service providers with all their professional obligations, including those to their clients or potential clients and concerning the integrity of the market;

7° When holding financial instruments belonging to clients, take appropriate measures to safeguard the clients' property rights in these financial instruments and prevent their use for their own account, unless the clients have given their express consent;

8° When holding funds belonging to clients, take appropriate measures to safeguard the rights of clients over such funds, in particular in the event of insolvency. Investment firms may under no circumstances use for their own account funds deposited with them by their clients, subject to Articles L. 440-7 to L. 440-10;

9° Do not enter into title transfer financial collateral arrangements with non-professional clients in order to secure their present or future, actual, contingent or potential obligations, or to cover them in any other way.

An order of the Economy Minister issued in accordance with Article L. 611-3 specifies the conditions of application of 4° and 8°.

III- The recordings referred to in 6° of II include the recording of telephone conversations or electronic communications relating, at least, to transactions concluded in the context of proprietary trading and the provision of services relating to client orders which concern the reception, transmission and execution of client orders. They also include the recording of telephone conversations or electronic communications intended to give rise to transactions

concluded in the context of proprietary trading or the provision of services relating to client orders concerning the receipt, transmission and execution of client orders, even if such conversations and communications do not give rise to the conclusion of such transactions or the provision of services relating to client orders.

These recordings are transmitted to the clients concerned at their request. They are kept for a period of five years and, when the *Autorité de contrôle prudentiel et de résolution* or the *Autorité des marchés financiers* deems it useful, for a period of up to seven years.

The providers concerned:

1° Take all reasonable measures to record relevant telephone conversations and electronic communications that are made, sent or received using equipment provided by them to an employee or contractor or whose use by an employee or contractor has been approved or authorized by them;

2° Take all reasonable measures to prevent an employee or contractor from making, sending or receiving the telephone conversations and electronic communications concerned using private equipment that they are unable to record or copy;

3° Notify their clients that communications or telephone conversations with their clients that give rise or are likely to give rise to transactions are recorded. This notification may be made only once, before the provision of investment services to clients;

4° Do not provide investment services by telephone to clients who have not been informed in advance that their telephone communications or conversations are being recorded, when these investment services relate to the reception, transmission and execution of client orders.

Clients may place orders through other channels, provided that these communications are made by means of a durable medium. Such orders are considered equivalent to orders transmitted by telephone.

Article L. 533-10-1:

Portfolio management companies as well as investment service providers that provide the investment service mentioned in 4 of article L. 321-1 employ:

1° A risk management method on behalf of third parties that enables them to control and measure at any time the risk associated with the management of portfolio positions and transactions and the contribution of these to the general risk profile of the managed portfolio. In particular, portfolio management companies shall not exclusively or mechanically use credit ratings issued by credit rating agencies within the meaning of point b of paragraph 1 of Article 3 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies to assess the credit quality of the assets in the portfolio.

2° A method enabling an accurate and independent assessment of the positions and transactions in the managed portfolio, and in particular of the value of over-the-counter financial contracts.

Portfolio management companies set reasonable leverage limits for each AIF they manage and comply with these limits at all times.

Article L. 533-10-2:

Without prejudice to the application of Section 8 of Chapter I of Title I of Book V, Sections II and III of Article L. 533-29 are applicable to credit institutions authorized to provide one or more of the investment services mentioned in Article L. 321-1.

Subsection 2: Algorithmic trading activities applicable to investment service providers other than portfolio management companies (Articles L. 533-10-3 to L. 533-10-7)

Article L. 533-10-3:

In this subsection and for the application of the provisions relating to algorithmic trading:

1° "Algorithmic trading" means the trading of financial instruments in which a computer algorithm automatically determines the parameters of orders such as the opportunity or the moment of their issue, the price or quantity conditions or the way in which they will be managed after their issue, without human intervention or with limited human intervention. Algorithmic trading does not refer to mechanisms used solely for:

a) The routing of orders to one or more trading platforms;

b) The sole processing of orders in the absence of a trading parameter;

c) The confirmation of orders;

d) Post-trade processing of executed transactions;

2° The expression: "high-frequency algorithmic trading technique" means any algorithmic trading technique characterized by both:

(a) An infrastructure designed to minimize computer and other types of latency, including at least one of the following systems allowing the insertion of algorithmic orders: collocation, proximity hosting or direct high-speed electronic access;

(b) A mechanism that decides to generate, generate, route or execute orders without human intervention;

(c) A high intra-day throughput of messages that constitute orders, quotes or cancellations;

3° "Market-making strategy" means, for an investment services provider other than a portfolio management company that trades for its own account and acts as a member of a trading platform, the simultaneous display of firm and competitive buy and sell prices for comparable sizes, relating to one or more financial instruments on that platform, with the result of providing liquidity to the market as a whole on a regular and frequent basis.

Article L. 533-10-4:

Investment service providers other than portfolio management companies that use algorithmic trading:

1° Have effective risk systems and controls appropriate to their business to ensure that their trading systems:

a) Are resilient and have sufficient capacity;

b) Are subject to appropriate trading thresholds and limits;

c) Prevent the sending of erroneous orders or any other operation of the systems likely to give rise to or contribute to market disruption;

d) May not be used for any purpose contrary to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, or to the rules of a trading platform to which these providers are connected;

2° Have effective business continuity plans in place to deal with any failure of their trading systems, and ensure that such systems are fully tested and properly monitored to ensure compliance with the requirements of this Article.

Article L. 533-10-5:

Investment service providers other than portfolio management companies that use algorithmic trading in a Member State of the European Union or party to the Agreement on the European Economic Area:

1° Notify the *Autorité des Marchés Financiers* and the competent authority designated as the contact point, within the meaning of Article 79(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, of the trading venue concerned;

2° Document the nature of their algorithmic trading strategies and provide detailed information on the trading parameters or limits, the tests performed on their systems and the main compliance and risk controls implemented to ensure that the conditions provided for in Article L. 533-10-4 are met. The *Autorité des marchés financiers* may, at any time, request additional information from service providers on the algorithmic trading they use and on the systems used for this activity;

3° Keep a record of algorithmic trading activities and ensure that it is sufficient to enable the AMF to verify compliance with the obligations set forth in III of Article L. 533-10.

Article L. 533-10-6:

Investment service providers other than portfolio management companies that use algorithmic trading to implement a market-making strategy shall comply with the following conditions, taking into account the liquidity, size and nature of the market and the characteristics of the financial instrument concerned:

1° They carry out this market making on a continuous basis during a determined proportion of the trading hours of the trading platform, except in exceptional circumstances, with the result of providing this trading platform with liquidity on a regular and predictable basis;

2° They shall enter into a written contract with the trading platform that specifies at least the obligations provided for in 1°;

3° They have effective systems and controls in place to ensure that they comply at all times with their obligations under the contract referred to in 2°.

Article L. 533-10-7:

Investment service providers other than portfolio management firms that use a high-frequency algorithmic trading technique maintain an accurate and chronological record of all orders they place, including order cancellations, executed orders and quotes on trading platforms.

Subsection 3: Provisions applicable to investment service providers other than portfolio management companies relating to the provision of direct electronic access to a trading platform (Article L. 533-10-8)

Article L. 533-10-8:

Investment service providers other than portfolio management companies that provide individuals with direct electronic access to a trading platform:

1° Have effective systems and controls in place to ensure that:

a) The suitability of persons using this service is properly assessed and reviewed;

b) Such persons are prevented from exceeding appropriate pre-set trading and credit thresholds;

c) The transactions carried out by these persons are properly monitored;

d) Appropriate risk controls shall prevent any trading that may create risks for the providers themselves, give rise to or contribute to market disruption or be contrary to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse or the rules of the trading venue;

2° Ensure that persons using this service comply with the requirements of this chapter and the rules of the trading venue;

3° Monitor transactions with a view to detecting any violation of these rules, any trading conditions likely to disrupt the market or any behaviour potentially indicative of market abuse that must be reported to the *Autorité des marchés financiers*;

4° Conclude a written contract with the persons who use this service, covering the essential rights and obligations arising from the provision of this service and stipulating that the service providers remain liable under this chapter;

5° Notify the *Autorité des marchés financiers* and the competent authority designated as the contact point, within the meaning of Article 79(1) of Directive 2014/65/EU of the European

Parliament and of the Council of 15 May 2014 on markets in financial instruments, of the trading venue concerned;

6° Provide, on a timely and regular basis, a description of the systems and controls referred to in this Article and proof that they have been applied;

7° Keep a record of the activities mentioned in the present Article and ensure that this record is sufficient to enable the AMF to verify compliance with the obligations set forth in III of Article L. 533-10.

Section 5: Rules of good conduct (Articles L. 533-11 to L. 533-22-4)

Subsection 1: Provisions common to investment service providers other than portfolio management companies (Articles L. 533-11 to L. 533-20)

Article L. 533-11:

When providing investment and related services to clients, investment service providers other than portfolio management companies act in an honest, fair and professional manner, serving the best interests of clients.

Article L. 533-12:

I. - All information, including communications of a promotional nature, sent by an investment service provider other than a portfolio management company to clients, including potential clients, shall be accurate, clear and not misleading. Promotional communications are clearly identifiable as such.

II- Investment service providers other than portfolio management companies shall provide their clients, including potential clients, with timely and appropriate information about the investment service provider other than a portfolio management company and its services, the financial instruments and investment strategies offered, the execution venues and all related costs and fees.

A decree shall specify the information communicated to the client pursuant to this II.

III - The information mentioned in II shall be provided in a comprehensible form so that clients, in particular potential clients, can reasonably understand the nature of the investment service and the specific type of financial instrument offered as well as the related risks, in order to enable clients to make informed investment decisions.

This information may be provided in a standardised form under the conditions laid down in the General Regulation of the *Autorité des marchés financiers*.

IV-Where an investment service is offered in the context of a financial product subject to other provisions, relating to credit institutions or consumer credits, regarding information requirements, this service is not subject to the information obligations provided for in this article.

Article L. 533-12-1:

Where an investment service provider other than a portfolio management company offers an investment service together with another service or product as part of a bundle or as a condition for obtaining the agreement or bundle, it shall inform the client whether it is possible to purchase the different elements of the offer or agreement separately and shall provide separate evidence of the costs and charges inherent in each element.

Where the resulting risks are likely to be different from those associated with the individual elements, the provider shall provide non-professional clients with an appropriate description of the different elements of the agreement or bundle and explain how the interaction changes the risk.

Article L. 533-12-2:

When an investment service provider other than a portfolio management company informs clients that the service mentioned in 5 of Article L. 321-1 is provided independently:

1° It assesses a sufficient range of financial instruments available on the market, which must be sufficiently diversified in terms of their type and their issuers or providers to ensure that the client's investment objectives can be appropriately met. The evaluation is not limited to financial instruments issued or provided by the provider itself, entities with which it has close links or other entities with which it has such close legal or economic relations that they present a risk of compromising the independence of the advice provided;

2° It does not accept, unless it returns them in full to the clients, any remuneration, commission or other monetary or non-monetary benefits in connection with the provision of the service to the clients, paid or provided by a third party. Minor non-monetary benefits which may improve the quality of the service provided to a client and which are of such importance and nature that they cannot be considered as preventing the provider from fulfilling its duty to act in the best interests of the client shall be clearly disclosed and shall not be subject to the requirements of this Article.

Article L. 533-12-3:

Investment service providers other than portfolio management companies that provide the investment service referred to in 4 of Article L. 321-1 do not accept, unless they return them in full to clients, any remuneration, commission or other monetary or non-monetary benefits in connection with the provision of the service to clients, paid or provided by a third party or by a person acting on behalf of a third party. Minor non-monetary benefits that are likely to improve the quality of the service provided to a client and whose importance and nature are such that they cannot be considered to be of such a nature as to undermine the provider's compliance with its duty to act in the best interests of the client are clearly disclosed and are not subject to the requirements of this article and article L. 533-12-4.

Article L. 533-12-4:

Investment service providers other than portfolio management companies must not pay or receive any remuneration or commission or provide or receive any non-monetary benefit in connection with the provision of an investment or related service to any person, other than the client or the person acting on behalf of the client, unless the payment or benefit is intended to improve the quality of the relevant service to the client and does not interfere with the fulfilment of the provider's obligation to act honestly, fairly and professionally in the best interests of the client.

The client shall be clearly informed of the existence, nature and amount of the payment or benefit referred to in the first subparagraph or, where that amount cannot be established, of the manner in which it is calculated, in a complete, accurate and comprehensible manner before the investment or related service concerned is provided to the client. Where applicable, providers other than portfolio management companies shall also inform the client of the mechanisms for transferring to the client the remuneration, commission and monetary or non-monetary benefit received in connection with the provision of the investment service or related service. The information referred to in this paragraph may be provided in a standardised form under the conditions laid down in the General Regulation of the *Autorité des marchés financiers*.

The payment or benefit which enables or is necessary for the provision of investment services, such as custodian fees, foreign exchange and settlement fees, taxes and duties payable and costs of proceedings, and which by its nature may not give rise to a conflict with the obligation on providers other than portfolio management companies to act honestly, fairly and professionally in the best interests of its clients, shall not be subject to the second subparagraph.

Article L. 533-12-5:

Investment service providers other than portfolio management companies shall ensure that they do not remunerate or evaluate the performance of their employees in a manner that undermines their obligation to act in the best interests of their clients when providing investment services to them.

They shall not take any steps, including in the form of compensation or sales targets, that might encourage their employees to recommend a particular financial instrument to a non-professional client when they could offer another financial instrument that better suits that client's needs.

Article L. 533-12-6:

Investment service providers other than portfolio management companies shall ensure and must be able to demonstrate to the *Autorité des marchés financiers* that natural persons who provide investment advice or information on financial instruments, investment or related services to clients on their behalf have the necessary knowledge and skills to comply with the obligations laid down in this Section.

Article L. 533-12-7:

Investment service providers may not send, directly or indirectly, by electronic means, communications of a promotional nature to potentially non-professional clients, in particular

potential clients, relating to the provision of investment services concerning financial contracts that are not admitted to trading on a regulated market or a multilateral trading facility, falling within one of the categories of contracts defined by the General Regulation of the *Autorité des marchés financiers* and having one of the following characteristics:

1° The maximum risk is not known at the time of subscription;

2° The risk of loss is greater than the amount of the initial financial contribution;

3° The risk of loss in relation to the corresponding potential benefits is not reasonably understandable given the specific nature of the proposed financial contract.

This Article does not apply to information published on their website by investment service providers marketing the financial contracts mentioned in the first paragraph.

Article L. 533-13:

I.- In order to provide the services mentioned in 4 or 5 of Article L. 321-1, investment service providers other than portfolio management companies shall obtain the necessary information concerning the knowledge and experience of their clients, in particular potential clients, in investment matters relating to the specific type of financial instrument or service, their financial situation, including their capacity to incur losses, and their investment objectives, including their risk tolerance, so as to be able to recommend to them the investment services and financial instruments that are appropriate and adapted to their risk tolerance and their capacity to incur losses.

When the provision of the investment service mentioned in 5 of Article L. 321-1 leads to the recommendation of a bundled offer within the meaning of Article L. 533-12-1, providers other than portfolio management companies shall ensure that the bundled offer as a whole is adequate.

II.- In order to provide a service other than those mentioned in I, investment service providers other than portfolio management companies shall ask their clients, in particular potential clients, for information on their knowledge and experience in investment matters, in relation to the specific type of financial instrument or service proposed or requested, in order to be able to determine whether the service or financial instrument is appropriate.

When a bundling of services or products within the meaning of Article L. 533-12-1 is envisaged, the assessment shall focus on the appropriateness of the bundling as a whole.

Where investment service providers other than portfolio management companies consider, on the basis of the information provided, that the service or financial instrument is not appropriate for clients, in particular potential clients, they shall warn them accordingly. This warning may be transmitted in a standardised form under conditions laid down in the General Regulation of the *Autorité des marchés financiers*.

If clients, in particular potential clients, do not provide the information referred to in the first subparagraph or if the information provided is insufficient, providers shall warn them that they are not in a position to determine whether the service or financial instrument envisaged is

suitable for them. This warning may be given in a standardised form under conditions laid down in the General Regulation of the *Autorité des marchés financiers*.

III- Investment service providers other than portfolio management companies may provide the services mentioned in 1 or 2 of Article L. 321-1 with or without related services, with the exception of the granting of credits or loans mentioned in 2 of Article L. 321-2 within the framework of which the existing limits on loans, current accounts and overdrafts for clients do not apply, without applying the provisions of II of this Article, under the following conditions:

1° The service relates to non-complex financial instruments defined by decree;

2° The service is provided at the initiative of the client, in particular the potential client;

3° The service provider has previously and clearly informed the client, in particular the potential client, that it is not required to assess the appropriateness of the service or the financial instrument and that it does not benefit from the corresponding protection of the relevant rules of good conduct. This warning may be transmitted in a standardised form;

4° The service provider has complied with 3° of either I or II of Article L. 533-10.

Article L. 533-13-1:

If a real estate credit within the meaning of Chapter III of Title I of Book III of the Consumer Code subject to the provisions relating to the assessment of consumer solvency provides, as a precondition, for the provision to the consumer of an investment service relating to mortgage bonds issued specifically to obtain financing for the real estate credit and subject to conditions identical to the latter, so that the loan is repayable, refinanced or amortized, this investment service is not subject to Articles L. 533-12-6, L. 533-13, L. 533-14 and L. 533-15.

Article L. 533-14:

Investment service providers other than portfolio management companies shall establish a file, including the document(s) approved by themselves and their clients, setting out the rights and obligations of the parties and the other terms and conditions under which the former provide services to the latter.

For the application of the first paragraph, the rights and obligations of the parties to the contract may be determined by reference to other documents or legal texts.

Article L. 533-15:

I.-Investment service providers other than portfolio management companies report to their clients, on a sustainable basis, on the services provided to them. The reporting includes periodic communications to clients depending on the type and complexity of the financial instruments concerned and the nature of the service provided to clients and, where applicable, the costs related to transactions carried out and services provided on behalf of clients.

II- Investment service providers other than portfolio management companies that provide the investment service mentioned in 5 of Article L. 321-1 shall provide clients, prior to the transaction, with a statement of suitability on a durable medium in which the advice provided

is specified and to what extent it meets the preferences, objectives and other characteristics of non-professional clients.

Investment service providers other than portfolio management companies that enter into an agreement to buy or sell a financial instrument by a means of distance communication that does not allow prior transmission of the declaration of adequacy may transmit the written declaration of adequacy to clients on a durable medium immediately after the clients are bound by the agreement, under conditions laid down by decree.

Where investment service providers other than portfolio management companies provide the investment service referred to in 4 of Article L. 321-1 or have informed clients that they will carry out a periodic adequacy assessment, the periodic report shall include an updated statement on how the investment meets the preferences, objectives and other characteristics of non-professional clients.

Article L. 533-16:

Articles L. 533-11 to L. 533-15 apply, taking into account the nature of the service proposed or provided, the nature of the financial instrument in question, and the professional or non-professional nature of the client, in particular the potential client.

A professional client is a client who possesses the experience, knowledge and competence necessary to make his own investment decisions and correctly assess the risks incurred.

A decree specifies the criteria according to which clients are considered professional or non-professional and the terms and conditions under which non-professional clients may request to be treated as professional clients.

Article L. 533-17:

An investment service provider other than a portfolio management company that receives, through another investment service provider other than a portfolio management company, instructions to provide investment or related services on behalf of a client, may rely on the due diligence performed by the latter provider. The investment services provider who transmitted the instruction remains responsible for the completeness and accuracy of the information transmitted.

The investment service provider other than a portfolio management company that receives such an instruction to provide services on behalf of the client may also rely on any recommendation relating to the service or transaction in question given to the client by that other provider. The investment services provider that transmitted the instruction remains responsible for the adequacy of the recommendations or advice provided to the client concerned.

The investment service provider other than a portfolio management company which receives an instruction or order from a client through another investment service provider other than a portfolio management company shall remain responsible for the provision of the service or the execution of the transaction in question, on the basis of the information or recommendations referred to above, in accordance with the relevant provisions of this Title.

Article L. 533-18:

I.- Investment service providers other than portfolio management companies shall take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account the price, cost, speed, likelihood of execution and settlement, size, nature of the order or any other considerations relating to the execution of the order. Nevertheless, whenever there is a specific instruction given by clients, providers execute the order following that instruction.

When investment service providers other than portfolio management companies execute orders on behalf of non-professional clients, the best possible result is determined on the basis of total cost. The total cost is the price of the financial instrument increased by the costs related to the execution, which include all expenses incurred by the client directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

In order to ensure the best possible result when several competing execution venues are able to execute an order concerning a financial instrument, the providers shall assess and compare the results that would be obtained for the clients by executing the order in each of the execution venues included in the execution policy referred to in II as soon as they are able to execute this order. In this assessment, providers take into account their own commissions and the costs for executing the order in each of the eligible execution venues.

II- Investment service providers other than portfolio management companies shall establish and implement effective arrangements to comply with I. They shall establish and implement an order execution policy enabling them to obtain, for their clients' orders, the best possible result in accordance with I.

III - The order execution policy includes, with regard to each category of financial instruments, information on the different execution venues in which the investment services provider other than a portfolio management company executes its clients' orders and the factors influencing the choice of execution venue. It shall include at least those execution venues which enable the provider to obtain, in most cases, the best possible result for the execution of client orders.

Investment service providers other than portfolio management companies shall provide appropriate information to their clients on their order execution policy. Such information shall explain clearly, in sufficient detail and in a manner easily understandable by clients, how orders will be executed by the providers on behalf of their clients. They obtain their clients' prior consent to this execution policy.

Where the order execution policy provides that client orders may be executed outside a trading platform, investment services providers other than portfolio management companies shall, in particular, inform their clients or potential clients of this possibility. Providers shall obtain the express prior consent of their clients before executing their orders outside a trading platform.

Investment service providers other than portfolio management companies may obtain such consent either in the form of a general agreement or for specific transactions.

IV.-At the request of their clients, investment service providers other than portfolio management companies must be able to demonstrate that they have executed their orders in accordance with their execution policy.

V.-Investment service providers other than portfolio management companies do not receive any remuneration, discount or non-monetary benefit for routing orders to a trading platform or a particular execution venue that disregards the requirements resulting from I of this article, 3° of I or II of article L. 533-10, articles L. 533-11 to L. 533-12-4 and articles L. 533-24 and L. 533-24-1.

Article L. 533-18-1:

When executing client orders, investment service providers other than portfolio management companies shall establish and publish once a year, for each category of financial instruments, the ranking of the top five execution venues on the basis of the trading volumes on which they have executed client orders during the previous year and summary information on the quality of execution obtained.

Article L. 533-18-2:

Investment service providers other than investment management firms that execute client orders monitor the effectiveness of their order execution arrangements and execution policy to identify and address any deficiencies. In particular, they shall regularly check whether the execution venues provided for in their order execution policy enable the best possible result to be obtained for clients or whether they need to make changes to their execution arrangements, in particular in the light of the information available pursuant to Articles L. 420-17, L. 533-18-1, L. 533-19 and L. 533-33.

Each investment service provider other than an asset management company recognized as an execution venue by Article 1 of Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with technical regulatory standards relating to the data to be published by execution platforms on the quality of execution of transactions shall make available to the public at least once a year, free of charge, the data relating to the quality of execution of the transactions carried out there. These periodic reports shall include detailed information on the price, costs, speed and probability of execution for the different financial instruments.

Investment service providers other than portfolio management companies shall notify clients with whom they have an ongoing relationship of any significant changes to their order execution arrangements or execution policy.

Article L. 533-19:

I.- With a view to providing the service mentioned in 2 of Article L. 321-1, investment service providers other than portfolio management companies shall adopt and apply procedures that ensure the prompt execution of their clients' orders and that they are executed in a fair manner in relation to the orders of their other clients or orders for their own account.

These procedures shall provide for the execution of client orders, comparable in particular with regard to their size, type and the nature of the financial instruments to which they relate, according to the time of their receipt by the providers.

After executing a transaction on behalf of their clients, service providers inform clients where the order was executed.

II-Where a client places a limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which is not immediately executed under the conditions prevailing on the market, the investment services provider other than a portfolio management company shall, unless the client expressly instructs otherwise, take measures to facilitate the fastest possible execution of that order by making it immediately public in a form that is easily accessible to other market participants.

A limit order is an order to buy or sell a financial instrument at the specified price limit or more advantageously and for a specified quantity.

The provider shall be deemed to comply with the first subparagraph if it transmits the order to a regulated market or a multilateral trading facility.

The first paragraph does not apply to limit orders with an unusually large size within the meaning of Article 4 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

Article L. 533-20:

Investment service providers other than portfolio management companies authorised to provide the services mentioned in 1, 2 or 3 of Article L. 321-1 may initiate transactions between eligible counterparties or enter into transactions with such counterparties without complying with the obligations set out in Articles L. 533-11 to L. 533-14, with the exception of II and III of Article L. 533-12, Articles L. 533-16 and L. 533-18 to L. 533-18-2, I of Article L. 533-19, and Articles L. 533-24 and L. 533-24-1 with respect to these transactions or any related service directly linked to these transactions.

In their relations with eligible counterparties, providers shall act honestly, fairly and professionally and communicate in an accurate, clear and non-misleading manner, taking into account the nature of the eligible counterparty and its activity.

A decree specifies the criteria according to which counterparties are considered eligible counterparties.

Subsection 2: Special provisions for portfolio management companies (Articles L. 533-21 to L. 533-22-2-3)

Article L. 533-21:

Portfolio management companies are prohibited from receiving deposits of funds, securities or gold from their clients.

Article L. 533-22:

I.- The portfolio management companies mentioned in Article L. 532-9, with the exception of those which exclusively manage AIFs falling under I of Article L. 214-167, AIFs falling under

IV of Article L. 532-9, AIFs falling under the second paragraph of III of the same Article L. 532-9 or which manage other collective investments mentioned in article L. 214-191, draw up and publish a shareholder engagement policy describing the way in which they integrate their role as shareholder in their investment strategy. Each year, they publish a report on the implementation of this policy.

The content and methods of publication of this policy and its report are set by decree adopted in *Conseil d'Etat*.

The persons mentioned in the first paragraph of this I may not comply with one or more of the requirements provided for in this Article if they publicly specify the reasons for this on their website.

II. When a company mentioned in 1° of Article L. 310-1 of the Insurance Code, a company mentioned in 1° of III of Article L. 310-1-1 of the same code that reinsures commitments mentioned in 1° of Article L. 310-1 of the said code, a supplementary occupational retirement fund mentioned in Article L. 385-7-1 of the same code, a mutual insurance company or a supplementary occupational retirement union mentioned in Article L. 214-1 of the Mutual Insurance Code or a supplementary occupational retirement institution mentioned in Article L. 942-1 of the Social Security Code contracts, on the basis of a portfolio management mandate or subscription to a collective investment mentioned in Article L. 214-1 of the present code, with a portfolio management company mentioned in the first paragraph of I of the present article, the latter provides it with information on how its investment strategy and the implementation thereof comply with this contract and contribute to the medium and long-term performance of the assets of the contracting investor or the collective investment.

The content and terms of publicity of this communication are set by decree adopted in *Conseil d'Etat*.

III-Where a person subject to the present article does not respect one or several provisions, any interested person may ask the president of the court ruling in summary proceedings to enjoin him, if need be under penalty, to respect them.

Article L. 533-22-1:

Portfolio management companies shall make available to the subscribers of each of the UCITS or AIFs falling within the scope of paragraphs 1, 2 and 6 of sub-section 2, paragraph 2 or sub-paragraph 1 of paragraph 1 of sub-section 3, or sub-section 4 of section 2 of Chapter IV of Title I of Book II of this code that they manage information on how they take into account in their investment policy criteria relating to compliance with social, environmental and governance quality objectives. They shall specify the nature of these criteria and the manner in which they apply them according to a standard presentation fixed by decree. They indicate how they exercise the voting rights attached to the financial instruments resulting from these choices.

The decree provided for in the preceding paragraph also specifies the media on which this information must appear and which are mentioned in the prospectus of the UCITS or AIF falling within the scope of paragraphs 1, 2 and 6 of sub-section 2, paragraph 2 or sub-paragraph 1 of paragraph 1 of sub-section 3, or sub-section 4 of section 2 of Chapter IV of Title I of Book II of this code.

Insurance and reinsurance companies and supplementary occupational retirement funds governed by the Insurance Code, mutual insurance companies or unions and mutual insurance companies or unions and supplementary occupational retirement funds governed by the mutual Insurance Code, provident institutions and their unions governed and supplementary occupational retirement institutions governed by the Social Security Code, open-ended investment companies, the *Caisse des dépôts et consignations*, supplementary retirement institutions governed by the Social Security Code, the institution for the supplementary pension scheme for non-tenured employees of the State and local authorities, the public institution managing the compulsory supplementary public pension scheme and the National Pension Fund for Local Authority Employees mention in their annual report and make available to their subscribers information on how they take into account in their investment policy criteria relating to compliance with social, environmental and governance quality objectives and on the means implemented to contribute to the energy and ecological transition. They specify the nature of these criteria and the manner in which they are applied, in accordance with a standard format set by decree. They indicate how they exercise the voting rights attached to the financial instruments resulting from these choices.

The decree provided for in the third paragraph specifies the information to be disclosed for each of the objectives depending on whether or not the entities mentioned in the same paragraph exceed the thresholds defined by the same decree. Information relating to the consideration of environmental objectives includes consideration of exposure to climate risks, in particular the measurement of greenhouse gas emissions associated with the assets held, as well as the contribution to compliance with the international objective of limiting global warming and to the achievement of energy and ecological transition objectives. This contribution is notably assessed with regard to indicative targets defined according to the nature of their activities and the type of their investments, in line with the national low-carbon strategy mentioned in Article L. 221-1 B of the Environment Code. If necessary, the entities mentioned in the third paragraph of this article explain the reasons why their contribution is below these indicative targets for the last closed financial year.

Article L. 533-22-2:

I. - The AIF portfolio management companies referred to in 1° and 2° of II of this Article and the UCITS portfolio management companies shall determine the policies and practices for the remuneration of the following persons, where their professional activities have a substantial impact on the risk profiles of the AIFs or UCITS they manage:

1° The managers;

2° The members of the Board of Directors or the Executive Board;

3° Managers of simplified joint stock companies and persons exercising a management function within the meaning of 4° of II of Article L. 532-9;

4° Risk takers;

5° Persons exercising a control function;

6° Persons placed under the authority of the portfolio management company who, in view of their overall remuneration, are in the same remuneration bracket as persons exercising a management function within the meaning of 4° of II of Article L. 532-9 and risk takers.

Remuneration policies and practices are compatible with and promote sound and effective risk management and do not encourage risk-taking that is incompatible with the risk profiles of the AIFs or UCITS and the elements of their regulations or articles of association.

II. - This Article is applicable to AIF portfolio management companies:

1° Falling under II of Article L. 214-24, excluding those mentioned in its last paragraph, and excluding AIFs falling under I of Article L. 214-167 and those mentioned in the second paragraph of III of Article L. 532-9; and

2° Coming under 1° of III of article L. 214-24.

III. - The General Regulation of the *Autorité des marchés financiers* sets out the terms and conditions of the remuneration policies and practices of AIF and UCITS portfolio management companies. In particular, it provides for the implementation of Articles 14a and 14b of Directive 2014/91/EU of the Parliament and of the Council of 23 July 2014 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as regards depositary functions, remuneration policies and sanctions.

IV- The compensation policy and practices referred to in this article may, by way of derogation from Article L. 1331-2 of the Labor Code, provide that the total amount of variable compensation may, in whole or in part, be reduced or refunded when the person concerned has disregarded the rules enacted by the company with respect to risk-taking, in particular because of his or her responsibility for actions that have resulted in significant losses for the company or in the event of failure to comply with the obligations of good repute and competence.

Article L. 533-22-2-1:

Portfolio management companies act in an honest, loyal and professional manner, serving the best interests of investors.

All information, including communications of a promotional nature, sent by a portfolio management company to investors shall be accurate, clear and not misleading. Communications of a promotional nature shall be clearly identifiable as such.

The General Regulation of the *Autorité des marchés financiers* specifies the conditions of application of the first two paragraphs above, taking into account the nature of the activity carried out, the nature of the financial instrument in question and the professional or non-professional nature of the investor.

Article L. 533-22-2-2:

I.- In the context of the management of collective investments, portfolio management companies take all reasonable steps to obtain, when executing orders, the best possible result

taking into account the price, cost, speed, probability of execution and settlement, size, nature of the order or any other considerations relating to the execution of the order.

II- Portfolio management companies shall establish and implement effective arrangements, including an order execution policy, to comply with the requirements of I above.

III- The order execution policy shall include, with respect to each class of instruments, information on the different systems in which the asset management company executes orders and the factors influencing the choice of execution system. It shall include at least the systems that enable the asset management company to obtain, in most cases, the best possible result for the execution of orders.

Portfolio management companies shall provide appropriate information to shareholders or unit-holders of collective investment schemes on their order execution policy.

If the order execution policy provides that orders may be executed outside a trading platform, the portfolio management company shall in particular inform the shareholders or unit-holders of the collective investment schemes of this possibility.

IV- The General Regulation of the *Autorité des Marchés Financiers* specifies the conditions of application of this article, adapting them according to whether the portfolio management companies execute orders or transmit or issue them without executing them themselves.

V.- Portfolio management companies shall adopt and apply procedures ensuring the prompt and equitable execution of orders on behalf of the collective investments they manage in relation to orders on behalf of the individual portfolios they manage or to orders for own account.

The General Regulation of the *Autorité des Marchés Financiers* specifies the conditions of application of the order handling rules applicable to portfolio management companies.

Article L. 533-22-2-3:

For the application of Articles L. 1226-15, L. 1234-9, L. 1235-3, L. 1235-3-1, L. 1235-11 and L. 1235-16 of the Labor Code, the determination of the indemnity payable by the employer does not take into account, pursuant to Article L. 533-22-2 of the present code and for the persons mentioned in the same Article L. 533-22-2, the part of the variable part of the remuneration whose payment may be reduced or refunded.

Subsection 3: Special provisions for investment service providers who carry out offers of financial securities by means of a website (Article L. 533-22-3)

Article L. 533-22-3:

Investment service providers who make offers of financial securities through a website that meets the characteristics set out in the General Regulation of the *Autorité des marchés financiers* shall ensure that:

1° That the companies in which their clients invest directly or indirectly through a company whose purpose is to hold and manage equity interests in another company comply, where applicable, with the provisions of Article L. 227-2-1 of the Commercial Code;

2° Where the company in which their clients invest has the purpose of holding equity interests in another company, that their interests are not adversely affected and that they have all the information necessary to assess their investment, in particular that they are, where applicable, recipients of the statutory auditor's report to the partners approving the accounts.

These rules are specified in the General Regulation of the *Autorité des marchés financiers*.

Subsection 4: Special provisions applicable to investment firms (Article L. 533-22-4)

Article L. 533-22-4:

Investment firms that provide the investment services mentioned in 4 of Article L. 321-1 are subject to the provisions of Article L. 533-22 in the same way as the portfolio management companies mentioned therein.

Section 6: Provisions common to investment service providers relating to investor guarantees (Article L. 533-23)

Article L. 533-23:

Investment service providers and the persons mentioned in Article L. 421-17 are required to inform investors, before entering into business relations with them, of the existence of an indemnification scheme applicable in respect of the transaction(s) under consideration, the amount and scope of the cover offered and, if applicable, the identity of the indemnification fund.

The investor compensation scheme is defined in Articles L. 322-1 to L. 322-10.

Section 7: Provisions applicable to investment service providers relating to the design and distribution of financial instruments (Articles L. 533-24 to L. 533-24-1)

Article L. 533-24:

Investment service providers other than portfolio management companies that design financial instruments for sale to clients:

1° Maintain, apply and review a validation process for each financial instrument and significant adaptations of existing financial instruments before their marketing or distribution to clients. This validation process determines a defined target market of end customers within the relevant customer category for each instrument and ensures that all relevant risks for this defined target market are assessed;

2° Ensure that the financial instruments are designed in accordance with the validation process referred to in 1° and that the distribution strategy for these instruments is compatible with the defined target market;

3° Make available to any distributor all useful information on the financial instruments and their validation process, including the defined target market;

4° Take reasonable measures to ensure that the financial instruments are distributed to the defined target market.

Article L. 533-24-1:

Investment service providers that offer, recommend or market financial instruments:

1° Ensure that they understand the characteristics of these financial instruments and assess their compatibility with the needs of the clients to whom they provide investment services, in particular in relation to the defined target market;

2° Ensure that financial instruments are only offered or recommended in the interest of the client;

3° Examine these financial instruments on a regular basis, taking into account any event that could significantly affect the potential risk to the defined target market, in order to assess at least whether these instruments continue to correspond to the needs of the defined target market and whether the planned distribution strategy remains appropriate;

4° If they do not design these financial instruments, have appropriate arrangements in place to obtain the information mentioned in 3° of Article L. 533-24 and to understand the characteristics and identify the defined target market for each financial instrument.

Section 8: Governance of Investment Firms (Articles L. 533-25 to L. 533-31)

Subsection 1: Officers (Articles L. 533-25 to L. 533-28)

Article L. 533-25:

Within an investment firm, have at all times the reputation, knowledge, skills and experience necessary for the performance of their duties:

1° Members of the Board of Directors, the Supervisory Board and the Executive Board, the Chief Executive Officer and the Deputy Chief Executive Officers, as well as any other person or member of a body performing equivalent functions;

2° The persons who effectively manage the company within the meaning of Article L. 532-2, paragraph 4, and who are not mentioned in 1°;

3° All persons responsible for the procedures, systems and policies referred to in Article L. 511-55, whose duties are specified by the order issued pursuant to I of Article L. 533-29, and who are likely to report directly on the performance of their duties to the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions.

The competence of the members of the Board of Directors, the Supervisory Board or any other body exercising equivalent functions is assessed on the basis of their training and experience, with regard to their duties. Where mandates have been previously exercised, competence is presumed on the basis of the experience acquired. For new members, account is taken of the training they may receive throughout their term of office. In the assessment of each person, account is also taken of the competence and powers of the other members of the body to which he or she belongs.

The members of the Board of Directors or the Supervisory Board, on the one hand, and the members of the Executive Board or any person who effectively manages the business of the company within the meaning of Article L. 532-2, on the other hand, collectively have the knowledge, skills and experience necessary for an understanding of all of the company's activities, including the main risks to which it is exposed.

Article L. 533-26:

I. - The persons who ensure the effective management of the company's activity within the meaning of Article L. 532-2, as well as the members of the Board of Directors, the Supervisory Board, the Executive Board or any other body exercising equivalent functions within an investment company devote sufficient time to the exercise of their functions.

II - Where the investment firm is of significant importance by reason of its size, its internal organization and the nature, scale and complexity of its activities, the persons referred to in I may not simultaneously exercise, within any legal person:

1° More than one mandate for one of the functions mentioned in 1° of IV and two mandates for one of the functions mentioned in 2° of IV; or

2° More than four mandates for one of the functions mentioned in 2° of IV.

However, the *Autorité de contrôle prudentiel et de résolution* may, taking into account the particular situation and the nature, scale and complexity of the investment firm, authorize a person who is in one of the cases provided for in 1° or 2° above to hold an additional office for one of the functions mentioned in 2° of IV.

The provisions of this II are not applicable to members appointed on the basis of Articles 4 or 6 of Ordinance No. 2014-948 of August 20, 2014 relating to the governance and capital operations of companies with public shareholdings within the Executive Board, the Supervisory Board, the Board of Directors or any other body performing equivalent functions in an investment firm.

III - For the application of II, are considered as a single function:

1° Functions performed within the same group within the meaning of Article L. 233-17-2 of the Commercial Code. Institutions and finance companies affiliated to a network and the central body within the meaning of Article L. 511-31 are considered to be part of the same group for the application of this Article. The same applies to entities belonging to cooperative groups governed by similar provisions in the legislation applicable to them;

2° Functions exercised within undertakings, including non-financial entities, in which the investment firm holds a qualifying holding within the meaning of Article 4(1) 36 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013.

No account shall be taken of functions performed in entities whose purpose is not primarily commercial, including when they take the form of commercial companies.

IV - The functions whose exercise is subject to the provisions of II are:

1° The functions of the persons who effectively run the company within the meaning of Article L. 532-2, the functions of Chief Executive Officer, Deputy Chief Executive Officer, member of the Board of Directors, sole Chief Executive Officer or any other person exercising equivalent functions;

2° The functions of member of the Board of Directors, the Supervisory Board or any other body performing equivalent functions.

Article L. 533-27:

Investment firms devote the human and financial resources necessary for the training of the persons mentioned in I of article L. 533-26.

Article L. 533-28:

A decree adopted in *Conseil d'Etat* specifies the conditions of application of the present sub-section.

Subsection 2: Organization and internal control (Article L. 533-29)

Article L. 533-29:

I.-Investment firms are required to comply with the obligations set forth in Articles L. 511-55 to L. 511-69.

In the case of a branch of a third-country firm mentioned in Article L. 532-48:

1° Articles L. 511-55 to L. 511-57, L. 511-61, L. 511-63 to L. 511-66 and L. 511-68 to L. 511-69 apply;

2° Articles L. 511-58 to L. 511-60, L. 511-62 and L. 511-67 apply under the conditions provided for the branches of credit institutions mentioned in I of Article L. 511-10.

An order of the Economy Minister defines the conditions of application of this I.

II- Without prejudice to I, the Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions approves and supervises:

1° The organization of the investment firm for the provision of investment and related services, including the skills, knowledge and expertise required of its employees, the resources,

procedures and mechanisms with or under which the firm provides services, having regard to the nature, scope and complexity of its business and to all the requirements to be met by it;

2° A policy relating to the services, products and operations proposed or provided, in accordance with the enterprise's risk tolerance and the characteristics and needs of the enterprise's customers to whom they are proposed or provided, including, where appropriate, by carrying out appropriate crisis simulations;

3° Without prejudice to compliance with Article L. 533-30, a remuneration policy for persons involved in the provision of services to clients that aims to encourage responsible professional conduct and fair treatment of clients, as well as to avoid conflicts of interest in relations with clients.

III - The Board of Directors, the Supervisory Board or any other body exercising equivalent supervisory functions shall periodically monitor and evaluate the relevance and implementation of the investment firm's strategic objectives in relation to the provision of investment and related services, the effectiveness of the firm's governance arrangements and the adequacy of policies relating to the provision of services to clients. It shall take appropriate action to remedy any deficiencies.

Subsection 3: Compensation policy and practices (Article L. 533-30)

Article L. 533-30:

Investment firms are bound by the obligations set forth in Articles L. 511-71 to L. 511-87.

In the case of a branch of a third-country firm mentioned in Article L. 532-48:

1° Articles L. 511-71, L. 511-73 and L. 511-75 to L. 511-87 apply;

2° Articles L. 511-72 and L. 511-74 apply under the conditions laid down for branches of credit institutions mentioned in I of Article L. 511-10.

A decree adopted in *Conseil d'Etat* defines the conditions of application of this article.

Subsection 4: Specialized Committees (Article L. 533-31)

Article L. 533-31:

Investment firms are bound by the obligations set forth in Articles L. 511-89 to L. 511-102.

In the case of a branch of a third-country firm mentioned in Article L. 532-48:

1° Articles L. 511-92, L. 511-95 to L. 511-97 apply;

2° Articles L. 511-89 to L. 511-90, L. 511-93 to L. 511-94 and L. 511-102 apply under the conditions laid down for branches of credit institutions mentioned in I of Article L. 511-10.

An order of the Economy Minister defines the conditions of application of this Article.

Section 9: Provisions common to investment service providers other than portfolio management companies relating to systematic internalisers (Articles L. 533-32 to L. 533-33)

Article L. 533-32:

A systematic internaliser is an investment service provider other than a portfolio management company that trades on an organised, frequent, systematic and substantial basis on its own account by executing client orders without operating a multilateral system. Its system must operate in accordance with Title III of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

Frequency and systematic nature is measured by the number of OTC transactions in a given financial instrument carried out by the provider on own account when executing client orders. Substantiality is measured either by the size of the OTC trading activities carried out by the service provider in relation to its total trading activity for a specific financial instrument, or by the size of the OTC trading activities carried out by the service provider in relation to the total trading activity carried out in the European Union on the financial instrument concerned.

A service provider may choose to fall under the systematic internaliser regime even if it does not comply with the conditions of frequent, systematic and substantial nature of the activity concerned. In such a case, it shall inform the *Autorité des marchés financiers* without delay.

Article L. 533-33:

Systematic internalisers shall make available to the public at least once a year, free of charge, data relating to the quality of execution of transactions executed within them. These periodic reports shall include detailed information on price, costs, speed and probability of execution for the various financial instruments.

Book V: Service Providers (Articles R. 511-1 to R. 571-3)

Title I: Banking Service Providers (Sections R. 511-1 to R. 519-31)

Chapter I: General provisions (Articles R. 511-1 to R. 511-26)

Section 1: Definitions and Activities

N/A

Section 2: Prohibitions (Articles R. 511-1 to R. 511-2-1-3)

Subsection 1: Human Resources (Articles R. 511-1 to R. 511-2)

Article R. 511-1:

Members of the staff of a credit institution or finance company, once they have received signing authority on behalf of that company, may not hold other employment or perform paid work outside that company without first informing the company's management.

This provision does not apply to the production of scientific, literary or artistic works.

Article R. 511-2:

When they have received authority to sign on behalf of a credit institution or a finance company, members of the staff of that undertaking may not, unless authorized by the general management, exercise administrative, management or executive functions in another credit institution, another finance company, an investment firm, a portfolio management company or a commercial company governed by Book II of the Commercial Code.

Subsection 2: Inter-Business Loans (Sections R. 511-2-1-1 to R. 511-2-1-3)

Article R. 511-2-1-1:

I. - The loans mentioned in 3 *bis* of Article L. 511-6 may be granted when the lending company or a member of its group, on the one hand, and the borrowing company or a member of its group, on the other hand, are economically linked according to one or the other of the following modalities:

1° The two companies are members of the same economic interest grouping mentioned in Title V of Book II of the Commercial Code or of the same grouping awarded a public procurement contract, mentioned in Article L. 1220-1 of the Public Procurement Code;

2° One of the two companies has benefited during the last two financial years or benefits from a public subsidy within the framework of the same project associating the two companies and, where applicable, other entities. This project must meet one of the following criteria:

a) The project has been approved by a competitiveness cluster within the meaning of Article 24 of Law 2004-1484 of December 30, 2004 on finance for 2005;

b) A grant has been awarded by the European Commission or by any entity to which the European Commission has delegated this role;

c) A grant has been awarded by a region or by any entity to which the region has delegated this role;

d) A grant has been awarded by the Environment and Energy Management Agency mentioned in Article L. 131-3 of the Environment Code, or by the National Research Agency mentioned in Article L. 329-1 of the Research Code, or by the Public Investment Bank mentioned in Article 1 A of Order No. 2005-722 of 29 June 2005 on the Public Investment Bank;

3° The borrowing firm or a member of its group is a direct or indirect subcontractor, within the meaning of Law No. 75-1334 of December 31, 1975 relating to subcontracting, of the lending firm or a member of its group acting as principal contractor or subcontractor or owner. Any loan set up in this context may not affect or substitute for the obligations of the lending company or of the relevant member of its group acting as main contractor, subcontractor or owner in accordance with the terms of this law.

II. - A company or a member of its group may also lend within the framework of the provisions of article L. 511-6, paragraph 3 *bis*, to another company or a member of its group if:

1° It has granted the borrowing company or a member of its group a patent license mentioned in article L. 613-8 of the Intellectual Property Code, a trademark license mentioned in article L. 714-1 of the Intellectual Property Code, a franchise mentioned in article L. 330-3 of the Commercial Code or a management lease mentioned in article L. 144-1 of the Commercial Code;

2° It is a customer of the borrowing company or a member of its group. In this case, the total amount of goods and services acquired during the last fiscal year preceding the date of the loan or during the current fiscal year within the framework of a contractual relationship established on the date of the loan is at least 500,000 euros or represents at least 5% of the turnover of the borrowing company or of the member of its group concerned during the same fiscal year;

3° It is indirectly linked to the borrowing company or a member of its group through a third party company, with which the lending company or a member of its group and the borrowing company or a member of its group, each as far as it is concerned, have had a business relationship during the last financial year preceding the date of the loan or have a business relationship established at the date of the loan. In the context of this business relationship, the goods and services acquired by the customer from the supplier during the last fiscal year preceding the date of the loan or during the current fiscal year in the context of a relationship established at the date of the loan is at least 500,000 euros or represents at least 5% of the supplier's revenue.

III. - The provisions of Article L. 511-6 (3 *bis*) are not applicable in cases where those of Article L. 511-7 are applicable.

For the application of this article and of article R. 511-2-1-2, the group is understood to mean all the companies within the same scope of consolidation within the meaning of article L. 233-

16 of the Commercial Code when the organization of the cash position of these companies is established at group level.

The loan granted by the lending company may not place the borrowing company in a state of economic dependence contrary to the provisions of the second paragraph of Article L. 420-2 of the Commercial Code.

Article R. 511-2-1-2:

A company can only grant a loan mentioned in 3 *bis* of article L. 511-6 when the following four conditions are met:

1° At the closing date of each of the two accounting periods preceding the date of granting of the loan, the shareholders' equity of the lending company is greater than the amount of the share capital and the gross operating surplus is positive;

2° Net cash and cash equivalents, defined as the value of current financial assets at less than one year, less the value of current financial liabilities at less than one year, recorded at the closing date of each of the two fiscal years of the lending company preceding the date the loan is granted, is positive;

3° The principal amount of all loans granted under Article L. 511-6, paragraph 3 *bis*, by the same company during an accounting period may not exceed a ceiling equal to the lesser of the following two amounts:

a) 50% of the net cash position or 10% of this amount calculated on a consolidated basis at the level of the group of companies to which the lending company belongs;

b) 10 million euros, 50 million euros or 100 million euros for loans granted respectively by a small or medium-sized enterprise, a mid-sized enterprise or a large enterprise, as defined in Article 3 of Decree 2008-1354 of December 18, 2008 relating to the criteria for determining the category to which an enterprise belongs for the purposes of statistical and economic analysis;

4° The principal amount of all the loans granted by the same company to another company during an accounting period may not exceed the greater of the following two amounts:

a) 5% of the ceiling defined in 3°;

b) 25% of the ceiling defined in 3° up to a maximum of €10,000.

Article R. 511-2-1-3:

The statutory auditor is notified annually of current loan contracts granted under the terms of Article L. 511-6, paragraph 3 *bis*. In a declaration attached to the management report, the auditor certifies, for each contract, the initial amount and the outstanding capital of these loan contracts as well as compliance with the provisions governing them.

Section 3: Conditions of access to the profession (Articles R. 511-2-1 to R. 511-4)

Subsection 1: Approval (Articles R. 511-2-1 to R. 511-3-5)

Article R. 511-2-1:

I. - The *Autorité de contrôle prudentiel et de résolution* or the European Central Bank, as the case may be, shall decide on a request for the authorization provided for in Article L. 511-10 within six months of its receipt.

Where the application is incomplete, the Authority or the European Central Bank, as the case may be, shall decide within six months of receipt of all the necessary information. However, the total period for the Authority or the European Central Bank, as the case may be, to take its decision shall not exceed twelve months from receipt of the initial application.

II. - When, in accordance with Article L. 515-1, an undertaking makes the same application for the approval of a finance company and for one of the approvals provided for in Articles L. 522-6, L. 526-7 or L. 532-2, the *Autorité de contrôle prudentiel et de résolution* shall decide on this application within the time limits provided for in I.

Article R. 511-2-2:

When the *Autorité de contrôle prudentiel et de résolution* assesses the good reputation of the persons mentioned in Article L. 511-51 in accordance with Articles L. 511-10 or R. 511-3-1, it consults the central database on administrative sanctions held by the European Banking Authority.

Article R. 511-3:

For mutual and cooperative networks, the European Central Bank may, on the proposal of the *Autorité de contrôle prudentiel et de résolution* and after obtaining the opinion of the central body, issue a collective approval to a regional or federal mutual fund for itself and for the local mutual funds which are affiliated to it or which are affiliated like it to the same regional federation, when the liquidity and solvency of the local mutual funds are guaranteed as a result of this affiliation.

In this case, compliance with the rules laid down by the Economy Minister for the application of Article L. 611-1 and Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 is assessed collectively.

Article R. 511-3-1:

Before attaching special conditions to an authorization or transmitting to the European Central Bank a draft decision to issue an authorization to acquire a participation or control or to grant an authorization to a credit institution that is:

1° Either a subsidiary of an insurance undertaking, a reinsurance undertaking, a credit institution, a portfolio management company or an investment firm authorised in a Member State of the European Union or in another State party to the Agreement on the European Economic Area or authorised in a financial sector other than that in which the acquisition is contemplated;

2° Or a subsidiary of the parent undertaking of an insurance undertaking, a reinsurance undertaking, a credit institution, a portfolio management company or an investment firm authorised in a Member State of the European Union or in another State party to the Agreement on the European Economic Area or authorised in a financial sector other than that in which the acquisition is contemplated;

3° Or an institution controlled by a person, whether natural or legal, that also controls an insurance undertaking, a reinsurance undertaking, a credit institution, a portfolio management company or an investment firm authorised in a Member State of the European Union or in another State party to the Agreement on the European Economic Area or authorised in a financial sector other than that in which the acquisition is contemplated,

The *Autorité de contrôle prudentiel et de résolution* consults the competent authority, within the meaning of 4° of Article L. 517-2, in order to assess, in particular, the quality of the shareholders with regard to the criteria provided for in Article R. 511-3-2, as well as the good repute and experience of the members of the management body associated with the management of another entity of the same group.

The decision taken in this respect by the European Central Bank or the *Autorité de contrôle prudentiel et de résolution*, as the case may be, shall mention any opinions or reservations expressed, as the case may be, by this competent authority.

II - In the case of direct or indirect acquisitions of voting rights or equity interests or of an extension of a holding, the *Autorité de contrôle prudentiel et de résolution* shall consult without delay the competent authority, within the meaning of Article L. 517-2 4°, to which the proposed acquirer belongs, with a view to obtaining any information that is essential or relevant to the assessment provided for in Article R. 511-3-2. The decision taken in this respect by the European Central Bank shall mention any opinions or reservations expressed, where applicable, by this competent authority.

Article R. 511-3-2:

When assessing the notification provided for in I of Article L. 511-12-1, the *Autorité de contrôle prudentiel et de résolution* shall assess, for the purpose of ensuring that the credit institution or finance company targeted by the proposed acquisition has sound and prudent management and taking into account the likely influence of the proposed acquirer on the credit institution or finance company, the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, by applying all of the following criteria:

1° The reputation of the proposed acquirer;

2° The compliance, following the proposed acquisition, with the provisions of Article L. 511-51, by the company targeted by the transaction;

3° The financial soundness of the proposed acquirer, taking into account in particular the type of activities carried out and envisaged within the credit institution or finance company targeted by the proposed acquisition;

4° The ability of the credit institution or finance company to comply and continue to comply with the prudential obligations arising from this Title and, where applicable, from Regulation

(EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, in particular as regards whether the group to which it will belong has a structure that makes it possible to exercise effective supervision, to effectively exchange information between the competent authorities and to determine the division of responsibilities between the competent authorities;

5° The existence of reasonable grounds to suspect that a money laundering or terrorist financing operation or attempt is being or has been carried out in connection with the proposed acquisition, or that the proposed acquisition could increase the risk thereof.

Article R. 511-3-3:

The *Autorité de contrôle prudentiel et de résolution* draws up a list of the information it deems necessary to carry out the assessment provided for in Article R. 511-3-2 and which must be communicated to it as part of the notification provided for in I of Article L. 511-12-1. This list is accessible on the website of the *Autorité de contrôle prudentiel et de résolution*.

The information thus requested is proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. The Authority does not request information that is not relevant to this assessment.

Article R. 511-3-4:

The *Autorité de contrôle prudentiel et de résolution* shall transmit to the European Central Bank a proposal for a decision to oppose the proposed acquisition only if there are reasonable grounds for doing so based solely on the criteria set forth in Article R. 511-3-2, or if the information provided by the proposed acquirer, pursuant to Article R. 511-3-3, is incomplete.

Article R. 511-3-5:

Any natural person or legal entity contemplating filing a proposed public offer with the *Autorité des marchés financiers* pursuant to Chapter III of Title III of Book IV of the legislative part of the present code, with a view to acquiring a given quantity of securities of a credit institution approved in France or of a finance company, may inform the Governor of the *Banque de France*, Chairman of the *Autorité de contrôle prudentiel et de résolution*, eight business days prior to the filing of such proposed offer or its public announcement, whichever is earlier.

Subsection 2: Freedom of establishment and freedom to provide services in the territory of the States party to the Agreement on the European Economic Area. (Article R. 511-4)

Article R. 511-4:

When a financial institution has justified to the *Autorité de contrôle prudentiel et de résolution* that it meets the conditions mentioned in the second paragraph of Article L. 511-28, the Authority issues a certificate. The Authority shall also send a certificate to the competent authorities of the host Member State, together with the notification referred to in the first paragraph of Article L. 511-28, or the declaration referred to in the fourth paragraph of the same Article.

Where the *Autorité de contrôle prudentiel et de résolution* is seized by a financial institution of the notification provided for in the first paragraph of Article L. 511-28 and decides not to

transmit this notification to the competent authority of the host Member State, it shall inform the institution of the reasons for its decision within three months of the regular receipt of the notification.

In the event of a change in the situation of a financial institution which affects the conditions mentioned in the second paragraph of Article L. 511-28, the institution shall inform the *Autorité de contrôle prudentiel et de résolution* without delay. If the latter considers that the institution may no longer benefit from the regime provided for in the first paragraph and the fourth paragraph of Article L. 511-28, it shall inform the competent authorities of the host Member States concerned without delay.

Section 4: Bodies of the profession

N/A

Section 5: Professional secrecy

N/A

Section 6: Accounting provisions (Articles R. 511-6 to D. 511-9)

Sub-section 1: Corporate financial statements and accounting documents. (Articles R. 511-6 to R. 511-7)

Article R. 511-6:

Credit institutions and finance companies are required to close their fiscal year at December 31. However, the *Autorité de contrôle prudentiel et de résolution* may authorize them to depart from this rule for the fiscal year during which they received their approval.

Unless an exemption is granted by the *Autorité de contrôle prudentiel et de résolution*, credit institutions and finance companies must submit their annual financial statements to the competent body for approval before May 31.

Article R. 511-7:

Article R. 511-6 is not applicable to the establishments mentioned in articles L. 511-22 and L. 511-23.

Sub-section 2: Statutory Auditors (Articles D. 511-8 to D. 511-9)

Article D. 511-8:

In order to carry out the mission assigned to them in credit institutions or finance companies, the statutory auditors mentioned in Article L. 511-38 are appointed by the body of these companies competent to approve the accounts.

They are appointed for six financial years. Their functions expire after the body competent to approve the financial statements has ruled on the financial statements for the sixth financial year. Their term of office is renewable.

Article D. 511-9:

In the branches in France of credit institutions that do not have their head office in a State party to the Agreement on the European Economic Area, the statutory auditors are appointed by the persons responsible for the effective management of the business of these branches.

Section 7: Prudential provisions (Articles D. 511-15 to R. 511-16-4)

Article D. 511-15:

The *Autorité de contrôle prudentiel et de résolution* shall take into account any guidance issued by the European Banking Committee for the application of Article L. 511-41-1.

Article R. 511-16:

I. - The threshold mentioned in the first paragraph of I of Article L. 511-47 is set on the basis of the book value of assets corresponding to trading activities in financial instruments at 7.5% of the balance sheet of the entity concerned.

Within the meaning of this article, the book value of trading activities in financial instruments is either that of assets at fair value through profit or loss as defined by the international accounting standard IAS 39 mentioned in Commission Regulation (EC) No 1126/2008 of November 3, 2008, or, where the institution is not subject to international accounting standards, that of trading securities.

II. - When the credit institution, financial holding company or mixed financial holding company mentioned in I of Article L. 511-47 belongs to a group over which supervision by the competent authority is exercised on a consolidated basis, the threshold set in I of this article is assessed on the basis of the consolidated financial situation of this group or of the central body and the entities it consolidates for mutual groups.

III. - If the threshold is exceeded, the establishment or financial company shall identify, within six months from the end of the financial year during which the threshold is exceeded, those of its activities that have been spun-off pursuant to Article L. 511-47 and shall fulfil the obligations provided for in Article L. 511-49 within the same period. It shall proceed with the spin-off within twelve months from the above-mentioned closing date.

Article R. 511-16-1:

Credit institutions and finance companies indicate in their annual reports the return on their assets, calculated by dividing their net profit by their balance sheet total.

Article R. 511-16-2:

In credit institutions and finance companies, the members of the Board of Directors or the Supervisory Board, on the one hand, and the members of the Board of Directors or any other body exercising equivalent functions or any persons who effectively manage the business of the institution within the meaning of Article L. 511-13, on the other hand, collectively have the necessary knowledge, skills and experience referred to in Article L. 511-51 with regard to banking and financial markets, legal and regulatory requirements applicable to the credit institution or finance company, its governance system, including internal control, strategic planning and its implementation, risk management, accounting and financial information.

Article R. 511-16-3:

Each person who effectively directs the business of the credit institution or finance company within the meaning of Article L. 511-13, as well as each member of the Board of Directors, the Supervisory Board, the executive board or any other body exercising equivalent functions, demonstrates honesty, integrity and independence of mind that enables him or her to evaluate and, if necessary, effectively challenge management decisions and to ensure the effective supervision and monitoring of such decisions.

Article R. 511-16-4:

I. - As from fiscal years beginning on or after January 1, 2014, the persons mentioned in II of Article L. 511-45 draw up a table containing the information relating to their establishments by State or territory, mentioned in 1° of III of the same Article, as well as a table containing by State or territory the other information mentioned in III of the same Article. In the document in which they appear, these two tables are presented one after the other.

Such persons are not required to draw up these tables when the information mentioned in the preceding paragraph is published, in accordance with the procedures provided for in II, by their consolidating company, within the meaning of Article L. 233-16 of the Commercial Code, established in France or when it is published by their consolidating company established in another Member State of the European Union in application of an equivalent arrangement.

II. - The persons mentioned in II of Article L. 511-45 whose financial securities are admitted to trading on a regulated market publish the two tables mentioned in I once a year in their management report or, as the case may be, in the group management report.

The persons mentioned in II of Article L. 511-45 whose financial securities are not admitted to trading on a regulated market publish the two tables mentioned in I once a year in their annual report or, as the case may be, in the group management report. However, if their annual report is not filed with the clerk of the commercial court or if the person is not subject to the obligation to draw up an annual report, the tables are published as an annex to their annual accounts. In the event that the management report and the annual accounts are not made public by the clerk's office of the commercial court, the tables are published once a year in a separate document on the website of the person concerned within eight months of the end of the financial year and are accompanied by the certificate of the statutory auditors provided for in V of Article L. 511-45 or, where applicable, a mention of the refusal of the certificate.

III. - Without prejudice to the publicity measures concerning the management report and the annual financial statements, the persons mentioned in I shall make the tables available to the

public free of charge on their website within eight months of the end of the financial year and for a period of five years.

Section 8: Governance of credit institutions and finance companies (Sections R. 511-17 to R. 511-26)

Subsection 1: Officers (Article R. 511-17)

Article R. 511-17:

I. - The rules limiting the accumulation of mandates provided for in II to IV of Article L. 511-52 apply within a credit institution or a finance company that meets one of the following conditions:

1° The balance sheet total, whether corporate or consolidated, exceeds, for two consecutive fiscal years, fifteen billion euros;

2° The *Autorité de contrôle prudentiel et de résolution* has decided that the credit institution or finance company is of significant importance in view of its internal organization or the nature, scale and complexity of its activities.

The rules limiting the number of directorships held by temporary directors appointed to credit institutions or finance companies in this capacity under Articles II to IV of Article L. 511-52 do not apply to them.

II. - For the application of the rules limiting the plurality of offices provided for in II to IV of Article L. 511-52, the functions mentioned in this IV are taken into account when they are exercised in a legal entity having its registered office on French territory or abroad.

The exercise, within the same company or the same group within the meaning of 1° or 2° of III of article L. 511-52, of the functions mentioned in this IV is taken into account when they are exercised in a legal entity having its registered office on French territory or abroad. 511-52, of one or more mandates for one of the functions mentioned in 1° of IV of this article and of one or more mandates for one of the functions mentioned in 2° of IV of the same article, by a natural person to whom the rules of limitation of the accumulation of mandates apply, is counted as a mandate for one of the functions mentioned in 1° of IV of article L. 511-52.

III. - Where a credit institution or finance company meets the condition set out in 1° of I, the natural persons to whom the rules limiting the number of offices held must have complied with these rules no later than when approving the financial statements for the second financial year ended with a corporate or consolidated balance sheet total of more than fifteen billion euros.

Where the *Autorité de contrôle prudentiel et de résolution* has decided that the company is of material importance pursuant to paragraph 2 of section I, the natural persons to whom the rules limiting the number of directorships held apply have a period of three months from the notification of the Authority's decision to comply with these rules.

In all other cases, a natural person who finds himself in breach of the rules limiting the number of mandates held by the same person has a period of three months from the event that led to this situation to regularize it.

Subsection 2: Organization and internal control (Article R. 511-17-1)

Article R. 511-17-1:

If they have a website, credit institutions and finance companies shall present on it the measures implemented to ensure compliance with the requirements laid down in Article L. 511-45, in the present section and in the regulatory provisions adopted for their application.

Subsection 3: Compensation Policy and Practices (Articles R. 511-18 to R. 511-25)

Article R. 511-18:

I. - The *Autorité de contrôle prudentiel et de résolution* collects, under the conditions defined by order of the Economy Minister, the information mentioned in g, h and i of paragraph 1 of Article 450 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 published by credit institutions, financial holding companies, mixed financial holding companies, finance companies and parent companies of finance companies in order to compare trends and practices in terms of remuneration.

II. - The *Autorité de contrôle prudentiel et de résolution* collects, for each institution or company mentioned in I, information relating to the number of natural persons whose compensation amounts to at least one million euros per fiscal year, broken down by compensation brackets of one million euros, the functions performed by these persons and their field of activity, the main components of their salary, bonuses, long-term benefits and discretionary pension contributions, as well as their amounts.

Article R. 511-19:

The information mentioned in Article R. 511-18 as well as the information concerning the results of the votes of the shareholders' meetings mentioned in Article L. 511-78 is transmitted by the *Autorité de contrôle prudentiel et de résolution* to the European Banking Authority, with the exception of information concerning finance companies and parent companies of finance companies.

Article R. 511-20:

In the cases provided for in Article L. 511-78 where it is envisaged to increase the amount of the variable portion of the total compensation of the persons mentioned in Article L. 511-71 to an amount higher than the fixed remuneration, the draft resolutions to this effect submitted to the competent general meetings of credit institutions or finance companies shall mention the reasons justifying the draft resolution, the number of persons concerned, the functions performed by them, the consequences of the adoption of this draft resolution with regard to the requirement to maintain a sound financial base, as well as any other element enabling shareholders or holders of equivalent ownership rights to measure the scope of their vote.

Article R. 511-21:

The presentation to the General Meeting of the credit institution or finance company concerned of the draft resolutions mentioned in Article R. 511-20 complies with the rules of the Commercial Code. In cases where the provisions of this code do not apply, the period between the presentation of the draft resolution, including the information mentioned in Article R. 511-20, and the decision of the competent body may not be less than fifteen days.

Article R. 511-22:

I. - The shares and equivalent property rights referred to in Article L. 511-81 are understood to mean instruments linked to shares or equivalent property rights or equivalent non-cash instruments when the shares or equivalent property rights of the institution or finance company are not admitted to trading on a regulated market.

II. - The other convertible instruments mentioned in Article L. 511-81 that may be used for the allocation of variable compensation are the only instruments that may be fully converted into Tier 1 basic equity instruments as defined by Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013.

Article R. 511-23:

Credit institutions and finance companies shall subject the instruments mentioned in Article L. 511-81 to a minimum holding period defined under the conditions set forth in Article L. 511-72 in order to preserve the long-term interests of the credit institution or finance company mentioned in Article L. 511-71.

Article R. 511-24:

For the application of Article L. 511-84, the actions likely to lead to the reduction or restitution, in whole or in part, of variable compensation are defined by credit institutions and finance companies in consideration of the serious losses that they may cause to these institutions or companies. The decision of reduction or restitution mentioned in the first paragraph of this article takes into account the involvement of the interested party in the actions in question.

A decision of reduction or restitution may also take into consideration the failure to comply with the requirements of good repute and competence that are applicable to the person in question.

Article R. 511-25:

The deferred instruments referred to in Article L. 511-79 are equity instruments, debt instruments or other instruments referred to in Article L. 511-81.

Credit institutions and finance companies discount the portion of variable compensation referred to in Article L. 511-79 based in particular on the inflation rate and the risk incurred, which includes the duration of the deferred period. An order issued by the Economy Minister specifies the methods used to calculate the discount rate.

Subsection 4: Specialized committees (Article R. 511-26)

Article R. 511-26:

The *Autorité de Contrôle Prudentiel et de Régulation* collects, under the conditions defined by order of the Economy Minister, the information mentioned in Article L. 511-99 published by credit institutions and finance companies and transmits it, with the exception of that concerning finance companies, to the European Banking Authority.

Book VI: Institutions in banking and financial matters

Title I: The competent institutions for regulation and control

Chapter II: The Prudential Control and Resolution Authority

Section 6: Administrative police measures

Article R. 612-30

Where the Autorité de contrôle prudentiel et de résolution requires a person to submit a recovery plan for approval as provided for in Article L. 612-32, the latter is required to submit it to it within a maximum period of one month.

The Authority designates a controller who must be kept permanently informed of the preparation of the recovery plan it has required and of the implementation of the decisions and measures it contains in order to ensure its execution.

***ARRÊTÉ* OF 3 NOVEMBER 2014 ON INTERNAL CONTROL OF COMPANIES IN THE BANKING, PAYMENT SERVICES AND INVESTMENT SERVICES SECTOR SUBJECT TO THE SUPERVISION OF THE *AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION* (ACPR)**

—

Target groups: credit institutions, finance companies, payment institutions and electronic money institutions.

Purpose: Internal control of credit institutions, finance companies, payment institutions and electronic money institutions.

Entry into force: this *Arrêté* shall enter into force the day after the day of its publication, except for the provisions of Article 104 which shall enter into force on 1 January 2015.

Notice: This *Arrêté*, adopted on the basis of Articles L. 511-70, L. 511-103, L. 533-29, L. 533-31, L. 611-1 to L. 611-3 and L. 611-7 of the Monetary and Financial Code, partially transposes Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the taking up of the business of credit institutions and the prudential supervision of credit institutions and investment firms ("CRD IV" Directive). The legislative aspect of the transposition was the subject of *Ordonnance* No 2014-158 of 20 February 2014 on various provisions for adapting legislation to European Union financial law, while the regulatory aspect was partly the subject of Decree No 2014-1315 of 3 November 2014 on various provisions for adapting to European Union financial law and on finance companies and Decree No 2014-1316 of 3 November 2014 on various provisions for adapting to European Union financial law and on finance companies.

This *Arrêté*, consisting of 279 articles, replaces Banking and Financial Regulation Committee Regulation 97-02 of 21 February 1997 on internal control of credit institutions and investment firms and completes the transposition of the articles of the CRD IV on governance (in particular Articles 74, 88, 91, 91, 92, 94 and 95). This new decree, which incorporates and amends the provisions of Regulation 97-02, also incorporates the provisions relating to the governance of the *Arrêté* of 5 May 2009 on the identification, measurement, management and control of liquidity risk.

In accordance with the CRD IV Directive and Ordinance No. 2014-158 of 20 February 2014, the main new implementing measures created by this *Arrêté* relate to:

- the obligation for companies with a balance sheet size exceeding five billion euros to set up two committees, the Risk Committee and the Appointments Committee, in addition to the Remuneration Committee created by the CRD III Directive; the provisions relating to the Audit Committee, the establishment of which was optional, are deleted, the functions relating to risk control which it performed being devolved to the Risk Committee;
- the replacement of the risk channel by the risk management function;
- clarification of the respective roles of the effective managers and the supervisory body, including the strengthening of the latter's powers.

The Minister of Finance and Public Accounts,

Having regard to Regulation No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds;

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 concerning prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

Having regard to Delegated Regulation (EU) No 604/2014 of the European Commission of 4 March 2014 supplementing the Directive 2013/36/EU of the European Parliament and of the Council by technical regulatory standards by with regard to appropriate qualitative and quantitative criteria to identify the categories of staff whose professional activities have a significant impact on an institution's risk profile;

Having regard to the Monetary and Financial Code, in particular Articles L. 511-70, L. 511-41-1 B, L. 511-103, L. 533-29, L. 533-31, L. 611-1 to L. 611-3 and L. 611-7 thereof

Considering the commercial code;

Considering the law n° 75-1334 of 31 December 1975 relating to subcontracting;

Having regard to Banking Regulation Committee Regulation No. 90-01 of 23 February 1990 on the accounting for securities transactions;

Having regard to Banking Regulation Committee Regulation 90-15 of 18 December 1990, as amended, on the accounting for interest rate and currency swaps;

Having regard to Banking Regulation Committee Regulation No. 92-12 of 23 December 1992, as amended, on the provision of banking services abroad by credit institutions and financial institutions having their registered office in France;

Having regard to Regulation of the Banking Regulation Committee No 92-13 of 23 December 1992, as amended, on the provision of banking services in France by institutions having their registered office in the other Member States of the European Union

Considering the amended Banking Regulation Committee Regulation 93-05 of 21 December 1993 on the control of large exposures;

Having regard to Regulation 99-10 of the Banking and Financial Regulations Committee of 9 July 1999 on mortgage credit companies and housing finance companies

Having regard to Accounting Standards Committee Regulation 99-07 of 24 November 1999 on consolidation rules, as amended by the *Autorité des normes comptables*;

Having regard to Regulation of the Banking and Financial Regulation Committee No 2002-01 of 18 April 2002, as amended, on the obligations of vigilance in respect of cheques for the purpose of combating money laundering and terrorist financing;

Considering the amended Accounting Regulations Committee Regulation 2002-03 of 12 December 2002 on the accounting treatment of credit risk;

Considering the *Arrêté* of 2 July 2007 on the minimum capital, own funds and internal control of market undertakings;

Having regard to the *Arrêté* of 5 September 2007 on activities other than investment services and related services that may be performed by investment firms other than portfolio management companies;

Considering the *Arrêté* of 5 May 2009 on the identification, measurement, management and control of liquidity risk;

Considering the *Arrêté* of 2 September 2009 adopted pursuant to Article R. 561-12 of the Monetary and Financial Code and defining information relating to customer knowledge and the business relationship for the purposes of assessing money laundering and terrorist financing risks;

Having regard to the *Arrêté* of 29 October 2009 on the prudential regulation of payment institutions;

Having regard to the *Arrêté* of 2 May 2013 on the prudential regulation of electronic money institutions;

Considering the *Arrêté* of 23 December 2013 on the prudential regime for finance companies;

Considering the *Arrêté* of 9 September 2014 implementing Title I of Act No. 2013-672 of 26 July 2013 on the separation and regulation of banking activities;

Having regard to the opinion of the Advisory Committee on Financial Legislation and Regulation dated 8 October 2014;

Having regard to the opinion of the National Standards Evaluation Council dated 10 October 2014;

Having regard to the opinion of the *Autorité des marchés financiers* dated 14 October 2014,

Decides:

Title I: PRINCIPLES AND DEFINITIONS

Article 1

The companies subject to this *Arrêté* are:

1° Credit institutions mentioned in I of Article L. 511-1 of the Monetary and Financial Code as well as branches of credit institutions whose registered office is located in a State which is neither a member of the European Union nor a party to the Agreement on the

European Economic Area, licensed by the *Autorité de Contrôle Prudentiel et de Résolution*;

2° Finance companies mentioned in II of Article L. 511-1 of the Monetary and Financial Code;

3° Investment firms mentioned in Article L. 531-4 of the Monetary and Financial Code other than portfolio management companies mentioned in Article L. 532-9 of the same Code;

4° The companies mentioned in 3 and 4 of Article L. 440-2 of the Monetary and Financial Code;

5° The companies mentioned in 4 and 5 of Article L. 542-1 of the Monetary and Financial Code;

6° Payment institutions mentioned in Article L. 522-1 of the Monetary and Financial Code;

7° Electronic money institutions mentioned in Article L. 526-1 of the Monetary and Financial Code.

The *Autorité de Contrôle Prudentiel et de Résolution* may grant the derogation provided for in Article 7 of Regulation (EU) No 575/2013, except with respect to the application of the provisions relating to anti-money laundering and terrorist financing.

Article 2

Without prejudice to the provisions of the General Regulation and the decisions of the *Autorité des marchés financiers*, companies subject to this *Arrêté* shall establish a solid governance system, including in particular an adequate internal control system, complying with the conditions laid down in this *Arrêté* and, where applicable, with the European provisions directly applicable.

Article 3

The internal control referred to in Article 2 shall include in particular:

a) A system for monitoring internal operations and procedures;

b) An accounting and information processing organization;
c) Systems for measuring risks and results;
d) Risk monitoring and control systems;
e) A documentation and information system;
f) A system for monitoring cash and securities flows.

Article 4

Companies subject to this *Arrêté* shall ensure that internal control is put in place by adapting all the measures provided for in this *Arrêté* and, where appropriate, in the directly applicable European regulations, to the size, volume and location of their activities, as well as to the nature, scale and complexity of the risks inherent in their business model and activities.

Article 5

For the purposes of applying Chapter VI of Title IV, companies subject to this *Arrêté* which form a liquidity subgroup under the conditions laid down in Article 8 of Regulation (EU) No 575/2013 or which belong to a liquidity management scope defined in Article 30 of the aforementioned *Arrêté* of 5 May 2009 shall also ensure that the provisions of that Chapter are applied consistently and comprehensively to the entire subgroup or management scope.

Article 6

Companies subject to this *Arrêté* supervised on a consolidated or, where applicable, sub-consolidated basis shall ensure that:

a) Implement the necessary means to ensure compliance within the supervised companies exclusively or jointly within the meaning of the above-mentioned amended Regulation of the Accounting Regulations Committee No 99-07 of 24 November 1999 or IFRS for companies subject to such standards, the provisions of this *Arrêté* and, where applicable, directly applicable European provisions, unless it can be demonstrated to the *Autorité de Contrôle Prudentiel et de Résolution* that their application would be illegal under the law of a State which is not a Member State of the European Union or a party to the Agreement on the European Economic Area in which its subsidiary is established;
b) Ensure that the systems set up within these companies are consistent with each other in order to measure, monitor and control the risks incurred at consolidated or, where applicable, sub-consolidated level;
c) Verify the establishment of an organization, a control system and the adoption, within these companies, of adequate procedures for the production of information and intelligence relevant to the exercise of supervision on a consolidated or, where appropriate, sub-consolidated basis.

Article 7

Companies subject to this *Arrêté* shall ensure that the means, systems and procedures referred to in Article 6 (a), (b) and (c) are adapted to the organization of the group and to the nature of the controlled companies.

Article 8

Articles 6 and 7 shall apply to financial holding companies, parent companies of financing companies mentioned in Article L. 517-1 of the Monetary and Financial Code and mixed financial holding companies mentioned in Article L. 517-4 of the same Code which are supervised by the *Autorité de Contrôle Prudentiel et de Résolution* in accordance with Article L. 613-20-1 of the same Code. These financial holding companies and parent companies shall ensure the proper application of this *Arrêté* and, where applicable, of the European provisions directly applicable in the companies subject to this *Arrêté* and at the level of the group or conglomerate as a whole, unless they can demonstrate to the *Autorité de Contrôle Prudentiel et de Résolution* that their application would be illegal under the law of a State which is not a Member State of the European Union or a party to the Agreement on the European Economic Area in which their subsidiary is established.

They shall adopt the necessary provisions to ensure that the internal control system is appropriate to the various activities and sectoral rules.

Article 9

Where a taxable company is affiliated to a central body, the internal control of that company shall be organized in agreement with the central body.

Article 10

For the purposes of this *Arrêté*, the following definitions shall apply:

a) Effective managers :
- the persons who, in accordance with Article L. 511-13, Article L. 532-2, 4 of Article L. 532-2, the seventh paragraph of II of Article L. 522-6 and 4° of Article L. 526-9 of the Monetary and Financial Code, ensure the effective management of the taxable company;
- the person who, in the case of a payment institution carrying out activities of a hybrid nature within the meaning of Article L. 522-3 of the same Code or an electronic money institution carrying out activities of a hybrid nature within the meaning of Article L. 526-3 of the same Code, is declared responsible for the management of the activities of payment services and the issuance and management of electronic money respectively;

– persons who perform the same functions within the companies mentioned in 3 and 4 of Article L. 440-2 and in 4 and 5 of Article L. 542-1 of the Monetary and Financial Code;

b) Supervisory body:

– for companies governed by the Commercial Code, the Board of Directors, the Supervisory Board or any other body exercising supervisory functions, including the shareholders' meeting;
– the board of directors for agricultural credit unions, popular banks, mutual guarantee societies and mutual credit unions;
– the orientation and supervisory board for savings banks and municipal credit unions;
– the board of directors or the supervisory board for other public institutions;
– for other companies having a legal form other than that mentioned above, the board of directors, the supervisory board or any other body exercising equivalent supervisory functions, including the collegiate body which is responsible in particular for supervising, on behalf of the capital providers, the management and situation of the company;

c) Parent company: company defined in Article 4(1)(15) of Regulation (EU) No 575/2013 or company defined in Article L. 511-20(I) of the Monetary and Financial Code;

d) Credit transactions: all the transactions mentioned in Article L. 313-1 as well as the related transactions mentioned in Article L. 321-2 of the Monetary and Financial Code and carried out with any person, including other companies subject to this *Arrêté*;

e) Credit risk: the risk incurred in the event of default by a counterparty or counterparties considered as the same group of connected customers in accordance with Article 4(1) 39 of Regulation (EU) No 575/2013;

f) Market risks: the risks mentioned in Articles 325 to 377 of the above-mentioned Regulation (EU) No 575/2013;

g) Interest rate risk inherent in activities outside the trading book or overall interest rate risk: the risk incurred in the event of a change in interest rates as a result of all on- and off-balance sheet transactions, with the exception, where applicable, of transactions subject to the market risks mentioned in f;

h) Liquidity risk: the risk that the reporting company will not be able to meet its obligations or to unwind or offset a position due to market conditions or idiosyncratic factors within a specified period of time and at a reasonable cost;

i) Settlement risk: the risk referred to in Articles 378 to 380 of Regulation (EU) No 575/2013 referred to above;

j) Operational risk: in accordance with Article 4(1)(52) of Regulation (EU) No 575/2013 above, the risk of losses resulting from inadequate or failed internal processes, personnel and systems or external events, including legal risk;

k) Operational risk includes in particular risks related to events with a low probability of occurrence but a high impact, risks of internal and external fraud as defined in Article 324 of Regulation (EU) No 575/2013 and risks related to the model;

l) Legal risk: the risk of any dispute with a counterparty, resulting from any imprecision, deficiency or insufficiency that may be attributable to the reporting company in respect of its operations;

m) Maximum potential loss: the measure of the most adverse impact on results of changes in market conditions occurring over a given period and with a given level of probability;

n) Intermediation risk: the risk of default by a principal or counterparty in a financial instrument transaction in which the reporting company provides its performance guarantee;

o) Emergency and business continuity plan: a set of measures designed to ensure, under various crisis scenarios, including extreme shocks, the maintenance, where necessary, on a temporary basis, in a degraded form, of the taxable company's essential or important services or other operational tasks, and then the planned recovery of the business and to limit its losses;

p) Means of payment: means of payment within the meaning of Article L. 311-3 of the Monetary and Financial Code other than cash;

q) Non-compliance risk: the risk of judicial, administrative or disciplinary sanctions, significant financial loss or damage to reputation, resulting from non-compliance with provisions specific to banking and financial activities, whether legislative or regulatory, national or European in nature, directly applicable, or professional and ethical standards, or instructions from effective managers taken in particular in accordance with the guidelines of the supervisory body;

r) Outsourced activities: activities for which the taxable company entrusts a third party, on a long-term basis and on a regular basis, with the provision of services or other essential or important operational tasks by subcontracting within the meaning of Law No 75-1334 of 31 December 1975 referred to above, by direct selling within the meaning of Articles L. 341-1 and L. 341-4 of the Monetary and Financial Code, by using persons to distribute electronic money on behalf of the taxable company within the meaning of Articles L. 525-8 et seq. of the same Code, by using tied agents as defined in Articles L. 545-1 et seq. of the same Code, by using agents as defined in Articles L. 523-1 et seq. of the same Code or by any other form;

s) Provision of services or other essential or important operational tasks:

– banking operations within the meaning of Article L. 311-1 of the Monetary and Financial Code, the issue and management of electronic money within the meaning of Article L. 315-1 of the same Code, payment services within the meaning of II of Article

L. 314-1 of the same Code and investment services within the meaning of Article L. 321-1 of the same Code, for which the taxable company has been authorized;
- the related transactions mentioned in 1, 2, 3, 7 and 8 of I of Article L. 311-2, 1, 2, 5 and 6 of Article L. 321-2 and Articles L. 522-2 and L. 526-2 of the Monetary and Financial Code;
- services directly involved in the execution of the operations or services mentioned in the first two indents;
- or any provision of services where an anomaly or failure in its performance is likely to seriously impair the ability of the taxable company to comply at all times with the conditions and obligations of its authorization and those relating to the conduct of its business, its financial performance or the continuity of its services and activities.

Without prejudice to the assessment of any other task, the following tasks shall not be considered as essential or important services and other operational tasks:

- the provision to the taxable company of advisory and other services not forming part of the activities covered by its authorization or authorization, including the provision of legal advice, the training of its staff, invoicing services and the security of the company's premises and staff;
- the purchase of standard services, including services providing market information or price data flows;

t) Concentration risk: the risk arising from exposure to each counterparty, including central counterparties, to counterparties considered as the same group of customers linked in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013, to counterparties operating in the same economic sector or geographical area, or from the granting of credit for the same activity, or from the application of credit risk mitigation techniques, including collateral issued by the same issuer;

u) Residual risk: the risk that the credit risk mitigation techniques recognized for the application of Regulation (EU) No 575/2013 used by companies subject to this *Arrêté* may prove to be less effective than expected;

v) Discretionary pension benefits: in accordance with Article 4(1)(73) of Regulation (EU) No 575/2013, the additional pension benefits granted on a discretionary and individual basis by a company subject to an employee and forming part of the employee's variable remuneration, which do not include the rights granted to an employee under the company's pension schemes;

w) Basic risk: risk of losses resulting from a change in the value of a futures contract on a stock market index or another product derived from this stock market index, not fully in line with that of the shares comprising it;

x) Dilution risk: in accordance with Article 4(1)(53) of Regulation (EU) No 575/2013, the risk that the amount of a claim will be reduced by granting the debtor credit, in the form of cash or in another form;

y) Credit risk mitigation: in accordance with Article 4(1)(57) of Regulation (EU) No 575/2013, a technique used by a reporting company to reduce the credit risk associated with an exposure or exposures it retains;

z) Securitization risk: the risk induced by securitization transactions in which the reporting company acts as an investor, initiator or sponsor, including reputational risks such as those arising in connection with complex structures or products;

aa) Systemic risk: risk of disruption of the financial system that could have serious negative repercussions on the financial system and the real economy;

bb) Model risk: loss that may be incurred as a result of decisions that may be based primarily on the results of internal models, due to errors in their development, implementation or use;

cc) Excessive leverage risk: in accordance with Article 4(1)(94) of Regulation (EU) No 575/2013, the risk of vulnerability of a credit institution or investment firm resulting from possible leverage or leverage that may require corrective measures not provided for in the business plan, including an emergency sale of assets that may result in losses or revaluation of remaining assets;

dd) Risk Committee: the committee referred to in Articles L. 511-89 and L. 511-92 to L. 511-97 of the Monetary and Financial Code;

ee) Appointments Committee: committee referred to in Articles L. 511-89 and L. 511-98 to L. 511-101 of the Monetary and Financial Code;

ff) Remuneration Committee: committee mentioned in Articles L. 511-89 and L. 511-102 of the Monetary and Financial Code;

gg) Mixed group or group: groups defined in III and V of Article L. 511-20 of the Monetary and Financial Code respectively;

hh) Trading portfolio: in accordance with Article 4(1) 86 of Article 4 of Regulation (EU) No 575/2013, all positions in financial instruments and commodities held by a credit institution or investment firm for trading purposes or to hedge other elements of the trading portfolio;

ii) Initiator or originator: in accordance with Article 4(1)(13) of Regulation (EU) No 575/2013, an entity that purchases exposures from a third party for its own account and securitizes them or an entity that, either directly or through related entities, participated in the original agreement that gave rise to the potential obligations or obligations of the

debtor or potential debtor and gave rise to the securitized exposure;

jj) Authorized introducer or Sponsor: in accordance with Article 4(1)(14) of Regulation (EU) No 575/2013, a reporting company, other than an originator reporting company, that establishes and manages an asset-backed commercial paper programme or other securitization scheme that repurchases exposures from third parties.

Title II: SYSTEM OF CONTROL OF INTERNAL OPERATIONS AND PROCEDURES

Chapter I: General provisions

Article 11

The purpose of the system for monitoring internal operations and procedures is, under optimal conditions of security, reliability and exhaustiveness, to:

a) Verify that the transactions carried out by the company, as well as its internal organization and procedures, comply with the provisions specific to banking and financial activities, which can be of a legislative or regulatory nature and include national provisions and directly applicable European provisions, or can consist in professional and ethical standards, or in instructions from executive managers issued in particular in accordance with the strategies and policies governing the taking, management, monitoring and reduction of risks, or in guidelines and supervisory policy of the supervisory body;

b) Verify that the decision-making and risk taking procedures, whatever their nature, and whatever the management standards set by the executive managers, within the framework of the policies and guidelines of the supervisory body, in particular in the form of limitations, are strictly complied with;

c) Verify the quality of accounting and financial information, whether intended for executive managers or the supervisory body, transmitted to the regulatory and supervisory authorities or included in documents to be published;

d) Verify the conditions for evaluating, recording, storing and making available this information, in particular by ensuring the existence of the audit trail within the meaning of Article 85;

e) Verify the quality of information and communication systems;

f) Verify the timely execution of corrective measures decided upon within the

companies subject to this *Arrêté*;

g) Verify compliance with the provisions relating to remuneration policies and practices, whether legislative or regulatory in nature, including European provisions that are directly applicable, and with the general principles of remuneration defined by the supervisory body or, where applicable, the competent general meetings.

Article 12

The companies subject to this *Arrêté* have, according to procedures adapted to their size, the nature and complexity of their activities, agents carrying out permanent or periodic controls.

Article 13

The permanent control of the compliance, security and validation of the operations carried out and the respect of other due diligence related to the missions of the risk management function is ensured, with a set of adequate resources, by:

- certain agents, at the level of central and local services, exclusively dedicated to this function;
- other agents engaged in operational activities.

Article 14

The organization of companies subject to this *Arrêté* adopted pursuant to Article 13 is designed to ensure strict independence between the units responsible for initiating transactions and the units responsible for validating them, in particular for accounting, paying them and monitoring the due diligence related to the tasks of the risk management function.

This independence is ensured by a different hierarchical reporting line for these units up to a sufficiently high level or by an organization that guarantees a clear separation of functions or by procedures, possibly computerized, designed for this purpose and for which the company is able to justify the adequacy.

Article 15

The remuneration of staff in the units responsible for validating operations is set independently of that of the professions whose operations they validate or verify, and at a level sufficient to provide qualified and experienced staff.

It takes into account the achievement of the objectives associated with the function.

Article 16

Companies subject to this *Arrêté* shall designate one or more persons responsible for the permanent control provided for in the first indent of Article 13.

The most senior managers, when they are not effective managers, do not perform any commercial, financial or accounting operation.

In the event of a plurality of persons responsible at the highest level for permanent control, an effective manager shall ensure the consistency and effectiveness of such control.

Article 17

Periodic monitoring of the conformity of operations, the level of risk actually incurred, compliance with procedures, the effectiveness and appropriateness of the arrangements referred to in Article 13 shall be ensured by means of investigations by officials at central and, where appropriate, local level, other than those referred to in that Article.

The companies subject to this *Arrêté* shall also appoint a person responsible for ensuring the consistency and effectiveness of the tasks referred to in the first subparagraph.

The officials responsible for the periodic inspection provided for in the first subparagraph shall carry out their duties as follows independently of all the entities and departments they control.

Article 18

Where the size of the taxable company does not justify entrusting the responsibilities for permanent and periodic control to different persons, these responsibilities may be entrusted either to a single person or to the effective managers who, under the supervision of the supervisory body, ensure the coordination of all the mechanisms involved in the performance of this task.

Article 19

Where the reporting company is an investment firm, the functions provided for in Article 13 may be entrusted to the persons in charge of the controls provided for in the General Regulation of the *Autorité des marchés financiers*.

The person responsible for these controls may assume the responsibilities provided for in Article 16.

Article 20

Where a taxable company belongs to a group, the responsibilities referred to in Article 18 may be carried out at the level of another taxable company of the same group or affiliated to the same central body, after agreement by the supervisory bodies of the two companies concerned.

Article 21

Under the conditions laid down in Article 18 or where justified by special circumstances, a company subject to this *Arrêté* may entrust tasks of carrying out the controls provided for in Articles 13 and 17 to external service providers under the responsibility of the persons designated pursuant to Article 16 and under the conditions laid down in Articles 237 to 240.

Article 22

The supervisory body and, where applicable, the Risk Committee shall be informed by the effective managers of the appointment of the officers referred to in Articles 16 and 17, whose identity shall be communicated to the Supervisory Authority.

Article 23

The persons responsible referred to in Articles 16 and 17 shall report on the performance of their duties to the effective managers and the supervisory body and, where applicable, to the Risk Committee.

Article 24

Companies subject to this *Arrêté* shall ensure that the number and qualifications of the persons referred to in Article 12, as well as the means at their disposal, in particular monitoring tools and risk analysis methods, are adapted to the size, locations and nature, scale and complexity of the risks inherent in the business model and their activities.

Article 25

The resources allocated to periodic review under the systems referred to in Article 17 shall be sufficient to carry out a complete cycle of investigations of all activities over a number of financial years as limited as possible.

A programme of control missions is drawn up at least once a year, incorporating the annual objectives of the executive managers and the control guidelines of the supervisory body.

Article 26

Companies subject to this *Arrêté* shall define procedures that allow:

a) A verification of the timely execution of corrective measures decided by the competent persons within the framework of the internal control system;

b) The person in charge of the periodic review to inform directly and on his own initiative the supervisory body and, where appropriate, the Risk Committee of the failure to implement the corrective measures decided.

Article 27

Companies subject to this *Arrêté* shall ensure that the control system is integrated into the organization, methods and procedures of each activity and that the arrangements referred to in Article 17 apply to the whole company, including its branches, as well as to all companies controlled exclusively or jointly.

Chapter II: Compliance monitoring system

Article 28

Reporting companies shall designate a person responsible for ensuring the consistency and effectiveness of the control of non-compliance risk, whose identity they shall communicate to the *Autorité de Contrôle Prudentiel et de Résolution*.

Article 29

The compliance officer, when he is not an executive manager, shall not carry out any commercial, financial or accounting operations.

Article 30

The companies subject to this *Arrêté* shall determine to whom, among the executive managers or one of the persons responsible for the permanent control provided for in Article 16, the compliance officer shall report on the performance of his duties.

Article 31

The compliance officer also reports directly to the supervisory body and, where applicable, to the Risk Committee.

Article 32

Where the size of the taxable company does not justify entrusting this responsibility to a person other than the person responsible for permanent control, the latter shall ensure the coordination of all the arrangements contributing to the exercise of the compliance control function.

Article 33

Where a taxable company belongs to a group, such liability may be assumed at the level of another taxable company of the same group or affiliated to the same central body, after agreement by the supervisory bodies of the two companies concerned.

Article 34

Where the reporting company is an investment firm, the responsibilities provided for in Article 28 may be entrusted to the person responsible for monitoring compliance with the provisions

falling within the competence of the *Autorité des marchés financiers*, without prejudice to the application of Article 19.

Article 35

Reporting companies shall provide for specific conformity assessment procedures, including:

- systematic prior approval procedures, including a written opinion from the compliance officer or a person duly authorized by the latter for this purpose, for new products or for significant transformations to existing products, for this company or for the market;

- or, for the provision of investment services, any arrangements to advise and assist the persons concerned in charge of investment services in order for them to comply with their obligations under this Chapter.

They also provide for procedures to control the operations carried out.

Article 36

Companies subject to this *Arrêté* shall set up, in accordance with procedures adapted to their organization and which take into account, where applicable, their membership of a group, procedures for centralizing information on any malfunctions in the effective implementation of compliance obligations.

Article 37

Companies subject to this *Arrêté* shall allow any manager or employee to report any questions about these possible malfunctions to the compliance officer of the entity or business line to which they belong, or to the officer referred to in Article 28.

The organizational rules adopted shall be made known to all staff.

Article 38

Companies subject to this *Arrêté* shall put in place procedures to monitor and evaluate the effective implementation of actions to remedy any malfunction in the implementation of compliance obligations.

In this context, executive managers shall define procedures to ensure the separation of tasks and to prevent conflicts of interest in accordance with the guidelines of the supervisory body.

Article 39

Companies subject to this *Arrêté* shall provide all relevant staff with training in compliance control procedures, appropriate to the operations they carry out.

Article 40

Companies subject to this *Arrêté* shall set up a system to ensure that changes in the texts applicable to their operations are regularly and as frequently as possible monitored and, as such, that all members of their staff concerned are immediately informed.

Article 41

Companies subject to this *Arrêté* shall ensure that their subsidiaries and branches abroad set up mechanisms to monitor the compliance of their operations.

The systems referred to in the first paragraph shall make it possible to monitor compliance with the local rules applicable to the activity of their subsidiaries and branches and to apply this *Arrêté*.

Where local provisions are more stringent than the provisions of this *Arrêté* and where applicable, than the directly applicable European provisions, compliance with them shall be deemed to satisfy the obligations laid down in this *Arrêté* at the level of local establishments.

Article 42

Where the provisions of local regulations prevent the application of the rules provided for in this *Arrêté,* in particular if they prevent the communication of information necessary for such application, the local entities concerned shall inform the compliance officer.

The reporting company shall inform the *Autorité de Contrôle Prudentiel et de Résolution* accordingly.

Chapter III: Anti-money laundering and anti-terrorist financing arrangements

Article 43

Companies subject to this *Arrêté* shall establish an organization, a classification of money laundering and terrorist financing risks, internal procedures and a monitoring process for this system.

Section 1: Organization

Article 44

Companies subject to this *Arrêté* shall ensure that staff whose activities are exposed to money laundering and terrorist financing risks are able to exercise a level of vigilance that is adequate to those risks.

Article 45

For the purposes mentioned in Article 44, companies subject to this Arrêté shall ensure that the training and information of such staff, provided for in Article L. 561-33 of the Monetary and Financial Code, is adapted to their activities, taking into account the risks identified by the classification and the level of responsibility exercised.

The training and information of staff shall include procedures indicating the operations on which they must exercise particular vigilance with regard to the risks identified by the classification established by the company subject to this *Arrêté*.

Article 46

Companies subject to this *Arrêté* shall set up mechanisms for monitoring and analyzing their business relationships, based on knowledge of their customers, making it possible in

particular to detect transactions which constitute anomalies with respect to the profile of business relationships and which could be subject to the enhanced examination referred to in II of Article L. 561-10-2 of the Monetary and Financial Code or to the declaration provided for in Article L. 561-15 of the same Code.

Article 47

Companies subject to this *Arrêté* shall also set up mechanisms adapted to their activities to detect any transaction for the benefit of a person or entity subject to a freezing measure in respect of funds, financial instruments or economic resources.

Article 48

The obligation provided for in Article 47 shall not apply in the case of a transfer from:

- a Member State of the European Union or a State party to the Agreement on the European Economic Area if the companies subject to this *Arrêté* do not know the identity of the principal pursuant to Article 6 of the above-mentioned Regulation No 1781/2006;
- an associated State or territory under Article 17 of the aforementioned Regulation No 1781/2006;
- Saint Pierre and Miquelon, New Caledonia, French Polynesia and the Wallis and Futuna Islands if the companies subject to this *Arrêté* do not know the identity of the principal pursuant to Article L. 713-5 of the Monetary and Financial Code.

Article 49

The mechanisms referred to in Articles 46 and 47 shall be adapted to the activities, customers, locations of the company and risks identified by the classification.

Article 50

The systems for monitoring and analyzing transactions shall make it possible to define criteria and materiality thresholds specific to anomalies in the field of money laundering and terrorist financing.

Article 51

Companies subject to this *Arrêté* shall, in accordance with procedures adapted to their size, the nature of their activities and the risks identified by the classification of money laundering and terrorist financing risks, acquire sufficient human resources to analyze the anomalies detected by the above-mentioned mechanisms.

Article 52

They shall ensure that the staff concerned have adequate experience, qualification, training and positioning to carry out their duties.

They shall ensure that they have access to the internal information necessary for the performance of their duties.

Article 53

Companies subject to this *Arrêté* shall set up, in accordance with procedures adapted to their organization and which take into account, where appropriate, their membership of a group, procedures for centralizing the analysis of detected anomalies meeting the criteria and thresholds mentioned in Article 50.

Article 54

The procedures provide for the transmission of these anomalies to the declarant and the correspondent mentioned in Articles R. 561-23 and R. 561-24 of the Monetary and Financial Code, depending on their respective competences.

Article 55

Companies subject to this *Arrêté* shall ensure that the above-mentioned declarant and correspondent have access to all the information necessary for the performance of their duties.

They shall provide them with tools and means for them to proceed, in accordance with their respective competences, to:

- the declarations provided for in Article L. 561-15 of the Monetary and Financial Code;

- the processing of requests for information from the service with national competence TRACFIN.

Article 56

The above-mentioned declarant and correspondent shall also be informed of:

- incidents relating to the fight against money laundering and terrorist financing revealed by internal control systems;

- deficiencies noted by national and foreign supervisory authorities in the implementation of provisions relating to the fight against money laundering and terrorist financing.

Section 2: Risk Classification

Article 57

The classification of money laundering and terrorist financing risks covers all activities likely to expose the company to risks in the field of the fight against money laundering and terrorist financing, in particular:

- transactions with the persons mentioned in Article R. 561-18 of the Monetary and Financial Code;

- the activities mentioned in Article R. 561-21 of the Monetary and Financial Code;

- asset management activities;

- activities carried out with persons established in States or territories mentioned by the Financial Action Task Force among those whose legislation or practices impede the fight against money laundering and terrorist financing, or through establishments in those States or territories;

- activities carried out with persons established in States or territories mentioned in I of Article L. 511-45 of the Monetary and Financial Code or through establishments in these States or territories.

Article 58

The classification of money laundering and terrorist financing risks also takes into account:

- the information and statements issued by the Financial Action Task Force and the Minister of the Economy;

- the information received from the service with national competence TRACFIN.

Article 59

The classification of money laundering and terrorist financing risks assesses the level of risk of the various products or services offered, the specific terms or conditions of the transactions carried out, the distribution channels used and the characteristics of the targeted clientele.

Article 60

The classification of money laundering and terrorist financing risks is updated on a regular basis and following any event significantly affecting the activities, customers or locations of the company subject to this *Arrêté*.

Section 3: Internal Procedures

Article 61

Companies subject to this *Arrêté* shall adopt procedures relating to the vigilance obligations provided for in Chapters I and II of Title VI of Book V of the Monetary and Financial Code, taking into account the risks identified by the classification provided for in Articles 57 to 60.

Article 62

The procedures include the following:

a) The procedures for accepting new clients, in particular persons exposed to particular risks because of the political, judicial or administrative functions they perform or ceased to perform within the last year;

b) The conditions under which to accept transactions with occasional customers.

Article 63

The procedures also specify:

a) The steps to be taken to identify the client and, where applicable, the beneficial owner, in particular when they use a service provider to identify and verify the identity of their client under the conditions provided for in II of Article R. 561-13 of the Monetary and Financial Code; in the latter case, the procedures shall lay down detailed rules for the application of Articles 234 to 239, with the exception of Articles 239(a) and (c), and the conditions for the transmission by the service provider of any information useful in the fight against money laundering and terrorist financing, while ensuring the confidentiality of such information;

b) The procedures for verifying the identity of customers pursuant to Article L. 561-5 of the Monetary and Financial Code for transactions involving electronic money, as defined in Article L. 315-1 of the same Code and, where the derogation provided for in Article R. 561-16 of the same Code is applicable, the steps to be taken to ensure that the conditions required to benefit from it are met pursuant to Article R. 561-17 of the same Code.

Article 64

The procedures also define:

a) The additional or enhanced due diligence measures to be implemented for the business relationships referred to in Articles L. 561-10, on the one hand, and L. 561-10-1 and L. 561-10-2 of the Monetary and Financial Code, on the other hand, as well as the review of due diligence measures when the client , during the business relationship, comes to meet the criteria of Article R. 561-18 of the same Code;

b) The elements necessary for adequate knowledge of the business relationship and, where applicable, of the beneficial owner, in particular those mentioned in the aforementioned *Arrêté* of 2 September 2009, as well as the frequency of their updating.

Article 65

When companies subject to this *Arrêté* use agents, under the conditions of I of Article L. 523-1 of the Monetary and Financial Code, or persons to distribute electronic money on their behalf, under the conditions laid down in Articles L. 525-8 et seq. of the same Code, specific procedures shall be laid down for the implementation of the due diligence obligations laid down in the Monetary and Financial Code and the conditions under which these agents and persons shall provide them with all information relevant to the fight against money laundering and terrorist financing.

Article 66

The procedures provide for the information to be collected and kept for the transactions mentioned in II of Article L. 561-10-2 of the Monetary and Financial Code concerning:

a) The origin and destination of the sums and the purpose of the transaction;

b) The identity of the principal client and, where applicable, of the beneficial owner;

c) The identity of the beneficiary or beneficiaries or the identity of the other party to the transaction (name, address, if applicable occupation);

d) The characteristics of the transaction (amount, date) and the conditions for its execution (use of a specific payment system in particular);

e) If applicable, the terms and conditions of operation of the account;

f) Relevant elements concerning the profile of the business relationship.

Article 67

The procedures shall provide for the information to be collected and kept for transactions involving electronic money as defined in Article L. 315-1 of the Monetary and Financial Code.

The information includes in particular:

a) The information required to ensure the traceability of the loading, collection and redemption of electronic money units by the issuing institution under the conditions of duration provided for in Article L. 561-12 of the Monetary and Financial Code. The persons used by an electronic money issuer to distribute electronic money on its behalf within the meaning of Article L. 525-8 of the Monetary and Financial Code shall provide the necessary assistance to the issuing institution to ensure such traceability;

b) Misstatements relating to the circulation or redemption of electronic money noted by the reporting company issuing the electronic money or, where applicable, on its behalf, by the persons it uses to distribute electronic money within the meaning of Article L. 525-8 of the Monetary and Financial Code.

Article 68

Where the companies subject to this *Arrêté* are part of a financial group, a mixed group or a financial conglomerate, the procedures shall define the procedures for the circulation within the group of the information necessary for the organization of the fight against money laundering and terrorist financing under the conditions laid down in Article L. 511-34 of the Monetary and Financial Code.

The procedures shall in particular provide for the processing of such information in the monitoring and analysis mechanisms referred to in Articles 46 and 47 and shall ensure that such information is not used for purposes other than the fight against money laundering and terrorist financing.

The procedures shall provide for the exchange of information relating to the existence and content of the declarations provided for in Article L. 561-15 of the Monetary and Financial Code. They define, under the conditions provided for in Article L. 561-20 of the same Code, the procedures to ensure the protection of this information, and in particular that persons whose sums and transactions are the subject of a declaration are not informed of it.

Article 69

The procedures shall provide for the exchange of information relating to the existence and content of the declarations provided for in Article L. 561-15 of the Monetary and Financial Code, under the conditions provided for in Article L. 561-21 of the same Code.

They indicate in particular:

- the persons duly authorized to carry out such exchanges;
- precautions to be taken to ensure that persons whose sums and transactions are the subject of a declaration are not informed;
- the provisions to be implemented to ensure that the information is not used for purposes other than the fight against money laundering and terrorist financing.

Article 70

The procedures define the conditions of storage, according to procedures designed to ensure confidentiality:

a) Copies of the identification documents mentioned in Article R. 561-5 of the Monetary and Financial Code or their references;

b) Where applicable, details identifying the beneficial owner;

c) Information necessary to know the business relationship;

d) Information, declarations and documents relating to the sums and transactions

mentioned in Article L. 561-15 and L. 561-15-1 of the Monetary and Financial Code.

Section 4: Control System

Article 71

The permanent review of the anti-money laundering and anti-terrorist financing system shall form part of the compliance monitoring system, under the conditions laid down in Chapter II of this Title.

Article 72

The compliance officer shall ensure that the systems and procedures referred to in this Chapter are appropriate, in particular that they comply with the obligations laid down in Articles L. 561-10-2, L. 561-15 and R. 561-31 of the Monetary and Financial Code.

Article 73

Where companies subject to this *Arrêté* use a service provider to identify and verify the identity of their customer, under the conditions provided for in II of Article R. 561-13 of the Monetary and Financial Code, their control system shall ensure compliance with the provisions of Articles 234 to 239 with the exception of a) and c) of Article 239.

Chapter IV: Risk monitoring by the risk management function

Article 74

Reporting companies shall designate a person responsible for the risk management function, whose identity they shall communicate to the *Autorité de Contrôle Prudentiel et de Régulation.*

Article 75

The risk management function includes the agents and units in charge of risk measurement, monitoring and control.

Article 76

When he is not an executive manager, the person in charge of the risk management function is directly attached to the executive managers and does not carry out any commercial, financial or accounting operations.

Article 77

The head of the risk management function reports on the performance of his or her duties to the executive managers and alerts them to any situation likely to have a significant impact on risk control.

If necessary, in the event of changes in risks, it may report directly to the supervisory body and, where applicable, to the Risk Committee, without referring to the executive management.

The person in charge of the risk management function shall communicate to the supervisory body and, where applicable, to the Risk Committee any information necessary for the performance of the latter's tasks or which they request from him.

Article 78

Where justified by the size, scale, nature and complexity of the activity of a reporting entity or circumstances, the person responsible for permanent control shall ensure the coordination of all the arrangements involved in the risk management function.

Article 79

Where a subject company belongs to a group, responsibility for the risk management function may be assumed at the level of another subject company of the same group or affiliated to the same central body, after agreement of the supervisory bodies of the two companies concerned.

Article 80

Where the company is an investment firm, the responsibilities provided for in Article 74 may be entrusted to the persons in charge of the controls provided for in the General Regulation of the *Autorité des marchés financiers*.

Article 81

The head of the risk management function shall ensure the implementation of the systems for measuring and monitoring risks and results referred to in Title IV and the systems for monitoring and controlling risks referred to in Title V.

It shall ensure that the level of risks incurred by the taxable company is compatible with the guidelines and policies laid down by the supervisory body and the limits referred to in Article 223.

Article 82

The reporting companies shall provide the risk management function with sufficient resources in terms of staff, information systems and access to internal and external information necessary for the performance of its functions.

They ensure that the staff of the risk management function have sufficient experience, qualifications and adequate positioning to carry out their duties within the company.

Article 83

The head of the risk management function may not be removed from office without the prior agreement of the supervisory body and may, if necessary, appeal directly to the supervisory body on this point.

Companies subject to this *Arrêté* shall set up a procedure or adapt existing procedures in order to comply with the provisions of the preceding paragraph.

Title III: THE ACCOUNTING AND PROCESSING ORGANIZATION OF INFORMATION

Article 84

Companies subject to this *Arrêté* shall comply with the provisions of Articles R. 123-172 to R. 123-177, R. 123-203 and R. 123-204 of the French Commercial Code, taking into account the clarifications provided in Articles 85 and 86.

Article 85

With regard to the information included in the published balance sheet and income statement accounts and the information in the notes to the accounts, the organization set up guarantees the existence of a set of procedures, known as the audit trail, which allows:

a) To reconstruct in chronological order the operations;

b) To justify any information by an original document from which it must be possible to trace back by an uninterrupted process to the summary document and vice versa;

c) Explain the change in balances from one period-end to the next by retaining the movements affecting the accounting items.

In particular, the balances of the accounts included in the chart of accounts prescribed in Article R. 123-175 of the French Commercial Code are linked, directly or by grouping, to the items and sub-items of the balance sheet and income statement as well as to the information contained in the notes.

As an exception, the balance of an account may be connected by splitting, provided that the company can justify it, that it complies with the appropriate security and control rules and that it describes the method used in the document prescribed in Article R. 123-172 of the same code.

Article 86

The accounting information contained in the situations intended for the *Autorité de Contrôle Prudentiel et de Résolution*, as well as those necessary for the calculation of the management standards established pursuant to Article L. 611-1, Articles L. 611-1-1-1 and L. 611-1-3 and 2 of Article L. 611-3 of the Monetary and Financial Code and the European provisions directly applicable, as well as the management standards applicable to the companies mentioned in Articles L. 440-2, 3 and 4, and 4 and 5 of Article L. 542-1 of the same Code, comply, at least, with the conditions described in Article 85(a) and (b).

In particular, each amount appearing in the situations, in the annexed tables, in the declarations relating to management standards and in the other documents submitted to the *Autorité de Contrôle Prudentiel et de Résolution* shall be auditable, in particular on the basis of the details of the elements making up that amount.

Where the *Autorité de Contrôle Prudentiel et de Résolution* authorizes information to be provided by statistical means, it is verifiable without necessarily leaving the audit trail.

Article 87

Companies subject to this *Arrêté* shall ensure the completeness, quality and reliability of the information and methods of valuation and accounting, in particular by the following means:

a) Periodic monitoring is carried out to ensure that the methods and parameters used to evaluate operations in the management systems are appropriate;

b) Periodic monitoring is carried out to ensure that the accounting schemes are relevant to the general objectives of security and prudence, as well as to their compliance with the accounting rules in force;

c) For transactions that involve market risks, including foreign exchange risks, a reconciliation must be made, at least monthly, between the results calculated for operational management and the results recognized in accordance with the valuation rules in force. Companies subject to this *Arrêté* are able to identify and analyze the discrepancies found.

Article 88

The companies subject to the rules determine the level of IT security deemed desirable in relation to the requirements of their businesses.

They shall ensure the level of security chosen and that their information systems are adapted.

Article 89

The control of information systems must in particular ensure that:

a) The level of security of the IT systems is periodically assessed and, if necessary, that corrective actions are taken;

b) Computer backup procedures are available to ensure business continuity in case of serious difficulties in the operation of computer systems;

c) The integrity and confidentiality of the information is preserved in all circumstances.

Article 90

The control of information systems extends to the storage of information and documentation relating to the analysis, programming and execution of the processing operations.

Article 91

Companies subject to this *Arrêté* are required to keep, until the date of the next financial year, all the files necessary to justify the documents of the last financial year submitted to the *Autorité de Contrôle Prudentiel et de Résolution*.

Article 92

Without prejudice to the provisions of the General Regulation and the decisions of the *Autorité des marchés financiers* relating to the accounting for financial instruments, assets held by companies subject to reporting requirements on behalf of third parties, but not included in the individual annual accounts, shall be the subject of accounting or material monitoring tracing existing assets, entries and exits.

Article 93

Among the assets mentioned in Article 92, a distribution shall be made, if significant, between those held as a mere depositary and those which guarantee either a credit granted or a commitment made for specific purposes or pursuant to a general agreement in favour of the depositor.

Title IV: SYSTEMS FOR MEASURING RISKS AND RESULTS

Chapter I: General provisions

Section 1: Risk Measurement Systems and Procedures

Article 94

Reporting companies shall set up risk analysis and measurement systems adapted to the nature and volume of their operations in order to assess the various types of risks to which they are exposed, in particular credit and counterparty, residual, concentration, market, overall interest rate, base, intermediation, settlement, liquidity, securitization, excessive leverage, as well as systemic risks, model-related risks and operational risk.

These systems also provide a transversal and prospective approach to risk analysis and measurement.

Article 95

The companies subject to this *Arrêté*, financial holding companies and parent companies of finance companies referred to in Article 8 shall also have, on a consolidated or, where applicable, sub-consolidated basis, measurement systems adapted to the nature and volume of their operations enabling them to assess credit and counterparty, residual, concentration, market, aggregate interest rate, base, intermediation, settlement and delivery, liquidity, securitization, excessive leverage, as well as systemic risks, model-related risks and operational risk.

Article 96

Companies subject to this *Arrêté* shall have reliable, effective and comprehensive systems and procedures in place to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider appropriate, taking into account the nature and level of the risks to which they are or could be exposed.

Article 97

These systems and procedures are subject to regular internal control to ensure that they remain comprehensive and appropriate to the size, locations, nature, scale and complexity of the risks inherent in the business model and activities of the reporting companies.

Article 98

The risk analysis and measurement systems provided for in Articles 94 and 95 shall provide for criteria and thresholds to identify as significant incidents revealed by internal control procedures.

These criteria are adapted to the activity of the reporting company and cover the risks of loss, including when it has not materialized.

For this purpose, any fraud resulting in a gross loss or gain exceeding 0.5 per cent of Tier 1 core capital, but not less than EUR 10 000, shall be deemed significant.

Article 99

Reporting entities shall set up systems and procedures to ensure that all risks associated with the reporting entity's banking and non-banking activities are fully understood, including credit and counterparty, residual, concentration, market, global interest rate, base, intermediation, settlement, liquidity, securitization, excessive leverage, as well as systemic risks, model risks and operational risk.

Article 100

These systems and procedures enable companies subject to this *Arrêté* to measure and manage all significant causes and effects of risks and to have a risk map that identifies and assesses the risks incurred with regard to internal and external factors.

Article 101

Internal factors include the complexity of the organization, the nature of the activities carried out, the professionalism of the staff and the quality of the systems.

External factors include economic conditions and regulatory developments.

Article 102

The mapping referred to in Article 100:

a) Takes into account all the risks involved;

b) Is established by entity or business line, at the level at which consolidated, sub-consolidated or complementary supervision, if any, is exercised;

c) Assesses the adequacy of the risks incurred in relation to changes in the activity;

d) Identifies actions to control the risks involved, by:

- the strengthening of permanent control mechanisms;
- the implementation of the monitoring and risk control systems mentioned in Title V;
- the definition of the emergency and business continuity plans provided for in Article 215.

Article 103

All the systems and procedures referred to in Articles 94 to 102 shall be regularly updated and evaluated.

Section 2: Specialized Committees

Article 104

For the purposes of applying Article L. 511-89 of the Monetary and Financial Code, companies subject to this *Arrêté* with a social or consolidated balance sheet total exceeding 5 billion euros shall set up a risk committee, an appointments committee and a remuneration committee.

Companies subject to the provisions of the Monetary and Financial Code other than those mentioned in Articles L. 511-89 and L. 533-31, which voluntarily set up a specialized committee mentioned in Article L. 511-89 of the same Code, shall comply with the provisions relating to the specialized committee concerned.

Article 105

For the purposes of applying Articles R. 511-26 and R. 533-22 of the Monetary and Financial Code, companies subject to this *Arrêté* shall transmit to the *Autorité de Contrôle*

Prudentiel et de Résolution at least once a year and no later than 30 June, the information referred to in Article L. 511-99 of the Monetary and Financial Code.

Any change in the objective and policy of the subject companies referred to in the same Article shall be communicated as soon as possible to the *Autorité de Contrôle Prudentiel et de Résolution*.

Chapter II: Selection and measurement of credit and counterparty risks

Article 106

The companies subject to the rules have a credit risk selection procedure and a system for measuring these risks, which enables them in particular to:

a) To identify in a centralized manner their balance sheet and off-balance sheet risks with respect to a counterparty or counterparties considered as the same group of related customers in accordance with Article 4(1) 39 of Regulation (EU) No 575/2013 referred to above;

b) To apprehend different categories of risk levels based on qualitative and quantitative information, including for credit risk during the day, when it is significant for the activity of the reporting company;

c) To apprehend and control concentration risk through documented procedures;

d) To apprehend and control residual risk by means of documented policies and procedures in accordance with the policies defined in this area;

e) To verify the adequacy of the diversification of commitments in line with their credit policy.

Article 107

Subject to the provisions of Article 117, the assessment of credit risk shall take into account, in particular, information on the beneficiary's financial situation, in particular its capacity to repay, and, where applicable, the guarantees received.

For risks on companies, it also takes into account the analysis of their environment, the characteristics of partners or shareholders and managers as well as the most recent accounting documents.

Article 108

Reporting companies shall set up credit files to collect all the qualitative and quantitative information referred to in Article 107 and shall compile in a single file information concerning counterparties considered to be the same group of connected customers in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013, subject to the application of foreign regulations which may limit the disclosure of information.

Reporting companies complete these files at least quarterly for counterparties whose receivables are unpaid or doubtful or who present significant risks or volumes.

Article 109

The selection of credit operations also takes into account their profitability, ensuring that the forecast analysis of direct and indirect income and expenses is as exhaustive as possible and covers in particular operating and financing costs, the expense corresponding to an estimate of the risk of default of the beneficiary during the credit operation and the cost of remunerating own funds.

Article 110

The executive managers carry out, at least every six months, an a posteriori analysis of the profitability of credit operations.

Article 111

The procedures for deciding on loans, commitments or renewals, in particular when they are organized by delegation, shall be based on precise criteria, clearly formalized and adapted to the characteristics of the company subject to this *Arrêté*, in particular its size, organization and the nature of its activity.

Article 112

Where the nature and scale of the transactions make it necessary, companies subject to this *Arrêté* shall ensure, within the framework of any delegation procedures defined, that decisions

on loans or commitments or renewals are taken by at least two persons and that credit files are also subject to analysis by a specialized unit independent of the operating entities.

Article 113

When granting loans or commitments to effective managers or members of the supervisory body or, where applicable, to main shareholders, within the meaning of Article 5 of the aforementioned Decree of 23 December 2013, companies subject to this *Arrêté* shall examine the nature of the transactions and the conditions attached to them, in particular with regard to the provisions of Articles L. 225-38 to L. 225-43 of the Commercial Code and in relation to transactions of the same nature usually concluded with persons other than those persons.

Article 114

Reporting companies have internal methods in place to assess credit risk related to exposure to individual counterparties, securities or securitization positions, and credit risk at the portfolio level.

Internal credit risk assessment methods are not based exclusively or mechanically on an external risk rating system.

Where capital requirements are based on a rating calculated by an external credit rating agency or on the fact that an exposure is not rated, reporting companies shall also take into account other relevant sources when assessing their internal capital allocation.

Article 115

The credit risk measurement and management systems put in place by the reporting companies effectively detect and manage problem loans, make appropriate value adjustments and record provisions or impairments of appropriate amounts.

Article 116

The credit risk measurement systems set up make it possible in particular to identify, measure and aggregate the risk resulting from all on- and off-balance sheet transactions for which the reporting company incurs a risk of default by a counterparty.

For the measurement of credit risk arising from instruments traded on over-the-counter markets or markets treated as equivalent to organized markets, companies subject to this *Arrêté* with significant activity use a market price valuation method that takes into account a future risk factor.

Article 117

Companies subject to this *Arrêté* using statistical systems for the selection and measurement of their credit risks shall regularly check their relevance in the light of recent payment incidents and changes in the economic and legal environment.

Article 118

The companies subject to the obligation shall, at least quarterly, analyze the evolution of the quality of their commitments.

This examination makes it possible in particular to determine, for transactions of material importance, any necessary reclassifications within the internal categories for assessing the level of credit risk, as well as, where necessary, allocations to accounting headings for doubtful receivables and appropriate levels of provisioning or impairment.

Article 119

The determination of the appropriate level of provisioning shall take into account the guarantees for which companies subject to this *Arrêté* ensure that they have effective implementation options and the existence of a recent valuation carried out on a prudent basis.

Article 120

Where the companies subject to this *Arrêté* are originators, sponsors or investors in the context of arrangements or securitization transactions, the risks, including reputational risks, associated with such arrangements or transactions shall be assessed and addressed

through appropriate procedures, in particular to ensure that the economic substance of such arrangements or transactions is fully taken into account in the risk assessment and management decisions.

Article 121

Firms subject to a prepayment clause for securitization of revolving exposures have a liquidity programme in place to address the implications of both scheduled and early repayments.

Chapter III: Measuring market risks

Article 122

Reporting companies implement policies and processes that enable them to detect, measure and manage all significant causes and effects of market risks.

When a short position matures before the long position, institutions also hedge against liquidity risk.

Article 123

Companies subject to this *Arrêté* have systems in place to monitor transactions carried out on their own account, allowing them to:

a) Record, at least daily, foreign exchange and trading book transactions and calculate their results, as well as determine positions at the same frequency;

b) To measure, at least on a daily basis, the risks resulting from positions in the trading book in accordance with Title IV of Part Three of the aforementioned Regulation (EU) No 575/2013 as well as the company's capital adequacy.

Article 124

For the measurement of market risks, regulated companies fully and accurately understand the various components of risk.

Article 125

Where they have a significant activity, companies subject to this *Arrêté* shall supplement the measures mentioned in Article 124 with an overall measure of their risk, which shall favour an approach based on the concept of maximum potential loss.

Article 126

The measurement of market risks is designed with systems that allow aggregation of positions relating to different products and markets at company or group level for reporting entities, financial holding companies, parent companies of financing companies and mixed financial holding companies supervised on a consolidated or, where applicable, sub-consolidated basis.

Article 127

Companies subject to this *Arrêté* shall ensure that they regularly assess the risks they incur in the event of significant variations in the parameters of a market or, where necessary, a market segment.

Article 128

Periodic monitoring is carried out on the validity and consistency of the parameters and assumptions used to assess market risks.

Article 129

The results of these measures shall be communicated to the effective managers and the supervisory body and, where applicable, to the Risk Committee, in order to assess the risks of the taxable company, in particular in relation to its own funds and results.

Article 130

Companies subject to this *Arrêté* have internal capital to cover significant market risks not subject to capital requirements.

Article 131

Reporting companies which, for the purpose of calculating their capital requirements for position risk in accordance with Chapter II of Title IV of Part Three of Regulation (EU) No 575/2013, have offset their positions in one or more of the shares constituting a stock index with one or more positions in a futures contract on that stock index or with another product derived from that stock index, have adequate internal capital to cover the basic risk resulting from a divergence between the value of the futures contract or other product and the value of the shares making up the stock market index.

Article 132

Companies subject to this *Arrêté* have adequate internal capital when they hold opposite sign positions in stock index futures contracts with different maturities or composition.

Article 133

Where companies subject to this *Arrêté* use the procedure referred to in Article 345 of Regulation (EU) No 575/2013, they shall have sufficient internal capital to cover the risk of losses between the time of the initial commitment and the first working day thereafter.

Chapter IV: Measuring overall interest rate risk

Article 134

Companies subject to this *Arrêté* have a system for measuring overall interest rate risk, where it is material, allowing them in particular to:

a) To understand the positions and flows, some or foreseeable, resulting from all balance sheet and off-balance sheet transactions;

b) To understand the various global interest rate risk factors to which these transactions expose them;

c) Periodically assess the impact of these various factors, when material, on their results and shareholders' equity.

Article 135

Reporting entities may choose to exclude from the scope of measurement of overall interest rate risk transactions for which they measure market risks as defined in Chapter III of this Title.

Article 136

The *Autorité de Contrôle Prudentiel et de Résolution* may exempt from compliance with the provisions of Article 134, at their request, taxable undertakings controlled exclusively or jointly by a taxable undertaking, a financial holding company, a parent company of a financial company or a mixed financial holding company supervised on a consolidated basis or, where applicable, sub-consolidated.

Article 137

Companies subject to this *Arrêté* shall ensure that they regularly assess the risks they incur in the event of significant variations in market parameters or breaks in the simulation assumptions used.

Article 138

Periodic monitoring is carried out on the validity and consistency of the parameters and assumptions used to assess overall interest rate risks.

Article 139

The results of these measures are communicated to the effective managers and the supervisory body and, where applicable, to the Risk Committee in order to assess the company's risks, in particular in relation to its own funds and results.

Chapter V: Selection and measurement of intermediation risks

Article 140

This Chapter shall apply only to taxable undertakings providing investment services which provide a performance guarantee in respect of transactions in financial instruments and to undertakings referred to in Articles L. 440-2(3) and (4) of the Monetary and Financial Code, hereinafter referred to as providers.

Article 141

Providers have a procedure for selecting and measuring intermediation risks that makes it possible to apprehend commitments towards principals and counterparties and to identify by principals the guarantees provided in the form of cash deposits or financial instruments.

Article 142

Service providers set up formalized procedures for the engagement of operations, particularly when they are organized in the form of delegations.

Article 143

The assessment of the service provider's risk on each principal takes into account, in particular, information on the latter's financial situation and the characteristics of the transactions it transmits.

Article 144

Service providers have a system for monitoring intermediation operations, including:

- to record without delay the operations already carried out. Transactions transmitted by originators that are not immediately charged to their accounts or formally accepted by them are considered as proprietary account positions for the purposes of risk monitoring and control;

- to take the necessary steps to be able to calculate at the end of each day the market value of the long or short positions of the principals which, following the assessment referred to in Article 143, require close monitoring. The value of these positions is reconciled daily with their transaction value;

- to evaluate at the end of each day the market value of the financial instruments provided as collateral by the principals;

- to record at the end of each day and individually track any errors in the handling and execution of orders. These positions are considered as proprietary market risks for the purposes of risk monitoring and control. Providers who are not authorized to provide the proprietary trading service shall settle these positions without delay.

Article 145

Each incident shall be the subject of a descriptive document brought to the attention of one of the persons responsible for the permanent control provided for in the first indent of Article 13 if the error exceeds a threshold established by the effective managers.

Article 146

The service provider shall ensure that it is able to establish the chronology of operations and to evaluate a posteriori the positions taken during the day.

Article 147

Where the service provider is an undertaking referred to in Article L. 440-2, 3 or 4 of the Monetary and Financial Code, the term principal used in this chapter refers to the term negotiator if the undertaking is not in direct contact with the principal.

Chapter VI: Measuring liquidity risk

Article 148

Regulated companies have robust strategies, policies, procedures, systems, tools and limits in place to detect, measure, manage and monitor liquidity risk over different time periods, ranging from the short term, including intraday, to the long term, in order to maintain adequate liquidity cushions and not to exhibit excessive transformation. These deadlines, set by the reporting company, constitute the modelable time horizon.

Article 149

The strategies, policies, procedures, systems, tools and limits of the regulated companies referred to in Article 148 shall be specifically adapted to their lines of business, currencies in to their branches and legal entities, as the case may be, and include appropriate mechanisms for allocating liquidity costs, benefits and risks among these entities.

Article 150

The strategies, policies, procedures, systems, tools and limits referred to in Article 148 shall also be adapted to the complexity, risk profile, scope of activity of the undertakings subject to risk, the level of risk tolerance determined in accordance with Article 181 and shall reflect the importance of the undertakings subject in each of the Member States of the European Union or the States party to the Agreement on the European Economic Area in which they operate, assessed taking into account the systemic implications that may result from their importance on these markets.

Article 151

The strategies, policies, procedures, systems, tools and limits referred to in Article 148 shall be an integral part of the overall risk management framework and shall be effectively used in the measurement and management of liquidity risk in current situations or in a crisis situation.

Article 152

Reporting entities shall adapt their strategies, policies, procedures, systems, systems, limiting tools referred to in Article 148 as well as their definition of the stock of liquid assets and diversification of funding sources to their liquidity risk.

Article 153

The limits referred to in Article 148 are consistent with the creditworthiness of the reporting companies, the general market conditions and the results of the stress scenarios defined in Article 168.

Article 154

The undertakings subject to the supervision shall inform the *Autorité de Contrôle Prudentiel et de Résolution* of the level of liquidity risk tolerance and the limits, referred to in Articles 181 and 148 respectively, adopted for all the business lines concerned.

Article 155

The information systems of the reporting companies allow the monitoring and control of liquidity risk and, in particular, to measure their liquidity positions.

They provide a permanent record of the stock of liquid assets likely to constitute liquidity reserves over the periods mentioned in Article 148.

They include systems for measuring the cost of liquidity, including internal liquidity, and mechanisms for managing the cost of liquidity.

Article 156

Reporting companies shall establish methods for detecting, measuring, managing and monitoring financing situations, using indicators and limits referred to in Article 148, on the basis of sufficiently prudent assumptions and in a static and dynamic manner.

Article 157

These methods take into account the significant current and expected current and projected cash flows, both certain and probable, resulting from all assets, liabilities and off-balance sheet items and other contingent liabilities, including those of securitization entities or other special purpose entities, within the meaning of the above-mentioned Regulation (EU) No 575/2013, in respect of which the reporting entities act as sponsors or provide significant liquidity support, and the possible impact of reputation risk.

They also take into account the needs and liquidity resources of the reporting companies in line with their business forecasts.

Article 158

The companies subject to this *Arrêté* shall document their methods and justify the choices made.

Article 159

Regulated companies distinguish between encumbered and unencumbered assets that are available at any time, including in emergency situations.

They take into account the legal entity in which the assets are located, the country in which they are legally registered, either in a register or in an account, as well as their eligibility for refinancing by central banks, and monitor how these assets can be used both in normal and crisis situations.

Companies subject to this *Arrêté* shall also take into account the legal, regulatory and operational limitations to any transfers of liquidity and unencumbered assets between entities, including outside the European Economic Area.

Article 160

In order to be able to deal with a range of types of crises, regulated companies shall rely on various instruments to mitigate liquidity risk, in particular a system of limits referred to in Article 148 and liquidity cushions, free of any commitment and available at any time.

They are diversifying their funding structure and sources of funding.

They also define the modalities for the rapid mobilization of complementary sources of financing.

Article 161

Companies subject to this *Arrêté* shall take into account the likely value of the use of the sources of financing referred to in Article 160 and the discounts applied to take into account the risks of losses linked to a forced transfer at short notice or in the event of the non-renewal of certain assistance.

Article 162

Companies subject to this Arrêté assess their ability to raise funds from each of their sources of financing, both in normal and crisis situations.

To this end, they shall periodically test, directly or through their refinancing entity, the confirmed and unconfirmed borrowing options available to them from their counterparties and their refinancing mechanisms with central banks and market institutions.

Article 163

Companies subject to this *Arrêté* shall regularly review the relevance of the criteria for the identification, valuation, liquidity and availability of assets and the measures taken for the application of Article 160.

Article 164

Reporting companies also implement tools to measure and monitor their intraday liquidity risk.

Article 165

Reporting companies shall set up alert procedures and action plans in the event of exceedances of the limits referred to in Article 148.

Article 166

To establish their net financing needs, the reporting companies shall calculate liquidity gaps over all the maturities they have defined pursuant to Article 148 and shall determine the terms and conditions of their coverage.

Article 167

Liquidity gaps correspond to the cumulative or non-cumulative balance of current and projected receipts and disbursements.

They are calculated, for each significant currency, according to the contractual or expected maturity of the transactions and the impact of contingent liabilities such as off-balance

sheet transactions in the form of guarantees, sureties or financing commitments not yet drawn down.

Article 168

Reporting entities shall consider alternative scenarios relating to liquidity positions and risk mitigation factors, based on assumptions different from those referred to in Article 156.

For these purposes, the other scenarios cover both certain and probable inflows and outflows resulting from all assets, liabilities and off-balance sheet items and other contingent liabilities, including those of securitization entities or other special purpose entities, within the meaning of Regulation (EU) No 575/2013, in respect of which the companies subject to this *Arrêté* act as sponsors or to which they provide significant liquidity support.

Article 169

Companies subject to this *Arrêté* shall examine the potential impact of the alternative scenarios mentioned in Article 168 on the companies themselves, the whole market and a combination of both, resulting in a sudden deterioration in their financing conditions.

The companies subject to this obligation shall take into account periods of different durations and crisis conditions of different intensities, including extremes, when drawing up the alternative scenarios referred to in Article 168.

Article 170

The companies subject to the rules identify liquidity risk factors according to their size, the nature of their activities and their importance in each of the Member States of the European Union or the States party to the Agreement on the European Economic Area in which they operate, assessed taking into account the systemic repercussions that may result from their importance on these markets.

They shall establish the alternative scenarios referred to in Article 168 by adapting them to these risk factors.

Article 171

When subject companies develop scenarios specific to certain foreign locations, legal entities or business lines, they document and justify their choices.

Article 172

Reporting companies shall test the alternative scenarios referred to in Article 168 on a periodic basis to ensure that their exposure to liquidity risk remains consistent with the risk tolerance they have defined.

Article 173

At least once a year, the companies subject to this *Arrêté* shall review the assumptions underlying the decisions relating to the financing situation and shall carry out a periodic review of the relevance and severity of the assumptions used to establish the alternative scenarios referred to in Article 168.

Article 174

They shall analyze the impact of the alternative scenarios referred to in Article 168 on their liquidity position, on the level and sustainability of financing commitments received, confirmed and unconfirmed, and on the level and composition of their stock of liquid assets.

Article 175

They shall develop, taking into account the results of the scenarios referred to in Article 168, effective formal emergency plans to prepare for crisis situations. Contingency plans shall specify the strategy and procedures to be followed to manage liquidity under the different alternative scenarios referred to in Article 168.

Article 176

The procedures referred to in Article 175 shall determine in particular:

- the persons concerned, their level of responsibility and tasks;
- the alternative solutions for access to liquidity to be implemented;
- the procedures for providing information to the public.

Article 177

On a periodic basis, and at least once a year, the companies subject to the rules shall test and update their contingency plans, in particular with regard to the results of the alternative scenarios referred to in Article 168, in order to ensure that they are effectively operational and appropriate.

Emergency plans are communicated to and approved by the supervisory body.

Article 178

Companies subject to this requirement shall have liquidity restoration plans setting out appropriate strategies and implementation measures to address any liquidity shortfalls, including branches established in other Member States of the European Union or other States party to the Agreement on the European Economic Area.

Article 179

Companies subject to this *Arrêté* shall take in advance appropriate operational measures to ensure the immediate implementation of the liquidity restoration plans referred to in Article 178, such as the holding of securities immediately available for financing by central banks or the holding of securities, if any, in the currency of another State to which the taxed company is exposed, which are held, according to operational needs, in the territory of that State.

Article 180

Subject undertakings shall test at least once a year the liquidity restoration plans referred to in Article 178, updated taking into account the results of the scenarios referred to in Article 168.

The results are communicated to effective managers in order to adapt internal policies and processes accordingly.

Article 181

The effective managers determine the liquidity risk tolerance level of the reporting company, i.e. the level of risk taking it accepts according to its risk profile, which is approved by the supervisory body.

They shall determine the liquidity management policy appropriate to the risk tolerance level of the reporting company and shall put in place the procedures, systems, limits and tools for identifying, measuring and managing liquidity risk referred to in Article 148.

Article 182

The effective managers shall ensure the adequacy of these procedures, systems, tools and limits referred to in Article 148 by monitoring developments in the liquidity situation.

They shall communicate the results of their analyses at least twice a year to the Supervisory Body and, where appropriate, to the Risk Committee.

Article 183

The supervisory body shall decide at least once a year on the level of risk tolerance referred to in Article 181 and on the strategies, policies, procedures, systems, tools and limits referred to in Article 148.

The Supervisory Body shall approve any substantial modification of the elements mentioned in the first paragraph.

Article 184

The supervisory body and, where applicable, the Risk Committee shall be kept informed of the conclusions of the reviews and analyses of liquidity risk referred to in the previous articles.

It shall be kept informed, as well as, where appropriate, the Risk Committee, of the results of alternative crisis scenarios conducted pursuant to Article 168 and the actions taken, if any.

Article 185

The Risk Committee shall, where appropriate, regularly review the strategies, policies, procedures, systems, tools and limits referred to in Article 148 and the underlying assumptions and report its findings to the Supervisory Body.

Article 186

Subject undertakings shall immediately inform the *Autorité de Contrôle Prudentiel et de Résolution* of any significant change in their current or projected liquidity position and any exceedance of the limits referred to in Article 148.

They shall also provide it with information on their strategies, policies, procedures, systems, tools, contingency plans and the results of the scenarios referred to in Articles 148, 175 and 168 respectively.

Chapter VII: Measuring settlement risk

Article 187

Companies subject to this *Arrêté* have a system in place to measure their exposure to settlement risk.

Article 188

Companies subject to this *Arrêté* shall ensure that they understand, for the various instruments they process, the different phases of the settlement and delivery process, in particular the time limit for unilateral cancellation of the payment instruction, the due date for final receipt of funds relating to the instrument purchased and the time at which they establish final receipt of funds or unpaid.

Article 189

Regulated companies shall put in place procedures to identify their current and future exposure to settlement risk as they enter into new transactions and as outstanding transactions follow the different phases of the settlement process.

Article 190

Articles 191 to 197 shall apply only to taxable undertakings providing investment services which provide a performance guarantee in respect of transactions in financial instruments and to undertakings referred to in Articles L. 440-2 and 3 and 4 of the Monetary and Financial Code hereinafter referred to as providers.

Article 191

Providers have a system in place to measure the liquidity risk arising from the performance of investment or clearing services that allows them to assess all cash flows and securities on the settlement date.

Providers shall take particular account of certain or foreseeable flows of cash or securities linked to forward transactions or transactions in financial futures instruments.

Article 192

Providers shall ensure that they understand the different phases of the settlement and delivery process for the different instruments they process and for each settlement system used.

In the event of delay or non-payment, operations are monitored until the effective settlement date.

Article 193

When transactions are processed by a settlement system with final settlements during the day, the measuring system shall also identify the forecast flows of securities or cash during the day, in order to take into account the cut-off times for unilateral cancellation of settlement or delivery orders.

Article 194

Service providers shall monitor on a daily basis the transactions that have led to suspense and shall ensure that they are cleared as soon as possible.

Article 195

Providers have a system for measuring resources, securities or cash, which can easily be used to meet the commitments made to counterparties, in compliance with the rules on asset segregation laid down by the regulations in force.

In this respect, they shall implement the necessary means to ensure compliance with their obligations under settlement systems with final settlements during the day.

Article 196

At least once a year, service providers assess the liquidity and settlement risks they incur in the event of significant changes in market parameters or in the event of default by the principals.

Periodic monitoring must be carried out on the assumptions used and the parameters used.

Article 197

The results of this measure are communicated to the effective managers who ensure that the reporting company has the necessary resources to meet its commitments in all cases.

The supervisory body and, where applicable, the Risk Committee shall be kept informed of this measure and of the decisions taken by the effective management to cover liquidity risks.

Chapter VIII: Taking risks into account in remuneration policy

Section 1: Provisions for the application of III of Article L. 511-57 of the Monetary and Financial Code

Article 198

Portfolio management companies and insurance or reinsurance undertakings belonging to a group mentioned in III of Article L. 511-57 of the Monetary and Financial Code are not subject to the provisions of Articles L. 511-71 to L. 511-88 of the same Code.

Entities other than those mentioned in the first paragraph whose balance sheet total is less than or equal to EUR 10 billion belonging to a group mentioned in III of Article L. 511-57 of the Monetary and Financial Code are not subject to the provisions of Articles L. 511-71 to L. 511-88 of the same Code if their activities do not involve a risk for the solvency and liquidity of the group to which they belong.

Article 199

Credit institutions, finance companies and investment firms, whose balance sheet total is less than or equal to EUR 10 billion and those belonging to a group mentioned in III of Article L. 511-57 of the Monetary and Financial Code whose consolidated or sub-consolidated balance sheet total is less than or equal to EUR 10 billion are not subject to the provisions of Articles L. 511-71 to L. 511-88 of the same code if, for the purpose of limiting excessive risk-taking, they have identified their employees who have a significant impact on the company's or group's risk and have set up and implemented rules for limiting, deferring and diversifying payment instruments for the variable part of the remuneration of such employees in accordance with the long-term interests of the company or group and provided that they do not limit the company's ability to strengthen its own funds or those of the group and set up a compensation committee if the threshold mentioned in Article 104 is reached.

The persons referred to in the first subparagraph shall be able to justify to the *Autorité de Contrôle Prudentiel et de Résolution* the scope of the staff concerned, the measures taken for the application of that subparagraph, the effectiveness of those measures and the appropriateness of those measures to their activities and size and, where applicable, to those of the group to which they belong.

Article 200

Credit institutions, finance companies and investment firms, whose balance sheet total is less than or equal to EUR 10 billion and which belong to a group mentioned in III of

Article L. 511-57 of the Monetary and Financial Code, whose consolidated or sub-consolidated balance sheet total exceeds EUR 10 billion, are subject, at group level, to the provisions of Articles L. 511-71 to L. 511-88 of the same Code.

Article 201

Credit institutions, finance companies and investment firms other than those mentioned in Articles 199 and 200 shall be subject, on an individual basis and, where applicable, on a consolidated or sub-consolidated basis, to the provisions of Articles L. 511-71 to L. 511-88 of the Monetary and Financial Code.

Entities other than portfolio management companies and insurance or reinsurance undertakings belonging to a group mentioned in III of Article L. 511-57 of the Monetary and Financial Code, whose balance sheet exceeds EUR 10 billion or whose activities generate risks for the solvency and liquidity of the group to which they belong, are subject on a consolidated basis to the provisions of Articles L. 511-71 to L. 511-88 of the same Code.

Section 2: Control of the remuneration framework

Article 202

Companies subject to this *Arrêté* shall ensure that the remuneration of persons defined in Article L. 511-71 of the Monetary and Financial Code and, where applicable, pursuant to Commission Regulation (EU) No 604/2014 of 4 March 2014 referred to above, is allocated and paid in accordance with the provisions of Articles L. 511-71 to L. 511-88 of the Monetary and Financial Code and, where applicable, the relevant delegated regulations adopted by the European Commission. They shall also ensure compliance with the provisions of this *Arrêté*.

Section 3: Discounting of a portion of the variable compensation component

Article 203

The discount rate formula provided for in Article R. 511-25 of the Monetary and Financial Code is:

$$\frac{1}{(1+i+g+id)^n}$$

Where:

i = the inflation rate;

g = the long-term yield on government bonds ;

id = the incentive factor to retain a deferral period greater than 5 years;

n = the duration of the deferral period.

Article 204

To update the variable remuneration of the persons referred to in Article 202 exercising their activity within the European Union, the companies subject to this *Arrêté* shall use:

1° For remuneration paid in euros, the average annual rate of change in the harmonized consumer price index of the Member State in whose territory the persons concerned are employed;

2° For remuneration paid in a currency other than the euro, the annual rate of change by means of the harmonized consumer price index of the State on whose territory the said persons carry on their activity or of the State which issued the currency concerned. Companies subject to this *Arrêté* may also use, for the purpose of discounting the variable remuneration of the persons mentioned in Article 202 employed by their subsidiaries located in another Member State of the European Union and operating in a Member State other than France, the average annual rate of change of the French harmonized index of consumer prices. Subsidiaries established in France of a company whose registered office is located in the territory of a other Member State of the European Union may use the average annual rate of change of the harmonized consumer price index of the State in which their parent undertaking has its headquarters.

Article 205

To update the variable remuneration of the persons referred to in Article 202 who do not carry on their activity within the European Union, the companies subject to this *Arrêté* shall use:

1° For remuneration paid in a currency issued by a Member State of the European Union, the average annual rate of change of the French harmonized index of consumer prices;

2° For remuneration paid in another currency, the average annual rate of change of the French harmonized index of consumer prices or the equivalent official statistical data of the State issuing that currency.

Article 206

To discount the variable remuneration, reporting companies use:

1° The average long-term yield on bonds of all European Union Member States if the remuneration is paid in euros or in a currency issued by another European Union Member State;

2° If the remuneration is paid in a currency other than those mentioned in 1°, the average long-term yield on State bonds issuing that currency or the rate mentioned in 1°.

Article 207

For the purposes of applying Articles 204 to 206, companies subject to this *Arrêté* shall apply the latest data available on the date on which the remuneration is granted.

The official statistical data of the Member States of the European Union to be used are those published by Eurostat.

Article 208

The duration of the deferral period referred to in Article 203 shall be expressed in years. It is rounded down to the nearest whole number.

Article 209

The incentive factor for a deferral period of more than 5 years referred to in Article 203 shall be 10 % for a deferral period of 5 years.

It is increased by four percentage points for each additional full carry-over year.

Article 210

Companies subject to this *Arrêté* are able to justify the amount of variable remuneration granted to the persons mentioned in Article 202, as well as the terms and conditions for payment of the variable remuneration.

Chapter IX: Measuring the risk of excessive leverage

Article 211

Reporting companies have policies and processes in place to detect, manage and monitor the risk of excessive leverage.

Indicators for excessive leverage risk include the leverage ratio determined in accordance with Article 429 of the above-mentioned Regulation (EU) No 575/2013 and asymmetries between assets and bonds.

Article 212

Reporting companies shall take prudent measures with regard to excessive leverage risk that take into account possible increases in excessive leverage risk resulting from a reduction in their own funds as a result of expected or realized losses, in accordance with applicable accounting rules. To this end, regulated companies are able to withstand a range of crisis situations with regard to the risk of excessive leverage.

Article 213 Article 213

This Chapter shall not apply to finance companies.

Chapter X: Measuring operational risk

Article 214

Reporting companies implement policies and processes to assess and manage their operational risk exposures. Institutions shall specify, for the purposes of these policies and procedures, what constitutes an operational risk.

Article 215

In addition to the provisions of Articles 88 to 93, companies subject to this *Arrêté*:

a) Have contingency and business continuity plans in place;

b) Ensure that their organization and the availability of their human, real estate, technical and financial resources are regularly assessed with regard to the risks related to the continuity of the activity;

c) Ensure the consistency and effectiveness of business continuity plans as part of a comprehensive plan defined by the supervisory body and implemented by effective management.

Title V: SYSTEMS FOR MONITORING AND CONTROL OF RISKS

Chapter I: General provisions

Article 216

The companies subject to the tax system shall acquire appropriate means to control operational risks, including legal risks.

Article 217

They shall set up systems for the supervision and control of risks, in particular credit and counterparty, residual, concentration, market, global interest rate, base, intermediation, settlement, liquidity, securitization, excessive leverage, as well as systemic, model-related and operational risks with internal limits and the conditions under which these limits are respected.

Article 218

Companies subject to this *Arrêté* shall put in place contingency and business continuity plans to ensure their ability to limit losses and not to interrupt their business in the event of a serious disruption.

Article 219

Reporting companies as well as financial holding companies, parent companies of financing companies mentioned in Article L. 517-1 of the Monetary and Financial Code and mixed financial holding companies mentioned in Article L. 517-4 of the same Code also have systems for monitoring and controlling credit and counterparty, residual, concentration, market, overall interest rate, base, intermediation, settlement, liquidity, securitization, excessive leverage, as well as systemic, model and operational risks, enabling them to assess these risks on a consolidated or, where applicable, sub-consolidated basis under the conditions set out in Article 95.

Article 220

The companies subject to the rules shall regularly review their risk measurement and limit-setting systems in order to verify their relevance in the light of changes in activity, the market environment, the economic environment in accordance with the business cycle or analytical techniques.

Article 221

Companies subject to this *Arrêté* shall set up systems and procedures to ensure both an upstream and prospective analysis of the risks incurred when deciding:

- to carry out operations involving new products;
- to make significant changes to an existing product, for that company or for the market;
- to carry out internal and external growth operations;
- to carry out exceptional transactions.

Article 222

The permanent control system makes it possible to ensure:

a) That the specific risk analysis has been carried out in a rigorous and prior manner;

b) That the procedures for measuring, limiting and controlling the risks involved are adequate

c) That, where necessary, the necessary adaptations of the procedures in place have been made;

d) That risk monitoring, accompanied by sufficient resources for its implementation, is put in place.

Article 223

The systems for monitoring and controlling credit and counterparty, residual, concentration, market, overall interest rate, base, intermediation, settlement, liquidity, securitization, excessive leverage, as well as systemic, model and operational risks, shall include an overall limit system.

For market activities, global limits are defined by type of risk incurred. For intermediation risk, global limits are defined per legal entity.

Article 224

The overall risk limits shall be set and reviewed, as necessary and at least once a year, by the effective management and approved by the supervisory body, which shall consult, where appropriate, the Risk Committee, taking into account in particular the company's own funds and, where applicable, consolidated or sub-consolidated own funds and their distribution within the group adapted to the risks incurred.

Article 225

The operational limits, which may be set at the level of different internal organizational entities, shall be established in a manner consistent with the overall limits referred to in Article 224.

The determination of the various global and operational limits is carried out in a manner consistent with the risk measurement systems.

Article 226

Companies subject to this *Arrêté* shall set up mechanisms to enable them, in accordance with formal procedures:

a) To ensure that the procedures and limits set are constantly respected;

b) To analyze the causes of possible non-compliance with procedures and limits;

c) Inform the entities or persons designated for this purpose of the extent of these exceedances and the corrective actions that are proposed or undertaken.

Article 227

When the limits are distributed among internal organizational entities or among companies included in the scope of consolidation or, where applicable, sub-consolidation, and are likely to be reached, the entities concerned shall refer to the appropriate level of the organization in the context of formalized procedures.

Article 228

When the monitoring of compliance with limits is monitored by an ad hoc committee, it is composed of heads of business units, representatives of actual managers and persons chosen for their expertise in risk control and independent of the business units.

Article 229

Reporting companies shall define procedures for informing, at least quarterly, the effective managers and, where appropriate, the ad hoc committee referred to in Article 228, of compliance with risk limits, in particular where the overall limits are likely to be reached.

The supervisory body for companies subject to this *Arrêté* shall determine the communication procedures and frequency with which the information referred to in the first subparagraph shall be communicated to it and, where appropriate, to the Risk Committee.

Article 230

Reporting companies shall prepare appropriate summary statements for the supervision of their operations, in particular for information intended for effective managers, the ad hoc committee referred to in Article 228, the supervisory body and, where appropriate, the risk committee.

These statements include quantitative and qualitative information, the latter allowing in particular to clarify the scope of the measures used to assess the level of risks incurred and set limits.

Chapter II: Conditions applicable to outsourcing

Article 231

Companies subject to this *Arrêté* shall ensure that any service which substantially contributes to the decision binding the company vis-à-vis its customers to conclude a transaction referred to in the first three indents of the first three indents of Article 10 is outsourced only to persons authorized or authorized in accordance with the standards of their country to carry out such activities.

Article 232

Payment institutions and electronic money institutions intending to outsource operational functions for payment or electronic money issuing and management services shall inform the *Autorité de Contrôle Prudentiel et de Résolution* in advance.

Article 233

Companies subject to this *Arrêté* which use agents, under the conditions of I of Article L. 523-1 of the Monetary and Financial Code, or persons to distribute electronic money on their behalf under the conditions laid down in Articles L. 525-8 et seq. of the Monetary and Financial Code, shall ensure compliance with the provisions of Articles 234 to 239, except for a and c of Article 239. **Article 234**

Companies subject to this *Arrêté*:

a) Ensure that their control system within the meaning of Article 11 includes their outsourced activities;

b) Establish control mechanisms, within the meaning of Article 12, for their outsourced activities.

Article 235

Where the taxable company uses an external service provider to which the provisions of Article 6(a) are applied, the provisions of Article 234 shall be incorporated into the internal control system on a consolidated basis.

This mechanism may take into account the extent to which the taxable company controls the service provider or can influence its actions.

Article 236

Where the company subject to this *Arrêté* uses a service provider also subject to this *Arrêté*, its system shall take into account the measures actually taken, where appropriate in concert, by the two companies to comply with the provisions of this *Arrêté* and thus enable it to ensure compliance with its own obligations on the basis of these measures.

Article 237

Companies subject to this *Arrêté* that outsource service offerings or other essential or important operational tasks, as defined in Article 10(q) and (r), shall remain fully responsible for compliance with all their obligations.

In particular, they shall comply with the following conditions:

a) Outsourcing does not imply any delegation of the responsibility of the executive managers;

b) The relationship of the company subject to this *Arrêté* with its customers and its obligations towards them shall not be affected;

c) The conditions that the company subject to this *Arrêté* is required to fulfil in order to obtain and maintain its approval are not altered;

d) None of the other conditions to which the license of the company subject to this *Arrêté* has been subject shall be withdrawn or amended;

e) The company subject to this *Arrêté*, which retains the necessary expertise to effectively control the outsourced services or tasks and manage the risks associated with outsourcing, controls those services or tasks and manages those risks.

Article 238

Outsourcing of activities:

a) Gives rise to a written contract between the external service provider and the company subject to this *Arrêté*;

b) Is part of a formalized policy for the control of external service providers defined by the company subject to this *Arrêté*. Appropriate measures shall be taken if it appears that the service provider is likely to fail to carry out its tasks effectively or in accordance with legislative or regulatory obligations;

c) Can, if necessary, be interrupted without affecting the continuity or quality of service delivery to clients.

Article 239

Companies subject to this *Arrêté* shall ensure, in their relations with their external service providers, that the latter:

a) Commit themselves to a level of quality consistent with the normal functioning of the service and, in the event of an incident, leading to the use of the back-up mechanisms mentioned in c;

b) Ensure the protection of confidential information relating to the reporting company and its customers;

c) Implement back-up mechanisms in the event of serious difficulties affecting the continuity of service. Failing this, the companies subject to this *Arrêté* shall ensure that their emergency and business continuity plan takes into account the impossibility for the external service provider to provide its services;

d) May not impose a substantial change in the service they provide without the prior agreement of the taxable company;

e) Comply with the procedures defined by the reporting company concerning the organization and implementation of the control of the services they provide;

f) Allow them, whenever necessary, access, where appropriate, on site, to any information on the services made available to them, in compliance with the regulations on the communication of information;

g) Inform them of any event likely to have a significant impact on their ability to perform the outsourced tasks effectively and in compliance with applicable legislation and regulatory requirements;

h) Agree that the *Autorité de Contrôle Prudentiel et de Résolution* or any other equivalent foreign authority within the meaning of Articles L. 632-7, L. 632-12 and L. 632-13 of the Monetary and Financial Code shall have access to information on

outsourced activities necessary for the performance of its tasks, including on site.

Article 240

Where a taxable company, as an investment services provider, uses, for the exercise of its outsourced portfolio management activities provided to non-professional clients, an external service provider located in a non-EU Member State or not party to the Agreement on the European Economic Area, it shall ensure that the following conditions are met:

- the service provider is authorized or registered in its home country to carry out the portfolio management service on behalf of third parties and is subject to prudential supervision;

- an appropriate cooperation agreement between the *Autorité de Contrôle Prudentiel et de Résolution* or the *Autorité des Marchés Financiers* and the competent authority of the service provider exists.

If one or both of the conditions mentioned in the second and third subparagraphs are not met, the investment service provider may only outsource the portfolio management service to a service provider located in a State not party to the Agreement on the European Economic Area after having notified the outsourcing contract to the *Autorité de Contrôle Prudentiel et de Résolution*. In the absence of comments from the Authority within two months of notification, the outsourcing envisaged by the investment services provider may be implemented.

Title VI: ROLE OF THE WORKFORCE MANAGERS AND SUPERVISORY BODIES OF THE ASSUMPTED COMPANY AND THE *AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION*

Article 241

The responsibility for ensuring that the reporting company complies with its obligations under this *Arrêté* lies with the effective management and the supervisory body.

They shall have at their disposal relevant information on the evolution of the risks incurred by the taxable company. Without prejudice to Article L. 511-96 of the Monetary and Financial Code, the supervisory body and, where applicable, each of the specialized committees provided for in Article L. 511-89 of the same Code shall determine the nature, volume, form and frequency of the information transmitted to it.

Article 242

Effective managers are required to periodically evaluate and monitor the effectiveness of the systems and procedures put in place to comply with this decree and take appropriate measures to remedy any deficiencies.

Article 243

The supervisory body shall regularly review, where appropriate, with the assistance of the Risk Committee, the policies put in place to comply with this *Arrêté*, assess their effectiveness and that of the systems and procedures implemented for the same purpose and the corrective measures taken in the event of failures.

Article 244

The supervisory body shall, where appropriate, on the advice of the central body of the taxable company, adopt the criteria and thresholds of materiality referred to in Article 98 for identifying incidents to be brought to its attention.

Article 245

Significant incidents with regard to the criteria and thresholds referred to in Article 98 shall be brought to the attention of the effective managers and the supervisory body and, where applicable, the risk committee and the central body with which the taxable company is affiliated without delay.

Article 246

Information on material misstatements detected by the monitoring and analysis system in the fight against money laundering and terrorist financing and on shortcomings of this system, in particular those noted by national and foreign supervisory authorities, shall be brought to the attention of the effective managers and the supervisory body as well as, where applicable, the risk committee and the central body with which the taxable company is affiliated.

Article 247

The undertakings subject to the supervision shall communicate to the *Autorité de Contrôle Prudentiel et de Résolution* the criteria and thresholds referred to in Article 98 and adopted by the supervisory body.

Article 248

The *Autorité de Contrôle Prudentiel et de Résolution* shall verify the relevance of the criteria and thresholds adopted with regard to the situation of the taxable company and the application thereof.

Where the situation of the taxable company so warrants, it may, pursuant to Article L. 511-41-3 of the Monetary and Financial Code, ask the company to review these criteria and thresholds and the procedures for their implementation.

Article 249

The effective managers shall inform the *Autorité de Contrôle Prudentiel et de Résolution* without delay of significant incidents in accordance with the criteria and thresholds referred to in Article 98 and adopted by the supervisory body.

Article 250

For taxable undertakings which are part of a financial group, mixed group or financial conglomerate, the materiality thresholds and criteria and the obligations laid down in Articles 244 to 249 shall be determined and implemented by the competent supervisory bodies and effective managers at the level of the area or areas over which the *Autorité de Contrôle Prudentiel et de Résolution* exercises control over the capital requirements laid down in the aforementioned Regulation (EU) No 575/2013 or the supplementary supervision under the conditions laid down in Articles L. 517-3 and L. 517-8 of the Monetary and Financial Code.

However, the same companies apply Articles 244 to 246 on an individual basis.

Article 251

The minutes of the deliberations of the supervisory body taken pursuant to Article L. 511-72 of the Monetary and Financial Code shall be forwarded to the *Autorité de Contrôle*

Prudentiel et de Résolution, as well as, where applicable, the minutes of the supervisory body's deliberations taken for the application of Articles 198 and 199.

Article 252

At least twice a year, the supervisory body shall review the activity and results of internal control, including compliance control, on the basis of information provided to it for this purpose by the effective managers and officers referred to in Articles 16 to 21, 28 to 34 and 74 to 80 and significant incidents revealed by internal control procedures pursuant to Articles 244 to 246.

Article 253

Effective managers shall regularly inform the supervisory body and, where applicable, the Risk Committee, at least once a year:

- Essential elements and main lessons that can be drawn from the analysis and monitoring of the risks associated with the activity and results to which the taxable company and, where applicable, the group are exposed, in particular the allocations provided for in Article 106 and the analysis of credit operations provided for in Articles 109 and 110 and the monitoring of non-compliance risk;

- Measures taken to ensure business continuity and the assessment of the effectiveness of the systems in place;

- Measures taken to ensure the control of the outsourced activities and any resulting risks for the reporting company. Companies subject to this *Arrêté* shall distinguish between these operations the provision of services or other essential or important operational tasks falling within the first three indents of Article 10 r.

The supervisory body approves the limits proposed by the effective managers.

The documents examined in this context by the supervisory body shall be sent to the General Secretariat of the *Autorité de Contrôle Prudentiel et de Résolution* together with extracts from the minutes of the meetings at which they were examined.

Article 254

Companies subject to this *Arrêté* shall develop and maintain appropriate procedural manuals for their various activities.

These documents describe in particular the procedures for recording, processing and returning information, accounting schemes and procedures for initiating transactions.

Article 255

Reporting companies shall, under the same conditions, establish documentation specifying the means intended to ensure the proper functioning of internal control, in particular:

a) The different levels of responsibility;

b) The powers vested and the resources allocated to the operation of internal control systems;

c) The rules ensuring the independence of these devices under the conditions provided for in Articles 14 to 21;

d) Procedures relating to the security of information and communication systems and emergency and business continuity plans;

e) A description of the systems for measuring, limiting and monitoring risks;

f) The organization of the conformity control system;

g) For investment service providers and companies mentioned in Article 3 and 4 L. 440-2 and 4 and 5 of Article L. 542-1 of the Monetary and Financial Code, the organization of treasury management in the context of the performance of investment or clearing services and the conditions under which forecast treasury is monitored as well as the procedures put in place to ensure compliance with the provisions relating to the segregation of funds from investment firms' clients.

Article 256

The documentation shall be organized in such a way that it can be made available, at their request, to the effective managers, the supervisory body, the auditors and the General Secretariat of the *Autorité de Contrôle Prudentiel et de Résolution* and, where appropriate, the specialized committees provided for in Article L. 511-89 of the Monetary and Financial Code and the central body.

Article 257

The reports drawn up following the audits carried out under the arrangements referred to in Article 17 shall be communicated to the effective managers and the supervisory body and, where applicable, to the Risk Committee.

Where the number of reports and the size of the establishment so warrants, they may be informed directly only of the conclusions contained in those reports, which shall include the main results. At their request, these reports shall be provided to them without delay.

When a company is affiliated to a central body, they are also communicated to the latter. These reports are made available to the statutory auditors and the General Secretariat of the *Autorité de Contrôle Prudentiel et de Résolution*.

Article 258

At least once a year, the companies subject to this *Arrêté* shall prepare a report on the conditions under which internal control is carried out.

Article 259

This report shall include, in particular, for the various categories of risks mentioned in this *Arrêté*:

a) A description of the main actions carried out in the context of the audit, pursuant to Article 13, and the lessons learned;

b) An inventory of investigations carried out pursuant to Article 17 highlighting the main lessons learned and, in particular, the main shortcomings identified and a follow-up of corrective measures taken;

c) A description of the significant changes made in the areas of permanent and periodic reviews during the period under review, in particular to take into account changes in business and risks;

d) A description of the conditions for applying the procedures put in place for new activities;

e) A development relating to the permanent and periodic reviews of branches abroad;

f) Presentation of the main planned actions in the field of internal control;

g) An appendix listing the transactions concluded with the executive managers, the members of the supervisory body and, where applicable, with the main shareholders within the meaning of Article 5 of the aforementioned *Arrêté* of 23 December 2013.

h) An updated description of the classification of money laundering and terrorist financing risks, as well as a presentation of the analyses on which this classification is based.

Article 260

Companies subject to this *Arrêté* and financial holding companies, parent companies of financing companies and mixed financial holding companies supervised on a consolidated or, where applicable, sub-consolidated basis, shall also prepare, at least once a year, a report on the conditions under which internal control is exercised at the level of the entire group.

Companies subject to this *Arrêté* shall include this group report in the report referred to in Article 258.

Article 261

Where the reporting company is an investment firm, the report referred to in Article 258 may include the information contained in the report provided for in the General Regulation of the *Autorité des marchés financiers*, where the investment firm considers that such information is material for the matters referred to in Article 259.

Article 262

At least once a year, reporting companies, financial holding companies, parent companies of financing companies and mixed financial holding companies supervised on a consolidated or, where applicable, sub-consolidated basis, shall draw up a report on the measurement and monitoring of risks which makes it possible to assess all risks globally and across the board, including the risks associated with banking and non-banking activities.

This report shall include in particular the information communicated to the supervisory body pursuant to Articles 246, 252 and 253.

Where the company is supervised on a consolidated or, where applicable, sub-consolidated basis, including other companies subject to this *Arrêté*, the report shall cover the risks to which the group is exposed.

This report shall include, for companies subject to this *Arrêté*, financial holding companies and

mixed financial holding companies concerned, an annex relating to the security of means of payment. In it, they present the assessment, measurement and monitoring of the security of the means of payment they issue or manage, in the light of any internal standards they may have and the recommendations that the *Banque de France* or the European System of Central Banks bring to their attention.

Article 263

The report referred to in Article 262 shall include an analysis of the evolution of liquidity cost indicators during the financial year.

For investment service providers and the persons mentioned in paragraphs 3 and 4 of Article L. 440-2 of the Monetary and Financial Code, this report specifies, among other things, the assumptions used in the context of liquidity monitoring.

Article 264

The report referred to in article 262 also includes:

a) An annex describing the assumptions and methodological principles used, as well as the results of stress tests carried out by companies subject to the provisions of Articles 177, 286 and 290 and Article 368(1)(g) of Regulation (EU) No 575/2013 referred to above;

b) An annex specifying the methods used, including stress tests, to assess the risks associated with the use of credit risk reduction techniques recognized for the application of Regulation (EU) No 575/2013, in particular concentration risk and residual risk.
c) This report may be included in the report provided for in Article 258.

Article 265

The reports referred to in Articles 258 to 264 shall be communicated to the supervisory body and, where applicable, to the committees referred to in Article L. 511-89 of the Monetary and Financial Code and to the central body. These reports are sent to the *Autorité de Contrôle Prudentiel et de Résolution*. The annex referred to in the fourth paragraph of Article 262 shall be forwarded by the General Secretariat of the *Autorité de contrôle prudentiel et de résolution* to the *Banque de France* for the purpose of carrying out its task defined in I of Article L. 141-4 of the Monetary and Financial Code.

Article 266

Without prejudice to Article 450 of the aforementioned Regulation (EU) No 575/2013, each year, the companies subject to it shall prepare a report to the *Autorité de Contrôle Prudentiel et de Résolution* containing the following information on remuneration policies and practices for persons defined in Article L. 511-71 of the Monetary and Financial Code and, where applicable, pursuant to Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 referred to above:

1° The general principles of the remuneration policy defined pursuant to Article L. 511-72 of the Monetary and Financial Code or pursuant to Articles 198 and 199 of this Decree;

2° The composition of the Remuneration Committee and, where applicable, the identity of the external consultants used to define the remuneration policy;

3° The information referred to in Articles R. 511-18 and R. 533-19 of the Monetary and Financial Code or Articles 198 and 199 of this Decree;

4° The main features of the remuneration policy, in particular the criteria used to measure performance and adjust remuneration to risk, the link between remuneration and performance, the policy on the spreading of remuneration and guaranteed remuneration, as well as the criteria used to determine the proportion of cash amounts in relation to other forms of remuneration;

5° The total remuneration of each effective manager as well as that of the person in charge of the risk management function mentioned in Article L. 511-64 of the Monetary and Financial Code and, where applicable, the compliance officer.

Article 267

For the purposes of Article 450 of Regulation (EU) No 575/2013, companies subject to this *Arrêté* shall endeavour to publish all relevant information on a single medium or location.

Article 268

The information referred to in Article 267 shall, where applicable, be published at the level of the group on which is exercised on a consolidated or, where applicable, sub-consolidated basis by the *Autorité de Contrôle Prudentiel et de Résolution*.

Article 269

Companies subject to this *Arrêté* with fewer than ten employees, financial market professionals whose activities have a significant impact on their risk exposure, are exempt from the publication of the information referred to in Article 450(1)(h) of Regulation (EU) No 575/2013 concerning these employees.

Where they justify that the anonymity of employees cannot be preserved in view of the very small number of employees concerned, companies subject to this *Arrêté* may refrain from publishing all or part of the data referred to in Article 450(1)(h)(v) of Regulation (EU) No 575/2013 concerning such employees.

Article 270

The *Autorité de Contrôle Prudentiel et de Résolution* shall examine whether the total amount of variable remuneration of companies subject to this *Arrêté* expressed as a percentage of net banking income is consistent with maintaining a sufficient level of own funds.

Title VII: MISCELLANEOUS PROVISIONS

Article 271

With the exception of the provisions on the measurement of liquidity risk laid down in Chapter VI of Title IV, Articles 187 to 197, the first paragraph of Article 263 and Article 265, and the provisions on the risk of money laundering and terrorist financing laid down in Articles 43 to 73, 246, 258 and 259, this *Arrêté* shall not apply to branches of institutions having their registered office in another Member State of the European Union or party to the Agreement on the European Economic Area and mentioned in Articles L. 511-22 and L. 511-23 of the Monetary and Financial Code.

On the date on which the requirement to cover liquidity needs is applicable, in accordance with the delegated act adopted pursuant to Article 460 of Regulation (EU) No 575/2013, this *Arrêté* shall not apply to branches of credit institutions having their registered office in another Member State of the European Union or party to the Agreement on the European Economic Area and mentioned in Articles L. 511-22 and L. 511-23 of the Monetary and Financial Code, with the exception of the provisions relating to the risk of money laundering and terrorist financing provided for in Articles 43 to 73, 246, 258 and 259.

Article 272

With the exception of the provisions relating to the risk of money laundering and terrorist financing provided for in Articles 43 to 73, 246, 258 and 259, this *Arrêté* shall not apply to branches of investment firms, payment institutions and electronic money institutions having their registered office in another Member State of the European Union or party to the Agreement on the European Economic Area and mentioned respectively in Article L. 532-18-1, 1° of II of Article L. 522-13 and Article L. 526-25 of the Monetary and Financial Code.

Article 273

Payment institutions and electronic money institutions shall not be subject to Articles 104, 105 and 122 to 213.

Payment institutions and electronic money institutions that do not grant credit shall not be subject to Articles 106 to 121.

Article 274

With the exception of the provisions relating to the risk of money laundering and terrorist financing provided for in Articles 43 to 73, 246, 258 and 259 and the provisions of Articles 237 to 239, with the exception of Articles 237 to 239 a and c, this *Arrêté* shall not apply to electronic money institutions benefiting from the exemption provided for in Article L. 526-19 of the Monetary and Financial Code nor to payment institutions benefiting from the exemption provided for in Article L. 522-11-1 of the same Code.

Article 275

The provisions of Articles 43 to 73, 246 and h of Article 259 shall not apply to credit institutions including branches, payment institutions and electronic money institutions whose registered office or branch is located in the Principality of Monaco.

Article 276

For the purposes of applying Article L. 511-102 of the Monetary and Financial Code, venture capital companies with a balance sheet or consolidated total exceeding EUR 10 billion shall set up a remuneration committee.

Article 277

I.-The reference to the Banking and Financial Regulations Committee Regulation No. 97-02 of 21 February 1997 is replaced by a reference to this *Arrêté* in the following regulatory provisions:

1° In the b of Article 2 of the regulation of the *Comité de la réglementation bancaire* n° 90-01 of 23 February 1990 above-mentioned;

2° c of 2.1 and 2.4 of Article 2 as well as Article 7 bis of Regulation No. 90-15 of the Banking Regulations Committee of 18 December 1990, as amended above;

3° Article 11 of Regulation 92-12 of the Banking Regulations Committee of 23 December 1992 modified above;

4° Article 3 of the aforementioned Regulation of the Banking and Financial Regulation Committee No. 99-10 of 9 July 1999;

5° Article 6 of the aforementioned decree of 2 July 2007;

6° Articles 42, 44 and 56 of the aforementioned decree of 2 May 2013;

7° To 3° of article 2 of the aforementioned decree of 23 December 2013.

II. in Article 5 of Regulation 92-13 of the Banking Regulation Committee of 23 December 1992, as amended above, the words:" and in Articles 31-1.43, paragraph 3, and 44 of Regulation 97-02 of 21 February 2002, as amended, on internal control of credit institutions and investment firms. “are replaced by the words: “and the provisions relating to the measurement of liquidity risk, provided for in Chapter VI of Title IV, Articles 187 to 197, the first paragraph of Article 263 and Article 265 of the *Arrêté* of 3 November 2014 on internal control of companies in the banking, payment services and investment services sector subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*.”

III - In the fifth paragraph of Article 1.1(1) of Article 1 of Regulation 93-05 of the Banking Regulations Committee of 21 December 1993, as amended above, the words:" in Article 4 (s)" are replaced by the words": "within the meaning of Article 10 of the *Arrêté* of 3 November 2014 on internal control of companies in the banking, payment services and investment services sector subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*".

IV - In the first paragraph of Article 12 of Regulation 99-10 of the Banking and Financial Regulations Committee of 9 July 1999, as amended above:

1° The words:" by Article 28 of Regulation No 97-02, notwithstanding the provisions of Article 29 of the said Regulation" are replaced by the words:" Articles 134 to 139 of the *Arrêté* of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sector subject to the supervision of the *Autorité de Contrôle Prudentiel et de Résolution*";

2° The words:" of the executive body" are replaced by the words:" effective managers within the meaning of article 10 a of the decree of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sector subject to the supervision of the *Autorité de Contrôle Prudentiel et de Résolution*" and the words:" of the legislative body" are replaced by the words:" of the supervisory body within the meaning of article 10 b of the same decree";

V.-In the second paragraph of Article 4 of Regulation 2002-01 of the Banking and Financial Regulations Committee of 18 April 2002, as amended above, the words:" in Article 38 of Regulation 97-02 of 21 February 1997. "are replaced by the words:" in Article 241 of the *Arrêté* of 3 November 2014 on the internal control of companies in the banking, payment and investment services sector subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*.”

VI. in Article 5 of the Accounting Regulations Committee Regulation No. 2002-03 of 12 December 2002 as amended, the words:" defined in Article 21 of Regulation No. 97-02 of the Banking and Financial Regulations Committee" are replaced by the words:" referred to in Articles 111 et seq. of the *Arrêté* of 3 November 2014 on internal control of companies in the banking, payment and investment services sector subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*".

VII - In Article 6 of the aforementioned Decree of 5 September 2007, the words: "in Article 5 of the aforementioned Regulation No 97-02" are replaced by the words: "in Article 11 of the Decree of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sector subject to the supervision of the *Autorité de Contrôle Prudentiel et de Résolution*".

VIII - In Article 44 of the aforementioned Decree of 29 October 2009, the words: "in Article 5 of Regulation No 97-02 of the Banking and Financial Regulations Committee of 21 February 1997" are replaced by the words: "in Article 11 of the Decree of 3 November 2014 on internal control of companies in the banking, payment and investment services sector subject to the supervision of the *Autorité de Contrôle Prudentiel et de Résolution*".

IX - In Article 42 of the aforementioned Decree of 2 May 2013, the words:" in Article 5 of Regulation No 97-02 of the Banking and Financial Regulations Committee of 21 February 1997 aforementioned" are replaced by the words:" in Article 11 of the Decree of 3 November 2014 on internal control of companies in the banking, payment and investment services sector subject to the supervision of the *Autorité de Contrôle Prudentiel et de Résolution*".

X. In the last paragraph of Article 2 of the aforementioned Decree of 9 September 2014, the words: "provided for in Articles 42 and 43 of the Banking and Financial Regulations Committee Regulation No 97-02 of 21 February 1997" are replaced by the words: "provided for in Articles 258 to 264 of the Decree of 3 November 2014 on internal control of companies in the banking, payment and investment services sector subject to the supervision of the *Autorité de Contrôle Prudentiel et de Résolution* ".

XI -The decree of 13 December 2010 amending various regulatory provisions relating to the control of the remuneration of staff carrying out activities likely to have an impact on the profile of risk of credit institutions and investment firms and various prudential provisions is repealed.

Article 278

Regulation 97-02 of the Banking and Financial Regulations Committee of 21 February 1997, as amended, on internal control of credit institutions and investment firms is repealed.

Article 279

The provisions of Article 104 shall enter into force on 1 January 2015.

Article 280

This *Arrêté* shall be published in the Official Journal of the French Republic.

Done on November 3, 2014. Michel Sapin

ARRÊTÉ OF 3 NOVEMBER 2014 ON THE PROCESS FOR PRUDENTIAL SUPERVISION AND RISK ASSESSMENT OF BANKING SERVICE PROVIDERS AND INVESTMENT FIRMS OTHER THAN PORTFOLIO MANAGEMENT COMPANIES

—

Intended for: credit institutions, finance companies, investment companies other than portfolio management companies, finance holding companies, parent companies of finance companies, mixed finance holding companies.

Purpose: process of prudential supervision and risk assessment.

Entry into force: this *Arrêté* will enter into force the day after the day of its publication.

Notice: this *Arrêté*, issued on the basis of Articles L. 511-41-1 B, L. 511-41-1 C, L. 533-2-2 and L. 533-2-3 of the Monetary and Financial Code, partially transposes Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 relating to the taking up and pursuit of the business of credit institutions and the prudential supervision of credit institutions and investment firms ("CRD IV" Directive). The legislative part of the transposition was the subject of Order no. 2014-158 of February 20, 2014 containing various provisions adapting the legislation to European Union law on financial matters, while the regulatory part was partly the subject of a Decree of the *Conseil d'Etat* no. 2014-1315 of November 3, 2014 containing various provisions adapting the legislation to European Union law on financial matters and relating to finance companies and of Simple Decree no. 2014-1316 of November 3, 2014 containing various provisions adapting the legislation to European Union law on financial matters and relating to finance companies. This *Arrêté*, consisting of fifteen articles, is devoted to the process of prudential supervision and risk assessment. In particular, it provides for the full transposition of Articles 77, 78, 97 to 109 of the CRD IV Directive.

References: the provisions of this *Arrêté* can be consulted on the *Légifrance* website (http://www.legifrance.gouv.fr).

The Minister of Finance and Public Accounts,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the taking up and pursuit of the business of credit institutions and to the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

Having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

Having regard to the Monetary and Financial Code, in particular Articles L. 511-41-1 B, L. 511-41-1 C, L. 533-2-2 and L. 533-2-3;

Having regard to the *Arrêté* of November 3, 2014 relating to the internal control of companies in the banking, payment services and investment services sector subject to the supervision of the *Autorité de contrôle prudentiel et de résolution*;

Having regard to the opinion of the Advisory Committee on Financial Legislation and Regulations dated October 8, 2014;

Having regard to the opinion of the National Council for the Evaluation of Standards dated October 10, 2014;

Having regard to the opinion of the *Autorité des marchés financiers* dated October 14, 2014,

Decides:

Article 1

I.-The provisions of this *Arrêté* are applicable:

1° To credit institutions within the meaning of I of Article L. 511-1 of the Monetary and Financial Code;

2° To finance companies within the meaning of II of the same Article;

3° To investment firms within the meaning of Article L. 531-4 of the same Code, with the exception of investment firms that do not hold funds or securities belonging to clients and that exclusively provide, cumulatively or not, the investment service(s) mentioned in 1, 2, 4 and 5 of Article L. 321-1 of the same Code.

II-Unless otherwise provided, this *Arrêté* also applies, on the basis of the consolidated situation of the institutions supervised on a consolidated basis by *the Autorité de contrôle prudentiel et de résolution*:

1° To financial holding companies within the meaning of the first paragraph of Article L. 517-1 of the same Code;

2° Parent companies of finance companies within the meaning of the third paragraph of Article L. 517-1 of the same Code;

3° To mixed financial holding companies within the meaning of Article L. 517-4 of the same Code.

Chapter I: Internal Capital Adequacy Assessment Process (Article 2)

Article 2

I. - The processes for assessing the adequacy of internal capital apply pursuant to the fourth paragraph of Article L. 511-41-1 B or the fourth paragraph of Article L. 533-2-2 of the Monetary and Financial Code.

II. - The internal capital adequacy assessment processes apply on an individual basis to the undertakings mentioned in Article 1 that are neither a subsidiary of an undertaking mentioned in Article 1 supervised by the *Autorité de contrôle prudentiel et de résolution*, nor a parent undertaking, or that are excluded from the scope of consolidation pursuant to Article 19 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 referred to above.

The *Autorité de contrôle prudentiel et de résolution* may exempt a credit institution from the obligations provided for in this Chapter, in accordance with Article 10 of the same Regulation.

III. - The internal capital adequacy assessment processes apply on an individual basis to investment firms that are part of a group when the *Autorité de contrôle prudentiel et de résolution* exempts that group from the application of the capital requirements on a consolidated basis, in accordance with Article 15 of the same Regulation.

IV. - The internal capital adequacy assessment processes apply, on a consolidated basis, to the undertakings referred to in Article 1, which are parents, in accordance with the provisions of Sections 2 and 3 of Chapter 2 of Title II of Part One of the same Regulation.

The internal capital adequacy assessment processes apply in accordance with Sections 2 and 3 of Chapter 2 of Title II of Part One of the same Regulation to the enterprises referred to in Article 1 which are controlled by a financial holding company, a parent enterprise of a finance company or a mixed financial holding company on the basis of the consolidated position of that financial holding company or parent enterprise.

Where several undertakings mentioned in Article 1 are controlled by a financial holding company, a parent undertaking of a finance company or a mixed financial holding company in a Member State of the European Union or a State party to the Agreement on the European Economic Area, the preceding paragraph applies only to the undertaking mentioned in Article

1 subject to supervision on a consolidated basis pursuant to Article L. 613-20-1 of the Monetary and Financial Code.

V. - The processes for assessing internal capital adequacy apply on the basis of their sub-consolidated position to the companies mentioned in Article 1 that are subsidiaries:

1° Having themselves as subsidiaries, in a State that is not a member of the European Union or a party to the Agreement on the European Economic Area, credit institutions, investment firms or financial institutions within the meaning of Article L. 511-21 of the Monetary and Financial Code, or holding an interest in such institutions or companies;

2° Whose parent company has as subsidiaries, in a State that is not a member of the European Union or a party to the Agreement on the European Economic Area, credit institutions, investment firms or financial institutions within the meaning of Article L. 511-21 of the Monetary and Financial Code or holds an interest in such institutions or companies; this parent company is a financial holding company, a parent company of a finance company or a mixed financial holding company.

Chapter II: Internal approaches to the calculation of capital requirements (Articles 3 to 4)

Article 3

I. - The provisions of this Chapter shall apply on an individual basis, unless the *Autorité de contrôle prudentiel et de résolution* makes use of the derogation provided for in Article 7 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 referred to above.

Parent undertakings and subsidiaries subject to this *Arrêté* shall comply with the requirements of this Chapter on a consolidated or sub-consolidated basis, so as to ensure the consistency and proper integration of the required arrangements, processes and mechanisms and to be able to provide any data and information useful for supervision. For the same purposes, they also implement such systems, processes and mechanisms in their subsidiaries not covered by this *Arrêté*.

Where the undertakings referred to in 1° or 2° demonstrate to the *Autorité de contrôle prudentiel et de résolution* that the requirements of this Chapter do not comply with the law of the States that are not members of the European Union or parties to the Agreement on the European Economic Area in which their subsidiaries are established, such subsidiaries shall not be subject to these requirements. This paragraph shall apply to the following undertakings:

1° Parent companies subject to tax in the European Union or in a State party to the Agreement on the European Economic Area;

2° Subsidiary enterprises controlled either by a financial holding company or a mixed financial holding company, in the European Union or in a State party to the Agreement on the European Economic Area, or by a parent enterprise of a finance company.

II. - Undertakings referred to in Article 1 that are material, having regard to their size, internal organization and the nature, scale and complexity of their activities, shall develop an internal

credit risk assessment capability and make greater use of the Internal Ratings Based Approach for the calculation of capital requirements for credit risk, where the exposures of such undertakings are material in absolute terms and where they have a large number of significant counterparties at the same time. This subparagraph is without prejudice to compliance with the criteria set out in Section 1 of Chapter 3 of Title I of Part Three of the same Regulation.

III. - The firms referred to in Article 1 shall, taking into account their size, internal organization and the nature, scale and complexity of their activities, develop an internal risk assessment capability and use internal models for the calculation of capital requirements for specific risk related to debt securities in the trading book, as well as for the calculation of capital requirements relating to default and migration risk, when the specific risk exposures of these companies are significant in absolute terms and they hold a large number of significant positions in debt securities from different issuers. This subparagraph is without prejudice to compliance with the criteria set out in Sections 1 to 5 of Chapter 5 of Title IV of Part Three of the same Regulation.

Article 4

I.- The companies mentioned in Article 1 authorized to use internal approaches for the calculation of risk-weighted exposure amounts or capital requirements, excluding operational risk, perform calculations based on their internal approaches for their exposures or positions included in the reference portfolios defined by the implementing regulation of the European Commission adopted for the application of Article 78 of Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 referred to above.

At least once a year, they shall transmit to the *Autorité de contrôle prudentiel et de résolution* the results of these calculations, together with an explanation of the methods used to produce them.

The undertakings mentioned in Article 1, with the exception of finance companies and parent undertakings of finance companies, shall also transmit the results of the calculations provided for in the first paragraph to the European Banking Authority.

The transmissions of results provided for in the second and third paragraphs are carried out in accordance with the models defined by the same delegated regulation of the European Commission.

II-When the *Autorité de contrôle prudentiel et de résolution* decides to create specific portfolios, it consults the European Banking Authority beforehand, except if this decision concerns finance companies and parent undertakings of finance companies. The undertakings mentioned in Article 1 shall transmit to the *Autorité de contrôle prudentiel et de résolution* these calculations separately from the results of the calculations mentioned in I.

III- For the purposes of comparative analysis of internal approaches, in application of the fourth paragraph of Article L. 511-41-1 C or the fourth paragraph of Article L. 533-2-3 of the Monetary and Financial Code, the *Autorité de contrôle prudentiel et de résolution* monitors in particular the range of weighted exposure amounts or capital requirements, as the case may be, excluding operational risk, for the exposures or transactions included in each reference portfolio, resulting from the internal approaches of the companies mentioned in I.

IV- Pursuant to the third paragraph of Article L. 511-41-1 C or the third paragraph of Article L. 533-2-3 of the same Code, the *Autorité de contrôle prudentiel et de résolution* shall assess the quality of the internal approaches at least once a year, paying particular attention to:

1° Approaches that show significant differences in their capital requirements for the same exposure;

2° Approaches that show particularly low or high diversity or significant and systematic under-evaluation of capital requirements.

V.- When certain reporting firms authorized to use internal approaches deviate significantly from the majority of their peers or when internal approaches with few common features result in results that are very different from those of their peers, the *Autorité de contrôle prudentiel et de résolution* investigates the causes of such deviations or discrepancies before taking corrective measures under the conditions provided for in the fourth paragraph of Article L. 511-41-1 C or the fourth paragraph of Article L. 533-2-3 of the same Code.

Chapter III: Supervisory Review and Evaluation Processes (Articles 5 to 12)

Article 5

The provisions of this Chapter shall apply in accordance with the level of application provided for in Title II of Part One of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 referred to above.

Where the *Autorité de contrôle prudentiel et de résolution* exempts from the application of capital requirements on a consolidated basis provided for in Article 15 of the same regulation, the requirements provided for in Article 6 of this *Arrêté* apply to the supervision of investment firms mentioned in 3° of I of Article 1 of this *Arrêté* on the basis of their individual situation.

Article 6

I.- The *Autorité de contrôle prudentiel et de résolution* supervises the systems, strategies and procedures implemented by the companies mentioned in Article 1 in order to comply with Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 mentioned above, as well as the provisions of Title I and Title III of Book V of the Monetary and Financial Code or of a regulation adopted for their application or any other legislative or regulatory provision, the ignorance of which entails the ignorance of the aforementioned provisions.

In accordance with the provisions of the first paragraph of Article L. 511-41-1 C or the first paragraph of Article L. 533-2-3 of the Monetary and Financial Code, the *Autorité de contrôle prudentiel et de résolution* assesses:

1° The risks to which the companies mentioned in Article 1 are or could be exposed;

2° The risks that an undertaking mentioned in Article 1 presents for the financial system taking into account the identification and measurement of systemic risk pursuant to Article 23 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of November 24, 2010 mentioned above or the recommendations of the European Systemic Risk Board;

3° The risks highlighted by the stress tests, taking into account the nature, scale and complexity of the activities of the undertakings mentioned in Article 1.

The *Autorité de contrôle prudentiel et de résolution* shall determine the frequency and intensity of the monitoring and assessment, taking into account the principle of proportionality, the size and systemic importance of the undertaking mentioned in Article 1 and the nature, scale and complexity of its activities. Such monitoring and assessment shall take place at least once a year for the undertakings covered by the prudential supervision programme provided for in II of Article 9.

II- The *Autorité de contrôle prudentiel et de résolution* shall determine whether the arrangements, strategies and procedures implemented by the undertakings referred to in Article 1, as well as the own funds and liquid assets they hold, ensure sound risk management and coverage.

III- The *Autorité de contrôle prudentiel et de résolution* shall inform the European Banking Authority without delay when a supervision reveals that an undertaking referred to in Article 1 may pose a systemic risk in accordance with Article 23 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 referred to above, unless that undertaking is a finance company or a parent undertaking of a finance company.

The *Autorité de contrôle prudentiel et de résolution* shall examine in particular the extent to which value adjustments made in accordance with Article 105 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 referred to above for trading book positions enable the undertaking referred to in Article 1 to sell or hedge its positions quickly without incurring significant losses under normal market conditions.

IV- The *Autorité de contrôle prudentiel et de résolution* shall inform the European Banking Authority of the functioning of its monitoring and evaluation process defined in this Article, except for finance companies and parent undertakings of finance companies.

Article 7

I.- The *Autorité de contrôle prudentiel et de résolution* shall determine whether the liquidity risk profiles implemented by the companies mentioned in Article 1, taking into account the nature, scale and complexity of their activities, comply with and do not exceed what is required by a sound and efficient system.

The *Autorité de contrôle prudentiel et de résolution* shall monitor developments affecting liquidity risk profiles, including product design and volumes, risk management, funding policies and funding concentrations.

The *Autorité de contrôle prudentiel et de résolution* may enjoin an undertaking mentioned in Article 1 to take corrective measures or to comply with a specific liquidity requirement, in accordance with the provisions of I and IV of Article L. 511-41-3 of the Monetary and Financial Code, when the developments mentioned in the previous paragraph could lead to instability in that undertaking or in the system.

The *Autorité de contrôle prudentiel et de résolution* shall inform the European Banking Authority of all corrective measures taken and of all specific liquidity requirements imposed

pursuant to the previous paragraph, except when such measures concern finance companies and parent companies of finance companies.

II-The *Autorité de contrôle prudentiel et de résolution* shall assess whether it is necessary to impose a specific liquidity requirement to take into account the liquidity risks to which an undertaking referred to in Article 1 is or could be exposed, taking into account the following elements:

1° The particular business model of that firm;

2° The company's systems, processes and mechanisms mentioned in I and Chapter VI of Title IV of the aforementioned *Arrêté* of November 3, 2014;

3° The results of the control and assessment carried out in accordance with Article 6 of this *Arrêté*;

4° A systemic liquidity risk constituting a threat to the integrity of the financial markets in France.

III. When a company mentioned in Article 1, with the exception of a finance company and a parent company of a finance company, has branches of significant importance in other Member States of the European Union or parties to the Agreement on the European Economic Area, the *Autorité de contrôle prudentiel et de résolution* shall consult the authorities of the host Member States on the operational measures required under Articles 178 to 180 of the aforementioned *Arrêté* of November 3, 2014, whenever relevant with respect to liquidity risks in the currency of the host State.

Where the *Autorité de contrôle prudentiel et de résolution*, in accordance with Article L. 613-32-1 of the Monetary and Financial Code, is the competent authority of the host Member State of a significant branch, it may refer the matter to the European Banking Authority, in accordance with Article 19 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of November 24, 2010 referred to above, in one of the following cases:

1° The *Autorité de contrôle prudentiel et de résolution* has not been consulted by the competent authority within the meaning of Articles L. 511-21 or L. 532-16 of the same Code;

2° The *Autorité de contrôle prudentiel et de résolution* considers that the operational measures required within the meaning of Articles 178 to 180 of the aforementioned *Arrêté* of November 3, 2014 are not adequate.

Article 8

I. - In addition to credit, market and operational risks, the control and evaluation carried out by the *Autorité de contrôle prudentiel et de résolution* pursuant to Article 6 shall cover at least :

1° The results of the stress tests carried out in accordance with Article 177 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 referred to above by the undertakings mentioned in Article 1 that apply the Internal Ratings Based Approach ;

2° Exposure to and management of concentration risk by the companies mentioned in Article 1, including compliance with the requirements set out in Part 4 of the same Regulation and in Article 106 c of the aforementioned *Arrêté* of November 3, 2014;

3° The soundness, appropriateness and methods of application of the policies and procedures implemented by the enterprises mentioned in Article 1 for the management of the residual risk associated with the use of recognized credit risk mitigation techniques;

4° The adequacy of the capital held by the undertakings referred to in Article 1 in relation to the assets they have securitized, taking into account the economic substance of the transaction, including the degree of risk transfer achieved;

5° The exposure to liquidity risk and the measurement and management of this risk by the undertakings mentioned in Article 1, including the development of analyses based on alternative scenarios, the management of risk mitigation elements, including the level, composition and quality of liquidity cushions, and the implementation of effective contingency plans;

6° The impact of diversification effects and how these effects are integrated into the risk assessment system;

7° The results of stress tests carried out by the firms mentioned in Article 1 that use an internal model to calculate their capital requirements for market risk in accordance with Chapter 5 of Title IV of Part Three of the same Regulation;

8° The geographical location of the exposures of the firms mentioned in Article 1;

9° The business model of the firm mentioned in Article 1;

10° The assessment of systemic risk in accordance with the criteria set out in Article 6.

II. - For the application of 5° of I, the *Autorité de contrôle prudentiel et de résolution* shall conduct at regular intervals an in-depth assessment of the overall management of liquidity risk by the firms mentioned in Article 1 and shall ensure that these firms develop sound internal methods. The *Autorité de contrôle prudentiel et de résolution* shall conduct these reviews taking into account the role played by the undertakings mentioned in Article 1 on the financial markets. The *Autorité de contrôle prudentiel et de résolution* shall take due account of the potential impact of its decisions on the stability of the financial system of all other Member States of the European Union or parties to the Agreement on the European Economic Area concerned.

III. - The *Autorité de contrôle prudentiel et de résolution* verifies whether an undertaking mentioned in Article 1 has provided implicit support to a securitization operation within the meaning of Article 248 of the same regulation. Where it is established that an undertaking referred to in Article 1 has provided such implicit support on more than one occasion, the *Autorité de contrôle prudentiel et de résolution* shall take the necessary measures in view of the increased expectation that this undertaking will provide further support for its securitization operations, thereby preventing a significant transfer of risk within the meaning of Articles 243 and 244 of the same Regulation.

IV. - The monitoring and assessment carried out by the *Autorité de contrôle prudentiel et de résolution* covers the exposure of the undertakings mentioned in Article 1 to the interest rate

risk inherent in their non-trading activities. The *Autorité de contrôle prudentiel et de résolution* shall take appropriate action when the economic value of an undertaking referred to in Article 1 declines by more than 20% of its own funds as a result of a sudden and unexpected change in interest rates of up to 200 basis points.

V. - The monitoring and assessment carried out by the *Autorité de contrôle prudentiel et de résolution* shall cover the exposure of the undertakings mentioned in Article 1, with the exception of finance companies, to the risk of excessive leverage, as shown by the indicators of excessive leverage, and in particular the leverage ratio determined in accordance with Article 429 of the same Regulation.

When the *Autorité de contrôle prudentiel et de résolution* assesses the adequacy of the leverage ratio of the undertakings referred to in Article 1, with the exception of finance companies, and the provisions, strategies, processes and mechanisms they implement to manage the risk of excessive leverage, it takes into account the business model of these undertakings.

VI. - The supervision and evaluation carried out by the *Autorité de contrôle prudentiel et de résolution* shall cover the governance arrangements of the companies mentioned in Article 1, their corporate culture and values, and the ability of the members of the board of directors, supervisory board or any other body exercising equivalent supervisory functions, to perform their duties.

VII. - The *Autorité de contrôle prudentiel et de résolution* shall inform the European Banking Authority of the method used for the assessment it carries out in accordance with this Article, except where such information concerns finance companies and parent undertakings of finance companies.

Article 9

I.- The *Autorité de contrôle prudentiel et de résolution* adopts at least once a year a prudential control program for the companies mentioned in Article 1. This program shall take into account the prudential control and evaluation process provided for in Article 6. It shall include:

1° An indication of how the *Autorité de contrôle prudentiel et de résolution* intends to carry out its missions and allocate its resources;

2° An identification of the enterprises that it intends to subject to enhanced supervision and the measures taken to that end, in accordance with III;

3° A plan for inspections in the premises used by the undertakings mentioned in Article 1, including their branches and subsidiaries established in other Member States of the European Union or parties to the agreement on the European Economic Area, in accordance with the provisions of Articles L. 612-26 and L. 632-12 of the Monetary and Financial Code.

II- Prudential control programs cover the companies mentioned in Article 1 below:

1° The companies mentioned in Article 1 for which the results of the stress tests mentioned in 1° and 7° of I of Article 8 and in Article 10 or the results of the prudential control and evaluation process provided for in Article 6 reveal significant risks to their financial soundness or breaches of the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 referred to above and the provisions of Title I and Title III of Book V of the Monetary and Financial Code or of a regulation adopted for their application or any

other legislative or regulatory provision, the ignorance of which entails the ignorance of the aforementioned provisions;

2° Firms mentioned in Article 1 that represent a systemic risk for the financial system;

3° Any other undertaking mentioned in Article 1 if the *Autorité de contrôle prudentiel et de résolution* deems it necessary.

III-Where appropriate in the light of Article 6, the following measures may be taken by the *Autorité de contrôle prudentiel et de résolution*:

1° An increase in the number and frequency of on-site inspections of the undertaking mentioned in Article 1;

2° The permanent presence of the *Autorité de contrôle prudentiel et de résolution* in the undertaking mentioned in Article 1, in accordance with 2° of I of Article L. 612-33 of the same Code;

3° Additional or more frequent declarations of information from the company mentioned in Article 1;

4° Additional or more frequent reviews of the operational, strategic or business plans of the company mentioned in Article 1;

5° Thematic reviews allowing the monitoring of specific risks likely to materialize.

IV.- The adoption of a prudential control programme by *Autorité de contrôle prudentiel et de résolution* for an undertaking referred to in Article 1 shall take due account of the information and findings communicated by the host Member States concerning the risk assessment of the branches and subsidiaries of that undertaking as well as those concerning the financial stability of those host Member States.

V.- The adoption of a prudential control programme by the competent authority of the home Member State does not prevent the *Autorité de contrôle prudentiel et de résolution* from carrying out on a case-by-case basis, in its capacity as host Member State authority, on-site inspections and inspections of the activities carried out by branches established within the territory of the French Republic by credit institutions having their head office in a Member State of the European Union or a State party to the Agreement on the European Economic Area, in accordance with Articles L. 511-25 and L. 532-18-1 of the same Code.

Article 10

I. - The *Autorité de contrôle prudentiel et de résolution* shall apply prudential stress tests at least once a year to the undertakings referred to in Article 1 that it supervises, in support of the monitoring and evaluation process provided for in Article 6.

II. - The *Autorité de contrôle prudentiel et de résolution* shall inform the European Banking Authority of the method used for the implementation of the stress tests provided for in this Article, except where that information relates to finance companies and parent undertakings of finance companies.

Article 11

I. - The *Autorité de contrôle prudentiel et de résolution* shall review at regular intervals, and at least every three years, whether the undertakings referred to in Article 1 comply with the requirements for approaches for which prior authorization is required before their application for the purposes of calculating their capital requirements in accordance with Part 3 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 referred to above.

The *Autorité de contrôle prudentiel et de résolution* shall in particular verify and assess that the undertakings referred to in Article 1, when using the approaches referred to in the previous subparagraph, employ well-developed and up-to-date techniques and practices.

In the review provided for in the first paragraph, the Authority shall take into account, in particular, the development of the activities of the undertaking referred to in Article 1 and the application of those approaches to new products. Where significant deficiencies are identified in the consideration of risks under the internal approach of the undertaking referred to in Article 1, the Authority shall take appropriate measures to remedy or mitigate the consequences of those deficiencies, including the imposition of higher multiplication factors or additional capital requirements or other appropriate and effective measures.

II. - Where, for an internal market risk model, numerous overshootings, within the meaning of Article 366 of the same Regulation, reveal that the model is not or no longer sufficiently accurate, the *Autorité de contrôle prudentiel et de résolution* shall revoke the authorization to use the internal model or impose appropriate measures to ensure that the model is rapidly improved.

III. - Where an undertaking referred to in Article 1 has been authorized by the *Autorité de contrôle prudentiel et de résolution* to use an internal approach for the purposes of calculating capital requirements appropriate to its situation in accordance with Part 3 of the same Regulation, but that undertaking no longer complies with the requirements for using that approach, the *Autorité de contrôle prudentiel et de résolution* requires that undertaking either to demonstrate that the effects of such non-compliance are negligible, if any, in accordance with the same regulation, or to submit a plan for timely compliance with these requirements and set a deadline for its implementation.

The *Autorité de contrôle prudentiel et de résolution* shall require the modification of this plan when it considers that it does not allow the undertaking referred to in Article 1 to comply with the requirements imposed on it or if it considers that the deadline referred to in the previous subparagraph is not appropriate.

If it is unlikely that the undertaking referred to in Article 1 will be able to restore compliance within an appropriate period of time and, where appropriate, if it has not demonstrated that the effects of such non-compliance are negligible, the Authority shall revoke the authorization to use the internal approach or limit it to those areas where compliance is ensured or can be achieved within an appropriate period of time.

IV. - For the examination provided for in the first paragraph of I, the *Autorité de contrôle prudentiel et de résolution* shall take into account the analysis of the internal approaches of the different institutions carried out by the European Banking Authority and the reference values issued by the latter.

V. - The *Autorité de contrôle prudentiel et de résolution* shall inform the European Banking Authority of the method used to implement this Article, except where such information concerns finance companies and parent undertakings of finance companies.

Article 12

When, pursuant to the fifth paragraph of Article L. 511-41-1 C or the fifth paragraph of Article L. 533-2-3 of the Monetary and Financial Code, the *Autorité de contrôle prudentiel et de résolution* applies the provisions of these articles in an analogous or identical manner to companies mentioned in Article 1, with the exception of finance companies and parent companies of finance companies, presenting similar risk profiles due to the similarity of their business models or the geographical location of their exposures, it shall inform the European Banking Authority.

Chapter IV: Additional capital requirement (Article 13)

Article 13

When, in application of II of Article L. 511-41-3, the *Autorité de contrôle prudentiel et de résolution* imposes an additional capital requirement in order to take into account the risks to which an undertaking referred to in Article 1 is or could be exposed, it shall take into account the following elements :

1° The quantitative or qualitative aspects of the process for assessing the internal capital adequacy of the undertakings mentioned in Article 1 ;

2° The systems, processes and mechanisms mentioned in Articles L. 511-55 and L. 533-29 of the Monetary and Financial Code of the companies mentioned in Article 1;

3° The results of the control and evaluation carried out in accordance with Articles 6 and 11;

4° The assessment of systemic risk in accordance with Article 23 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of November 24, 2010 referred to above or the recommendations of the European Systemic Risk Board.

Chapter V: Final Provisions (Articles 14 to 15)

Article 14

III of Article 7 shall enter into force on the date on which the requirement to cover liquidity needs is applicable, in accordance with the delegated act adopted pursuant to Article 460 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 referred to above.

Article 15

This *Arrêté* will be published in the Official Journal of the French Republic.

ARTICLE L. 232-1, ARTICLES R. 232-1 TO R. 232-8, ARTICLES L. 823-1 TO L. 823-8-1 OF THE FRENCH COMMERCIAL CODE, AS OF NOVEMBER 23, 2020

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Article L. 232-1 of the French Commercial Code

Legislative Part (Sections L110-1 to L960-4)

Book II: Commercial companies and economic interest groups. (Articles L210-1 to L253-1)

Title III: Common provisions for the various commercial companies. (Articles L231-1 to L23-11-4)

Chapter II: Financial statements (Articles L232-1 to L232-26)

Section 1: Accounting documents (Sections L232-1 to L232-5)

Article L232-1

I. - At the end of each financial year the board of directors, the executive board (*le directoire*) or the managers draw up the inventory, the annual financial statements in accordance with the provisions of section 2 of Chapter III of Title II of Book I and prepare a written management report. They include in the annex:

1° A statement of the personal guarantees (*cautionnements*), endorsements (*avals*) and guarantees given by the company. This provision does not apply to companies operating a credit institution, a finance company or an insurance company;

2° A statement of the collaterals granted by the company.

II. - The management report sets out the company's situation during the past financial year, its foreseeable development, the significant events that have occurred between the date of the financial year end and the date on which it is prepared, and its research and development activities. Reference is made to the existing branches.

III. - The documents referred to in this article are, where applicable, made available to the statutory auditors under conditions determined by decree of the *Conseil d'Etat.*

IV. - Commercial companies that are small businesses within the meaning of Article L. 123-16 are exempt from the obligation to prepare a management report. This exemption does not apply to companies belonging to one of the categories defined in Article L. 123-16-2 or whose business consists in managing equity interests or securities.

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Articles R. 232-1 to R. 232-8 of the French Commercial Code

Regulatory Part (Articles R121-1 to R976-1)

Book II: Commercial companies and economic interest groups. (Articles R210-1 to R252-1)

Title III: Common provisions for the various commercial companies. (Articles R232-1 to D23-10-3)

Chapter II: Financial statements. (Articles R232-1 to R232-22)

Section 1: Accounting documents. (Articles R232-1 to R232-8)

Article R232-1

The annual financial statements, the management report and, where applicable, the consolidated financial statements and the group management report shall be made available to the statutory auditors at the registered office at least one month before the shareholders' meeting called to approve the company's annual financial statements.

Copies of the documents mentioned in the preceding paragraph are delivered to the statutory auditors upon request.

Article R232-2

Commercial companies which, at the end of a fiscal year, have three hundred or more employees or whose net turnover, at that time, is equal to or greater than 18,000,000 euros, are required to draw up the documents mentioned in Article L. 232-2.

They cease to be subject to this obligation if they do not meet any of these conditions for two successive fiscal years.

The employees taken into account are permanent employees linked to the company and to companies in which the company directly or indirectly holds more than half of the capital. The number of employees is determined in accordance with the provisions of Article D. 210-21.

The net turnover is equal to the amount of sales of products and services related to the ordinary activity reduced by sales discounts, value added tax and similar taxes.

NOTA:

In accordance with Article 15 of Decree no. 2020-100 of February 7, 2020, the provisions apply as from the first financial year beginning after its entry into force.

Article R232-3

The board of directors, the executive board (*le directoire*) or the managers of the companies mentioned in Article R. 232-2, as the case may be, shall prepare:

1° Semi-annually, within four months following the end of each semester of the financial year, the situation of the realizable and available assets, excluding operating values, and of the current liabilities;

2° Annually:

a) The cash flow statement together with the annual financial statements within four months of the end of the past financial year;

b) The provisional financing plan;

c) The forecast income statement.

The provisional financing plan and the provisional income statement are prepared at the latest at the end of the fourth month following the opening of the current financial year; the provisional income statement is, moreover, revised within four months following the opening of the second semester of the financial year.

Article R232-4

The reports provided for in Articles L. 232-3 and L. 232-4 are attached to the documents mentioned in Article R. 232-3.

These reports supplement and comment on the information given in these documents. They describe the accounting policies, methods used and assumptions made and justify their relevance and consistency.

Article R232-5

The rules of presentation and the methods used for the elaboration of the documents mentioned in Article R. 232-3 shall not be modified from one period to another without justification in the reports mentioned in Article R. 232-4. The latter shall describe the impact of these modifications.

The items in the cash flow statement, the provisional financing plan and the provisional income statement include the figure relating to the corresponding item of the previous financial year.

The items relating to the situation of realizable and available assets, excluding operating values, and current liabilities include the figures relating to the corresponding items for the two previous semesters.

The documents referred to in Article R. 232-3 show, each as far as it is concerned, the company's cash position, its forecast results and its financing resources and forecasts. Where applicable, additional information is provided to enable the data they contain to be reconciled with that in the annual financial statements.

The forecast income statement may include one or more variants where this is justified by special circumstances.

Article R232-6

Within eight days of their preparation, the documents and reports mentioned in articles R. 232-3 and R. 232-4 are communicated to the statutory auditor, the works council (*comité d'entreprise*) and the supervisory board (*conseil de surveillance*).

Article R232-7

When, pursuant to Articles L. 232-3 and L. 232-4, the statutory auditor makes observations, he records them in a written report addressed to the board of directors, the executive board (*directoire*) or the managers as well as to the works council (*comité d'entreprise*) within one month following the expiration of the time limits provided for in Article R. 232-3.

When, pursuant to Article L. 232-4, the statutory auditor requests that his report be communicated to the shareholders, the managers shall proceed with this communication within eight days following receipt of the report.

Article R232-8

A consolidating company within the meaning of the first paragraph of Article L. 232-5, when it exercises the option provided for in that article, makes restatements in accordance with the rules of consolidation on the items in the financial statements of the companies that it directly or indirectly controls.

These restatements may be carried out, for the application of the third paragraph of Article L. 232-5, under the responsibility of the consolidating company by the controlled companies.

For the application of this method, the company records separately, on the asset side of the balance sheet, the sum of the portions of shareholders' equity before allocation of profit, whether positive or negative, and the net amount of the unallocated retained earnings on first consolidation.

The difference between this amount and the purchase price of the shares is recorded under shareholders' equity under an equity-accounted item (*poste d'écart d'équivalence*).

When this valuation method is applied for the first time, the provisions deducted from the value of the shares are transferred to the equity-accounted item (*poste d'écart d'équivalence*).

If the equity accounting difference (*l'écart d'équivalence*) becomes negative, an overall depreciation of the portfolio is charged to the income statement.

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Articles L. 823-1 to L. 823-8-1 of the French Commercial Code

Legislative Part (Sections L110-1 to L960-4)

Book VIII: On some regulated professions. (Articles L811-1 to L824-16)

Title II: Statutory Auditors. (Articles L820-1 to L824-16)

Chapter III: On the exercise of the statutory audit. (Articles L823-1 to L823-21)

Section 1: Appointment, disqualification and removal of statutory auditors. (Articles L823-1 to L823-8-1)

Article L823-1

I.- Apart from statutory appointments, statutory auditors are appointed by the ordinary shareholders' meeting in the case of legal entities that have this body or by the body exercising a similar function that is competent under the rules that apply to other persons or entities.

Where the statutory auditor so appointed is a natural person or a one-person company, one or more substitute statutory auditors, called upon to replace the incumbent auditors in the event of refusal, impediment, resignation or death, shall be appointed under the same conditions.

The duties of the substitute statutory auditor called upon to replace the incumbent shall end on the date of expiry of the mandate entrusted to the latter, unless the impediment is only temporary. In the latter case, when the impediment has ceased, the incumbent resumes his duties after the approval of the financial statements by the general meeting or the competent body.

Where the statutory auditor has verified, during the last two financial years, the contribution transactions or mergers of the company or companies that it controls within the meaning of I and II of Article L. 233-16, the draft resolution appointing him shall mention this fact.

Any contractual clause that limits the choice of the general meeting or the body mentioned in the first paragraph to certain categories or lists of statutory auditors is deemed to be null and void.

II - In public interest entities, the statutory auditors are also appointed in accordance with the provisions of Article 16 of EU Regulation 537/2014 of April 16, 2014.

Paragraphs 2 to 5 of Article 16 of the aforementioned Regulation do not apply to statutory appointments required for company registration or appointments made pursuant to Articles L. 823-4 of the French Commercial Code and Articles L. 214-7-2, L. 214-24-31, L. 214-133, L. 214-162-5 and L. 612-43 of the French Monetary and Financial Code. In such cases, the public interest entity shall inform the *Haut conseil du commissariat aux comptes* of the terms and conditions of such appointment.

Article L823-2

The persons and entities required to publish consolidated financial statements shall appoint at least two statutory auditors.

Article L823-2-1

Public interest entities appoint at least one auditor.

Article L823-2-2

Persons and entities, other than those referred to in Articles L. 823-2 and L. 823-2-1, that control one or more companies within the meaning of Article L. 233-3, shall appoint at least one statutory auditor when the combined total of their assets and those of the companies they control exceeds the thresholds set by decree for two of the following three criteria: the

cumulative total of their balance sheet, the cumulative amount of their sales excluding taxes, or the cumulative average number of their employees during a financial year.

The first paragraph of this article does not apply when the person or entity that controls one or more companies is itself controlled by a person or entity that has appointed a statutory auditor.

Companies controlled directly or indirectly by the persons and entities mentioned in the first paragraph of this Article shall appoint at least one statutory auditor if they exceed the thresholds set by decree for two of the following three criteria: the balance sheet total, the amount of turnover excluding taxes and the average number of employees employed during the financial year. The same statutory auditor may be appointed pursuant to the same first paragraph and this paragraph.

NOTA:

In accordance with Article 20 of Law No. 2019-486 of May 22, 2019:

II-These provisions apply as from the first fiscal year ending after May 27, 2019, the day after the publication of Decree no. 2019-514 of May 24, 2019.

III-The thresholds set by the decrees provided for in Articles L. 221-9, L. 223-35, L. 227-9-1, L. 225-218, L. 226-6 and L. 823-2-2 of the French Commercial Code, in the wording resulting from this article, are applicable to companies domiciled for tax purposes in an overseas collectivity governed by Article 73 of the Constitution as from January 1, 2021.

Article L823-3

The statutory auditor is appointed for a term of six fiscal years. His functions expire after the deliberation of the general meeting or the competent body that rules on the accounts for the sixth financial year.

A statutory auditor appointed to replace another shall remain in office only until the expiry of his predecessor's term of office.

An auditor whose term of office has expired, who has been dismissed, relieved of his duties, suspended, temporarily prohibited from practicing, struck off the roll, omitted or has resigned, shall allow the succeeding statutory auditor to access all relevant information and documents concerning the person or entity whose accounts are certified, in particular those relating to the most recent certification of the accounts.

Where that person or entity is a public interest entity, the provisions of Article 18 of Regulation (EU) No 537/2014 of the European Parliament and of the Council shall also apply.

Article L823-3-1

I. - Where a public interest entity appoints a single statutory auditor, said auditor shall not certify the accounts of the public interest entity for a period exceeding ten years.

However, at the end of this period, he may be appointed for a further term of office of six financial years, provided that the conditions laid down in paragraphs 2 to 5 of Article 16 of Regulation (EU) No 537/2014 of 16 April 2014 are met.

II. - The term of office provided for in the first paragraph of I may be extended up to a maximum of 24 years if, at the end of that period, the public interest entity, either voluntarily or pursuant to a legal obligation, employs more than one statutory auditor, under the conditions provided for in Article 17 (b) of 4 of Regulation (EU) No. 537/2014, provided that they present a joint report on the certification of the accounts.

III. - At the end of the terms of office referred to in I and II, the *Haut conseil du commissariat aux comptes* may, exceptionally and if the conditions set out in paragraph 6 of Article 17 of Regulation (EU) No. 537/2014 are met, authorize the public interest entity which so requests to extend the term of office of the statutory auditor for a further period not exceeding two years.

IV. - The statutory auditor or, where applicable, a member of his network within the European Union may not accept a term of office with the public interest entity whose accounts he has certified before the expiry of a period of four years following the end of his term of office.

V. - For the application of this Article, the duration of the mission shall be calculated in accordance with the requirements of Article 17 of the aforementioned Regulation (EU) No 537/2014. The *Haut Conseil* may be requested by any statutory auditor to examine a question relating to the determination of the date of departure of the initial term of office.

NOTA:

In accordance with Article 53 4° of Ordonnance no. 2016-315 of March 17, 2016, the provisions of Article L. 823-3-1 of the French Commercial Code as amended by this Ordonnance shall apply in accordance with the provisions of Article 41 of the aforementioned Regulation (EU) no. 537/2014 of April 16, 2014.

Article L823-3-2

By derogation to the first paragraph of Article L. 823-3, when the statutory auditor is appointed by a company on a voluntary basis or pursuant to the first or last paragraphs of Article L. 823-2-2, the company may decide to limit the term of office to three fiscal years.

NOTA:

In accordance with II of Article 20 of Law no. 2019-486 of May 22, 2019, these provisions apply as from the first fiscal year ending after May 27, 2019, the day after the publication of Decree no. 2019-514 of May 24, 2019.

Article L823-4

If the general meeting or the competent body fails to appoint a statutory auditor, any member of the general meeting or the competent body may apply to the court for the appointment of a statutory auditor, the legal representative of the person or entity duly called. The term of office thus granted ends when the general meeting or the competent body has appointed the statutory auditor(s).

Article L823-5

When a company of statutory auditors is merged with another company of statutory auditors, the absorbing company shall continue the term of office entrusted to the absorbed company until the expiry date of the latter's term of office.

However, notwithstanding the provisions of Articles L. 823-3 and L. 823-3-1, the shareholders' general meeting or the competent body of the controlled person or entity may, at its first meeting after the merger, deliberate on the continuation of the term of office, after hearing the statutory auditor.

Article L823-6

One or more shareholders or partners representing at least 5% of the share capital, the works council (*comité d'entreprise*), the public prosecutor's office (*ministère public*), the French Financial Markets Authority (*Autorité des marchés financiers*) for persons and entities whose financial securities are admitted to trading on a regulated market may, within the time limit and under the conditions set by decree of the *Conseil d'Etat*, apply to the courts for the disqualification on just cause of one or more statutory auditors.

The provisions of the preceding paragraph are applicable, with respect to persons other than commercial companies, at the request of one-fifth of the members of the general meeting or of the competent body.

A difference of opinion on an accounting treatment or on an audit procedure may not constitute a ground for disqualification.

If the request is granted, a new statutory auditor shall be appointed by the court. He shall remain in office until the statutory auditor appointed by the general meeting or the competent body takes up his duties.

Article L823-7

In the event of misconduct or impediment, the statutory auditors may, under the conditions set by decree of the *Conseil d'Etat*, be discharged from their duties before the normal expiry of their term of office, by court decision, at the request of the collegial body in charge of administration, the body in charge of management, one or more shareholders or partners representing at least 5% of the share capital, the works council (*comité d'entreprise*), the public prosecutor's office (*ministère public*) or the French Financial Markets Authority (*Autorité des marchés financiers*) in the case of persons whose financial securities are admitted to trading on a regulated market and entities.

The provisions of the preceding paragraph are applicable, with respect to persons other than commercial companies, at the request of one-fifth of the members of the general meeting or of the competent body.

Article L823-8

Where, on the expiry of a statutory auditor's term of office, a proposal is made to the meeting or the competent body not to reappoint him, the statutory auditor shall, subject to the provisions of Article L. 822-14 and if he so requests, be heard by the general meeting or the competent body.

Article L823-8-1

The ordinary general meeting, in commercial companies that have this body, or the body exercising a similar function that is competent under the rules that apply, may authorise, on the proposal of the collegial body in charge of the administration or the body in charge of the

management of the company, the statutory auditors to send directly to the clerk of the court, within the time limits imposed on the company, the reports to be filed and the documents attached thereto, as well as copies of the documents relating to their acceptance of their mission or their resignation. Such authorization may be terminated in the same manner.

Instruction no. 2017-I-24 relating to the transmission to the ACPR of accounting and prudential documents and miscellaneous information (Banking sector) amended by Instruction no. 2019-I-07

The Autorité de contrôle prudentiel et de resolution,

Having regard to Council Regulation (EU) No. 1024/2013 of October 15, 2013 entrusting the European Central Bank specific missions related to the policies in prudential supervision of credit institutions;

Having regard to Regulation No. 2014-07 of the Accounting Standards Authority of November 26, 2014 relating to the accounts of companies in the banking sector;

Having regard to the French Monetary and Financial Code, in particular Articles L. 612-2 and L. 612-24;

Having regard to the French Commercial Code;

Having regard to the order of November 3, 2014 relating to the internal control of companies in the banking sector, payment and investment services sector subject to the supervision of the Autorité de contrôle prudentiel et de résolution ;

Having regard to the amended Instruction No. 2015-I-19 relating to the electronic signature of documents transmitted to the Autorité de contrôle prudentiel et de résolution (Banking sector);

Having regard to the Instruction No. 2009-01 of June 19, 2009, as amended, relating to the setting up of the unified financial reporting system;

Having regard to the opinion of the Consultative Commission on Prudential Affairs of the December 11, 2017,

DECIDES:

Article 1:

Are concerned by the present instruction the establishments and companies, hereinafter referred to as "reporting institutions", as follows:

1° The credit institutions mentioned in I of Article L. 511-1 of the Monetary and Financial Code;

2° The finance companies mentioned in II of Article L. 511-1 of the Monetary and Financial Code;

3° The central bodies referred to in Article L. 511-30 of the Monetary and Financial Code;

4° The investment firms mentioned in Article L. 531-4 of the Monetary and Financial Code;

5° Legal entities that are members of the mentioned clearing houses 3 and 4 of Article L. 440-2 of the Monetary and Financial Code;

6° Legal entities authorized to engage in the activities of custody or administration of financial instruments referred to in 4 and 5 of Article L. 542-1 of the Monetary and Financial Code;

7° Payment institutions and providers of information services on the financial statements referred to in Article L. 522-1 of the Monetary and Financial Code;

8° Electronic money institutions referred to in Article L. 526-1 of the Monetary and Financial Code;

9° The financial holding companies and parent companies of financing mentioned in Article L. 517-1 of the Monetary and Financial Code.

Article 2:

Reporting institutions shall communicate to the ACPR the information to be included in the report on the internal control, established in accordance with Articles 258 to 264 of the order of November 3, 2014.

Article 3:

Reporting institutions, with the exception of the institutions mentioned in the 7° to 9° of Article 1, shall communicate to the ACPR information relating to the compensation policies and practices established pursuant to Article 266 of the order of November 3, 2014.

Article 4:

Reporting institutions, with the exception of the institutions mentioned in 9°of Article 1, shall communicate to the ACPR, on a quarterly basis, the minutes of the deliberations of the Board of Directors, the Management Board or any other body exercising supervisory functions and any documents reviewed in this framework, in accordance with Articles 251 and 253 of the order of November 3, 2014.

Article 5:

Reporting institutions shall report to the ACPR, as from approval of the financial statements by the legislative body:

- the report of the Board of Directors or of the Management Board drawn up in application of Articles L. 225-100 and L. 232-1 of the Commercial Code and, in the case of the the Supervisory Board's observations on this report and on any other financial statements for the year in accordance with Article L. 225-68 of the Commercial Code, and documents equivalent to the above-mentioned report for reporting institutions constituted in a form other than a public limited company;

- the report on the annual financial statements and consolidated financial statements of the statutory auditors provided for in Article L. 823-9 of the Commercial Code;

- the special report of the statutory auditors on all the regulated agreements, as provided for in Articles L. 225-40 and L. 225-88 of the Commercial Code and Articles L. 511-39, L. 522-19,

L. 526-39 and L. 533-5 of the Monetary and Financial Code, or for reporting institutions which have the status of a single-person simplified joint stock company, the entry made in the register of decisions of the regulated agreements pursuant to the last paragraph of Article L. 227-10 of the Commercial Code;

- the minutes of the shareholders' and members' meetings, that of the partners or that which takes the place of the partners in other cases, including the resolutions adopted by it.

The reporting institutions mentioned in 4° of Article 1, other than those which do not hold funds on behalf of their clients, and those mentioned to 5° and 6° of Article 1 which are subject to the provisions of the Order of the September 6, 2017 relating to the ring-fencing of corporate client funds shall also provide ACPR with an annual report on the status of the investment information relating to client funds as well as a report from the statutory auditors to the financial statements on the adequacy of the measures taken, in application of the above-mentionned order.

Reporting institutions, except those referred to in paragraphs 7 and 8 of Article 1, shall provide, in addition, financial information concerning the natural persons and legal entities holding at least 10% of their capital as well as the partners when they are incorporated as a general partnership, or the general partners if they are incorporated as a limited partnership, in accordance with the provisions of the order of December 4, 2017 relating to the approval, the changes in the situation and the withdrawal of the credit institution's licence, of the order of December 4, 2017 relating to the approval, amendments to the situation, withdrawal of approval and deregistration of finance companies, as well as to the reporting obligations of certain financial institutions and the order of December 4, 2017 relating to the approval and changes in situation, the withdrawal of approval and deregistration of investment firms and assimilated establishments.

Article 6:

The reporting institutions mentioned in 1° to 6° and 9° of Article 1 of which the shares are not admitted to trading on a regulated market and of which the total of the last balance sheet does not exceed 450 million euros shall communicate to the ACPR a copy of their individual annual accounts and, where applicable, their consolidated financial statements, as published in a newspaper authorized to publish legal notices as well as a copy of the certificate of publication, within one month after publication. These institutions shall also communicate to the ACPR a copy of the notice inserted in the Mandatory Legal Notices Bulletin mentioning the reference of this publication within one month after the date of insertion.

The reporting institutions mentioned in 1° to 6° and 9° of Article 1 of which the shares are not admitted to trading on a regulated market and of which the total of the last balance sheet exceeds 450 million euros, or whose shares are admitted, in whole or in part, to trading on a regulated market, shall provide the ACPR with a copy of their individual annual accounts and, where applicable, their consolidated financial statements, as published in the Mandatory Legal Notices Bulletin, and a copy of the certificate of publication, within one month after publication.

As an exception to the previous paragraph, the reporting institutions mentioned in 1° to 6° and 9° of Article 1 which are subject to I of Article L. 451-1-2 of the Monetary and Financial Code and whose financial statements were approved without modification shall communicate to the

ACPR a copy of the notice inserted in the Mandatory Legal Notices Bulletin mentioning the reference of the publication of the annual financial report made in accordance with the above-mentioned article, within one month after insertion.

Article 7:

The reporting institutions mentioned in 7° and 8° of Article 1, which do not exercise any activity of a hybrid nature within the meaning of Articles L. 522-3 and L. 526-3 of the Monetary and Financial Code, shall provide the ACPR with a copy of their annual individual financial statements and, where applicable, their consolidated financial statements, such as published in the Mandatory Legal Notices Bulletin or, as the case may be, in the newspaper authorized to receive legal notices and a copy of the certificate of publication, within one month after publication.

The reporting institutions mentioned in 7° and 8° of Article 1 operating in regular occupation title for activities of a hybrid nature within the meaning of Articles L. 522-3 and L. 526-3 of the Monetary and Financial Code shall provide the ACPR with a copy of the appendix dedicated, as the case may be, to the activity of providing payment, issuance and management of electronic money or services mentioned in Articles L. 522-2 and L. 526-2 of the Monetary and Financial Code, as published in the Mandatory Legal Notices Bulletin or, according to the case, in the newspaper authorized to receive legal notices, as well as a copy of the certificate of publication, within one month after publication.

The reporting institutions mentioned in 7° and 8° of Article 1, which use the exemption provided for in Articles 3131-1 and 3141-1 of the appendix of the above-mentioned Regulation No. 2014-07 of the Accounting Standards Authority, shall communicate to the ACPR a copy of the notice inserted in the Mandatory Legal Notices Bulletin or, as the case may be, in the newspaper authorized to receive legal notices mentioning the reference to a archiving that can be consulted on the institution's website within one month after insertion.

Article 8:

The reporting institutions mentioned in 1° to 6° of Article 1, which are not not subject to Article L. 451-1-2 of the Monetary and Financial Code and whose total of last balance sheet exceeds 450 million euros, shall provide ACPR with a copy of their quarterly accounting position as published in the Mandatory Legal Notices Bulletin and a copy of the certificate of publication, within one month after publication.

Article 9:

Reporting institutions shall provide ACPR with the information notes approved by the Autorité des marchés financiers as well as any annual document of information edited, if necessary, in order to disseminate them to the public.

Article 10:

Reporting institutions shall communicate as soon as possible to the ACPR changes to the general organizational chart showing the structure of the institution.

Article 11:

The income statement CPTE_RESU, the consolidated balance sheet BILA_CONS and the account of consolidated income RESU_CONS, which is to be transmitted to ACPR according to the Instruction No. 2009-01 as amended relating to the implementation of the unified system of financial report, shall be submitted to the ACPR on a semi-annual basis by 30 September for the period ending June 30 and by March 31 for the period ending December 31, in accordance with the terms and conditions defined by the aforementioned Instruction No. 2009-01.

Article 12:

The documents referred to in Articles 2 to 10 shall be communicated to the ACPR exclusively by teletransmission in an office format, according to technical terms and conditions defined by the ACPR and signed electronically in accordance with the above-mentioned Instruction No. 2015-I-19 and Schedule I of this instruction. In the event that the above-mentioned documents are transmitted separately via several office documents, each document shall be signed individually.

Article 13:

For the documents referred to in Articles 2 to 10 exclusively, by way of exception to second, third and fourth paragraphs of Article 4 of the above-mentionned Instruction No. 2015-I-19, only the persons in charge of the effective management of the bodies, within the meaning of Article L. 511-13, of the 4° of Article L. 532-2, of a) of III of Article L. 522-6 and of a) of II of Article L. 526-8 of the Monetary and Financial Code, are authorized to sign.

The persons who effectively manage an establishment affiliated to a central body, within the meaning of Articles L. 511-30 and L. 511-31 of the Monetary and Financial Code, may grant delegation to persons holding senior management or similar positions within this central body for the purposes of sign the above-mentioned documents.

Article 14:

ACPR Instruction No. 93-01 of January 29, 1993 relating to the transmission to the ACPR of annual financial statements, prudential documents, and miscellaneous information is repealed. References to the repealed Instruction No. 93-01 that appear in other instructions are understood to be made to this instruction.

Article 15:

The present instruction comes into application on the day of its publication.

Provisions of the MFC relating to anti-money laundering and terrorist financing

Article L. 561-4-1 MFC	Les personnes mentionnées à l'article L. 561-2 appliquent les mesures de vigilance destinées à mettre en œuvre les obligations qu'elles tiennent du présent chapitre en fonction de l'évaluation des risques présentés par leurs activités en	The persons referred to in Article L. 561-2 shall apply the vigilance measures designed to implement their obligations under this chapter based on the assessment of the risks presented by their activities with respect to money laundering and terrorist financing.

	matière de blanchiment de capitaux et de financement du terrorisme. A cette fin, elles définissent et mettent en place des dispositifs d'identification et d'évaluation des risques de blanchiment des capitaux et de financement du terrorisme auxquels elles sont exposées ainsi qu'une politique adaptée à ces risques. Elles élaborent en particulier une classification des risques en question en fonction de la nature des produits ou services offerts, des conditions de transaction proposées, des canaux de distribution utilisés, des caractéristiques des clients, ainsi que du pays ou du territoire d'origine ou de destination des fonds. Lorsqu'elles appartiennent à un groupe au sens de l'article L. 561-33, et que l'entreprise mère du groupe a son siège social en France, elles mettent en place un dispositif d'identification et d'évaluation des risques existant au niveau du groupe ainsi qu'une politique adaptée, définis par celle-ci. Pour l'identification et l'évaluation des risques de blanchiment des capitaux et de financement du terrorisme auxquels elles sont exposées, les personnes mentionnées ci-dessus tiennent compte des facteurs inhérents aux clients, aux produits, services, transactions et canaux de distribution, ainsi qu'aux facteurs géographiques, précisés par arrêté du ministre chargé de l'économie, ainsi que des recommandations de la Commission européenne issues du rapport prévu par l'article 6 et des facteurs de risque mentionnés aux annexes II et III de la directive 2015/849 du Parlement européen et du Conseil du 20 mai 2015 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux ou du financement du terrorisme, ainsi que de l'analyse des risques effectuée au plan	To this end, they shall define and set up systems for identifying and assessing the money laundering and terrorist financing risks to which they are exposed as well as a policy adapted to these risks. In particular, they draw up a classification of the risks in question according to the nature of the products or services offered, the transaction conditions proposed, the distribution channels used, the characteristics of the customers, and the country or territory of origin or destination of the funds. When they belong to a group within the meaning of Article L. 561-33, and the parent company of the group has its registered office in France, they set up a system for identifying and assessing the risks existing at group level and an appropriate policy, defined by it. In identifying and assessing the money laundering and terrorist financing risks to which they are exposed, the above-mentioned persons take into account factors inherent to customers, products, services, transactions and distribution channels, as well as geographical factors, as specified by order of the Minister of the Economy, as well as the recommendations of the European Commission resulting from the report provided for in Article 6 and the risk factors mentioned in Annexes II and III of Directive 2015/849 of the European Parliament and of the Council of May 20, 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, as well as from the risk analysis carried out at the national level under conditions set by decree.

	national dans des conditions fixées par décret.	
Article L. 561-5 MFC	I. – Avant d'entrer en relation d'affaires avec leur client ou de l'assister dans la préparation ou la réalisation d'une transaction, les personnes mentionnées à l'article L. 561-2 : 1° Identifient leur client et, le cas échéant, le bénéficiaire effectif au sens de l'article L. 561-2-2 ; 2° Vérifient ces éléments d'identification sur présentation de tout document écrit à caractère probant. II. – Elles identifient et vérifient dans les mêmes conditions que celles prévues au I l'identité de leurs clients occasionnels et, le cas échéant, de leurs bénéficiaires effectifs, lorsqu'elles soupçonnent qu'une opération pourrait participer au blanchiment des capitaux ou au financement du terrorisme ou lorsque les opérations sont d'une certaine nature ou dépassent un certain montant. III. – Lorsque le client souscrit ou adhère à un contrat d'assurance-vie ou de capitalisation, les personnes concernées identifient et vérifient également l'identité des bénéficiaires de ces contrats et le cas échéant des bénéficiaires effectifs de ces bénéficiaires. IV. – Par dérogation au I, lorsque le risque de blanchiment des capitaux ou de financement du terrorisme paraît faible et que c'est nécessaire pour ne pas interrompre l'exercice normal de l'activité, les obligations mentionnées au 2° dudit I peuvent être satisfaites durant l'établissement de la relation d'affaires. V. – Les conditions d'application du présent article sont précisées par décret en Conseil d'Etat.	I. - Before entering into a business relationship with their client or assisting their client in the preparation or completion of a transaction, the persons mentioned in Article L. 561-2: 1° Identify their client and, where applicable, the beneficial owner within the meaning of Article L. 561-2-2; 2° Verify these identification elements on presentation of any written document of a probative nature. II. - They identify and verify under the same conditions as those provided for in I the identity of their occasional customers and, where applicable, their beneficial owners, when they suspect that a transaction could participate in money laundering or terrorist financing or when the transactions are of a certain nature or exceed a certain amount. III. - When the customer subscribes or adheres to a life insurance or capitalization contract, the persons concerned also identify and verify the identity of the beneficiaries of these contracts and, where applicable, the beneficial owners of these beneficiaries. IV. - By way of derogation from I, when the risk of money laundering or terrorist financing appears low and it is necessary in order not to interrupt the normal exercise of the activity, the obligations mentioned in 2° of the said I may be met during the establishment of the business relationship. V. - The conditions of application of this Article are specified by decree of the Conseil d'Etat.

Article L. 561-5-1 MFC	Avant d'entrer en relation d'affaires, les personnes mentionnées à l'article L. 561-2 recueillent les informations relatives à l'objet et à la nature de cette relation et tout autre élément d'information pertinent. Elles actualisent ces informations pendant toute la durée de la relation d'affaires. Les modalités d'application de cet article sont précisées par décret en Conseil d'Etat.	Before entering into a business relationship, the persons mentioned in Article L. 561-2 shall collect information relating to the purpose and nature of this relationship and any other relevant information. They shall update this information throughout the duration of the business relationship. The methods of application of this article are specified by decree of the Conseil d'Etat.
Article L. 561-6 MFC	Pendant toute la durée de la relation d'affaires et dans les conditions fixées par décret en Conseil d'Etat, ces personnes exercent, dans la limite de leurs droits et obligations, une vigilance constante et pratiquent un examen attentif des opérations effectuées en veillant à ce qu'elles soient cohérentes avec la connaissance actualisée qu'elles ont de leur relation d'affaires.	Throughout the duration of the business relationship and in accordance with the conditions laid down by decree of the Conseil d'Etat, these persons exercise, within the limits of their rights and obligations, constant vigilance and carry out a careful examination of the transactions carried out, ensuring that they are consistent with their up-to-date knowledge of their business relationship.
Article L. 561-10 MFC	Les personnes mentionnées à l'article L. 561-2 appliquent des mesures de vigilance complémentaires à l'égard de leur client, en sus des mesures prévues aux articles L. 561-5 et L. 561-5-1, lorsque : 1° Le client, le cas échéant son bénéficiaire effectif, le bénéficiaire d'un contrat d'assurance-vie ou de capitalisation, le cas échéant son bénéficiaire effectif, est une personne qui est exposée à des risques particuliers en raison des fonctions politiques, juridictionnelles ou administratives qu'elle exerce ou a exercées ou de celles qu'exercent ou ont exercées des membres directs de sa famille ou des personnes connues pour lui être étroitement associées ou le devient en cours de relation d'affaires ; 2° Le produit ou l'opération présente, par sa nature, un risque particulier de blanchiment de capitaux ou de	The persons mentioned in Article L. 561-2 apply additional vigilance measures with respect to their client, in addition to the measures provided for in Articles L. 561-5 and L. 561-5-1, when: 1° The customer, where applicable his beneficial owner, the beneficiary of a life insurance or capitalization contract, where applicable his beneficial owner, is a person who is exposed to particular risks by reason of the political, jurisdictional or administrative functions that he exercises or has exercised or those that are exercised or have been exercised by direct members of his family or persons known to be closely associated with him or become closely associated with him in the course of a business relationship ; 2° The proceeds or the operation presents, by its nature, a particular risk of money laundering or terrorist

	financement du terrorisme, notamment lorsqu'ils favorisent l'anonymat ; 3° L'opération est une opération pour compte propre ou pour compte de tiers effectuée avec des personnes physiques ou morales, y compris leurs filiales ou établissements ou toute autre entité, domiciliées, enregistrées ou établies dans un Etat ou un territoire figurant sur les listes publiées par le Groupe d'action financière parmi ceux dont la législation ou les pratiques font obstacle à la lutte contre le blanchiment des capitaux et le financement du terrorisme ou par la Commission européenne en application de l'article 9 de la directive (UE) 2015/849 du 20 mai 2015 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux ou du financement du terrorisme. S'il n'existe pas de soupçon de blanchiment des capitaux ou de financement du terrorisme, les personnes mentionnées à l'article L. 561-2 peuvent ne pas appliquer aux clients mentionnés au 1° les mesures de vigilance complémentaires prévues par le présent article lorsque la relation d'affaires est établie avec une personne mentionnée au 2° de l'article L. 561-9 ou est établie exclusivement pour un ou plusieurs produits mentionnés au même 2° de l'article L. 561-9. Un décret en Conseil d'Etat précise les catégories de personnes mentionnées au 1°, la liste des produits et des opérations mentionnées au 2°, ainsi que les mesures de vigilance complémentaires.	financing, in particular when they promote anonymity; 3° The transaction is an operation for own account or for the account of third parties carried out with natural or legal persons, including their subsidiaries or establishments or any other entity, domiciled, registered or established in a State or territory included in the lists published by the Financial Action Task Force among those whose legislation or practices hinder the fight against money laundering and terrorist financing or by the European Commission pursuant to Article 9 of Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing. If there is no suspicion of money laundering or terrorist financing, the persons mentioned in Article L. 561-2 may not apply to the customers mentioned in 1° the additional due diligence measures provided for in this Article when the business relationship is established with a person mentioned in 2° of Article L. 561-9 or is established exclusively for one or more products mentioned in the same 2° of Article L. 561-9. A decree of the Conseil d'Etat shall specify the categories of persons mentioned in 1°, the list of products and operations mentioned in 2°, as well as the additional vigilance measures.
Article R. 561-5 MFC	Pour l'application du 1° du I de l'article L. 561-5, les personnes mentionnées à l'article L. 561-2 identifient leur client dans les conditions suivantes : 1° Lorsque le client est une personne physique, par le recueil de ses nom et	For the application of 1° of I of article L. 561-5, the persons mentioned in article L. 561-2 identify their customer under the following conditions: 1° When the customer is a natural person, by the collection of his surname

	prénoms, ainsi que de ses date et lieu de naissance ; 2° Lorsque le client est une personne morale, par le recueil de sa forme juridique, de sa dénomination, de son numéro d'immatriculation, ainsi que de l'adresse de son siège social et celle du lieu de direction effective de l'activité, si celle-ci est différente de l'adresse du siège social ; 3° Lorsque le client intervient dans le cadre d'une fiducie ou d'un dispositif juridique comparable de droit étranger, par le recueil des informations prévues au présent article pour l'identification des constituants, des fiduciaires, des bénéficiaires et, le cas échéant, du tiers au sens de l'article 2017 du code civil ou de leurs équivalents pour tout autre dispositif juridique comparable relevant d'un droit étranger. Dans le cas où les bénéficiaires sont désignés par des caractéristiques ou une catégorie particulières, les personnes mentionnées à l'article L. 561-2 recueillent les informations permettant de les identifier au moment du versement des prestations ou au moment où ils exercent leurs droits acquis ; 4° Lorsque le client est un placement collectif qui n'est pas une société, par le recueil de sa dénomination, de sa forme juridique, de son numéro d'agrément, de son numéro international d'identification des valeurs mobilières, ainsi que de la dénomination, de l'adresse et du numéro d'agrément de la société de gestion qui le gère.	and first names, as well as his date and place of birth; 2° When the customer is a legal entity, by collecting its legal form, its name, its registration number, as well as the address of its registered office and that of the place of effective management of the activity, if different from the address of the registered office; 3° Where the customer is involved in a trust or a comparable legal arrangement under foreign law, by collecting the information provided for in this Article for the identification of the settlors, trustees, beneficiaries and, where applicable, the third party within the meaning of Article 2017 of the Civil Code or their equivalents for any other comparable legal arrangement under foreign law. In the event that beneficiaries are designated by particular characteristics or category, the persons mentioned in article L. 561-2 shall collect the information enabling them to be identified at the time of payment of benefits or at the time they exercise their acquired rights ; 4° Where the client is a collective investment which is not a company, by collecting its name, legal form, approval number, international securities identification number, as well as the name, address and approval number of the management company which manages it.
Article R. 561-5-1 MFC	Pour l'application du 2° du I de l'article L. 561-5, les personnes mentionnées à l'article L. 561-2 vérifient l'identité du client selon l'une des modalités suivantes : 1° En recourant à un moyen d'identification électronique délivré dans le cadre d'un schéma français	For the application of 2° of I of article L. 561-5, the persons mentioned in article L. 561-2 verify the identity of the customer according to one of the following methods: 1° By using a means of electronic identification issued as part of a French electronic identification scheme

	d'identification électronique notifié à la Commission européenne en application du paragraphe 1 de l'article 9 du règlement (UE) n° 910/2014 du Parlement européen et du Conseil du 23 juillet 2014 sur l'identification électronique et les services de confiance pour les transactions électroniques au sein du marché intérieur, ou d'un schéma notifié par un autre Etat membre de l'Union européenne dans les mêmes conditions et dont le niveau de garantie correspond au moins au niveau de garantie substantiel fixé par l'article 8 de ce même règlement; 2° En recourant à un moyen d'identification électronique présumé fiable au sens de l'article L. 102 du code des postes et des communications électroniques ; 3° Lorsque le client est une personne physique, physiquement présente aux fins de l'identification au moment de l'établissement de la relation d'affaires, par la présentation de l'original d'un document officiel en cours de validité comportant sa photographie et soit par la prise d'une copie de ce document, soit par la collecte des mentions suivantes : les nom, prénoms, date et lieu de naissance de la personne, ainsi que la nature, les date et lieu de délivrance du document et les nom et qualité de l'autorité ou de la personne qui a délivré le document et, le cas échéant, l'a authentifié ; 4° Lorsque le client est une personne morale, dont le représentant dûment habilité est physiquement présent aux fins de l'identification au moment de l'établissement de la relation d'affaires par la communication de l'original ou de la copie de tout acte ou extrait de registre officiel datant de moins de trois mois ou extrait du Journal officiel, constatant la dénomination, la forme juridique,	notified to the European Commission pursuant to paragraph 1 of Article 9 of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trusted services for electronic transactions within the internal market, or a scheme notified by another Member State of the European Union under the same conditions and whose level of guarantee corresponds at least to the substantial level of guarantee set by Article 8 of the same Regulation; 2° By using a means of electronic identification which is presumed reliable within the meaning of Article L. 102 of the French Post and Electronic Communications Code; 3° When the customer is a natural person, physically present for identification purposes at the time the business relationship is established, by presenting the original of a valid official document containing his photograph and either by taking a copy of this document, or by collecting the following information: the surname, first names, date and place of birth of the person, as well as the nature, date and place of issue of the document and the name and capacity of the authority or person who issued the document and, where appropriate, authenticated it ; 4° Where the client is a legal entity, whose duly authorized representative is physically present for identification purposes at the time of the establishment of the business relationship, by communicating the original or a copy of any deed or extract from the official register dating less than three months or extract from the Official Gazette, recording the name,

	l'adresse du siège social et l'identité des associés et dirigeants sociaux mentionnés aux 1° et 2° de l'article R. 123-54 du code de commerce, des représentants légaux ou de leurs équivalents en droit étranger ; La vérification de l'identité de la personne morale peut également être réalisée en obtenant une copie certifiée du document directement via les greffes des tribunaux de commerce ou un document équivalent en droit étranger. 5° Par ailleurs, lorsque le client intervient dans le cadre d'une fiducie ou d'un dispositif juridique équivalent en droit étranger, les personnes mentionnées à l'article L. 561-2 recueillent, selon le mode de constitution du dispositif, la copie du contrat de fiducie établi en application de l'article 2012 du code civil, l'extrait du Journal officiel de la loi établissant la fiducie en application du même article 2012 ou tout document ou acte équivalent afférent à un dispositif juridique équivalent en droit étranger.	legal form, address of the registered office and the identity of the partners and corporate officers mentioned in 1° and 2° of Article R. 123-54 of the Commercial Code, of the legal representatives or their equivalents in foreign law; Verification of the identity of the legal entity may also be carried out by obtaining a certified copy of the document directly from the clerks of the Commercial Courts or an equivalent document under foreign law. 5° Moreover, when the client intervenes within the framework of a trust or an equivalent legal arrangement under foreign law, the persons mentioned in article L. 561-2 collect, according to the method of constitution of the arrangement, the copy of the trust agreement drawn up pursuant to article 2012 of the Civil Code, the extract of the Official Journal of the law establishing the trust pursuant to the same article 2012 or any document or equivalent act relating to an equivalent legal arrangement under foreign law.
Article R. 561-5-2 MFC	Pour l'application du 2° du I de l'article L. 561-5, et lorsque les mesures prévues aux 1° à 4° de l'article R. 561-5-1 ne peuvent pas être mises en œuvre, les personnes mentionnées à l'article L. 561-2 vérifient l'identité de leur client en appliquant au moins deux mesures parmi les suivantes : 1° Obtenir une copie d'un document mentionné au 3° ou au 4° de l'article R. 561-5-1 ; 2° Mettre en œuvre des mesures de vérification et de certification de la copie d'un document officiel ou d'un extrait de registre officiel mentionné au 3° ou au 4° de l'article R. 561-5-1 par un tiers indépendant de la personne à identifier ; 3° Exiger que le premier paiement des opérations soit effectué en provenance ou	For the application of 2° of I of article L. 561-5, and when the measures provided for in 1° to 4° of article R. 561-5-1 cannot be implemented, the persons mentioned in article L. 561-2 verify the identity of their client by applying at least two of the following measures: 1° Obtain a copy of a document mentioned in 3° or 4° of article R. 561-5-1; 2° Implementing measures to verify and certify the copy of an official document or an extract from an official register mentioned in 3° or 4° of Article R. 561-5-1 by a third party independent of the person to be identified; 3° Require that the first payment for the transactions be made from or to an

	à destination d'un compte ouvert au nom du client auprès d'une personne mentionnée aux 1° à 6° bis de l'article L. 561-2 qui est établie dans un Etat membre de l'Union européenne ou dans un Etat partie à l'accord sur l'Espace économique européen ou dans un pays tiers imposant des obligations équivalentes en matière de lutte contre le blanchiment de capitaux et le financement du terrorisme ; 4° Obtenir directement une confirmation de l'identité du client de la part d'un tiers remplissant les conditions prévues au 1° ou au 2° du I de l'article L. 561-7 ; 5° Recourir à un service certifié conforme par l'Agence nationale de la sécurité des systèmes d'information, ou un organisme de certification que cette agence autorise, au niveau de garantie substantiel des exigences relatives à la preuve et à la vérification d'identité, prévues à l'annexe du règlement d'exécution (UE) 2015/1502 du 8 septembre 2015. Un arrêté conjoint du Premier ministre et du ministre chargé de l'économie précise les modalités d'application de ce 5° ; 6° Recueillir une signature électronique avancée ou qualifiée ou un cachet électronique avancé ou qualifié valide reposant sur un certificat qualifié ou avoir recours à un service d'envoi recommandé électronique qualifié comportant l'identité du signataire ou du créateur de cachet et délivré par un prestataire de service de confiance qualifié inscrit sur une liste de confiance nationale en application de l'article 22 du règlement (UE) n° 910/2014 du 23 juillet 2014. Parmi les mesures mentionnées ci-dessus, les personnes mentionnées à l'article L. 561-2 choisissent celles qui, combinées entre elles, permettent la	account opened in the customer's name with a person mentioned in 1° to 6° bis of Article L. 561-2 who is established in a Member State of the European Union or in a State party to the Agreement on the European Economic Area or in a third country imposing equivalent obligations with regard to the fight against money laundering and terrorist financing; 4° Obtain confirmation of the identity of the customer directly from a third party meeting the conditions set forth in 1° or 2° of I of Article L. 561-7; 5° Use a service certified as compliant by the National Agency for Information Systems Security, or a certification body that this agency authorizes, at the level of substantial guarantee of the requirements relating to proof and verification of identity, provided for in the Annex to Implementing Regulation (EU) 2015/1502 of September 8, 2015. A joint order of the Prime Minister and the Minister in charge of the economy specifies the modalities of application of this 5°; 6° Collect an advanced or qualified electronic signature or a valid advanced or qualified electronic stamp based on a qualified certificate or use a qualified electronic registered mail service bearing the identity of the signatory or stamp creator and issued by a qualified trusted service provider registered on a national trusted list pursuant to Article 22 of Regulation (EU) No. 910/2014 of July 23, 2014. Among the measures mentioned above, the persons mentioned in Article L. 561-2 choose those which, combined, allow verification of all the customer identification elements mentioned in Article R. 561-5.

	vérification de tous les éléments d'identification du client mentionnés à l'article R. 561-5. Ces personnes conservent, selon les modalités prévues à l'article L. 561-12, les informations et documents relatifs aux mesures mises en œuvre au titre du présent article, quel qu'en soit le support.	These persons keep, according to the methods provided for in Article L. 561-12, the information and documents relating to the measures implemented under this Article, whatever the medium.
Article R. 561-5-4 MFC	Pour l'application du I de l'article L. 561-5, les personnes mentionnées à l'article L. 561-2 identifient et vérifient l'identité des personnes agissant pour le compte du client selon les modalités prévues aux articles R. 561-5 à R. 561-5-3. Elles vérifient également leurs pouvoirs. Elles conservent, selon les modalités prévues à l'article L. 561-12, les informations et documents relatifs aux mesures mises en œuvre au titre du présent article, quel qu'en soit le support.	For the application of I of Article L. 561-5, the persons mentioned in Article L. 561-2 identify and verify the identity of the persons acting on behalf of the customer in accordance with the procedures set out in Articles R. 561-5 to R. 561-5-3. They also verify their powers. They keep, according to the methods provided for in Article L. 561-12, the information and documents relating to the measures implemented under this Article, whatever the medium.
Article R. 561-7 MFC	Pour l'application du I de l'article L. 561-5, les personnes mentionnées à l'article L. 561-2 identifient le bénéficiaire effectif de la relation d'affaires selon les modalités définies à l'article R. 561-5 et vérifient les éléments d'identification recueillis sur celui-ci par des mesures adaptées au risque de blanchiment de capitaux et de financement du terrorisme présenté par la relation d'affaires. Pour la vérification de l'identité du bénéficiaire effectif, les personnes mentionnées à l'article L. 561-2 recueillent, lorsque le client est une personne ou entité mentionnée à l'article L. 561-45-1, les informations sur le bénéficiaire effectif contenues dans les registres mentionnés à l'article L. 561-46 du présent code, à l'article 2020 du code civil ainsi qu'à l'article 1649 AB du code général des impôts. Aux mêmes fins de vérification de cette identité, elles prennent, le cas échéant, des mesures complémentaires en se fondant sur une approche par les risques.	For the application of I of Article L. 561-5, the persons mentioned in Article L. 561-2 shall identify the beneficial owner of the business relationship in accordance with the procedures defined in Article R. 561-5 and verify the identification elements collected from him/her by means of measures adapted to the risk of money laundering and terrorist financing presented by the business relationship. For the verification of the identity of the beneficial owner, the persons mentioned in Article L. 561-2 collect, when the customer is a person or entity mentioned in Article L. 561-45-1, the information on the beneficial owner contained in the registers mentioned in Article L. 561-46 of this Code, in Article 2020 of the Civil Code and in Article 1649 AB of the General Tax Code. For the same purpose of verifying this identity, they shall, where appropriate, take additional

	Les personnes mentionnées à l'article L. 561-2 sont en mesure de justifier auprès des autorités de contrôle mentionnées à l'article L. 561-36 de la mise en œuvre de ces mesures et de leur adéquation au risque de blanchiment de capitaux et de financement du terrorisme présenté par la relation d'affaires. Elles sont également en mesure de justifier que les mesures prises pour la détermination du bénéficiaire effectif sont conformes aux articles R. 561-1 à R. 561-3-0. Conformément aux dispositions de l'article L. 561-12, elles conservent, au titre des documents et informations relatifs à l'identité de leur client, les documents et informations relatifs à l'identification et à la vérification de l'identité du bénéficiaire effectif effectuées conformément au présent article, quel qu'en soit le support.	measures based on a risk-based approach. The persons mentioned in Article L. 561-2 are able to justify to the supervisory authorities mentioned in Article L. 561-36 the implementation of these measures and their adequacy to the risk of money laundering and terrorist financing presented by the business relationship. They are also in a position to justify that the measures taken to determine the beneficial owner comply with Articles R. 561-1 to R. 561-3-0. In accordance with the provisions of Article L. 561-12, they shall keep, in respect of documents and information relating to the identity of their customer, the documents and information relating to the identification and verification of the identity of the beneficial owner carried out in accordance with this Article, whatever the medium.
Article R. 561-10-3 MFC	Pour l'application du III de l'article L. 561-5, les personnes mentionnées aux 2° à 2° *sexies* et 3° *bis* de l'article L. 561-2 identifient et vérifient l'identité des bénéficiaires des contrats d'assurance sur la vie ou de capitalisation et, le cas échéant, de leurs bénéficiaires effectifs, lorsque la prime annuelle dépasse les seuils prévus pour ces contrats au 1° de l'article R. 561-16, dans les conditions suivantes : 1° Lorsque les bénéficiaires des contrats sont des personnes ou des entités juridiques nommément désignées, elles relèvent leur nom et prénoms ou dénomination ; 2° Lorsque les bénéficiaires des contrats sont désignés par leurs caractéristiques, par catégorie ou par d'autres moyens, elles obtiennent les informations sur ces bénéficiaires permettant d'établir leur	For the application of III of Article L. 561-5, the persons mentioned in 2° to 2° sexies and 3° bis of Article L. 561-2 shall identify and verify the identity of the beneficiaries of life insurance or capitalization contracts and, where applicable, of their beneficial owners, when the annual premium exceeds the thresholds provided for these contracts in 1° of Article R. 561-16, under the following conditions: 1° Where the beneficiaries of the contracts are named persons or legal entities, they shall record their surname and first names or denomination; 2° Where the beneficiaries of contracts are designated by their characteristics, by category or by other means, they obtain information on these beneficiaries enabling them to establish their identity and, where applicable,

	identité et le cas échéant celle de leur bénéficiaire effectif au moment du versement des prestations ; 3° Dans les cas prévus aux 1° et 2°, elles vérifient l'identité des bénéficiaires des contrats et, le cas échéant, de leur bénéficiaire effectif au moment du versement des prestations sur présentation de tout document écrit probant selon les modalités respectivement prévues aux articles R. 561-5-1 et R. 561-7. Les bénéficiaires effectifs des bénéficiaires des contrats d'assurance sur la vie ou de capitalisation sont déterminés selon les modalités prévues aux articles R. 561-1 à R. 561-3-1.	that of their beneficial owner at the time of payment of benefits; 3° In the cases provided for in 1° and 2°, they verify the identity of the beneficiaries of the contracts and, where applicable, of their beneficial owner at the time of payment of the benefits on presentation of any documentary evidence in accordance with the methods provided for in Articles R. 561-5-1 and R. 561-7 respectively. The beneficial owners of the beneficiaries of life insurance or capitalization contracts are determined in accordance with the procedures set out in Articles R. 561-1 to R. 561-3-1.
Article R. 561-11-1 MFC	En cas de cession à un tiers d'un contrat d'assurance-vie ou de capitalisation, les personnes mentionnées aux 2° à 2° sexies et 3° bis de l'article L. 561-2, lorsqu'elles prennent acte de la cession ou, le cas échéant, lorsque celle-ci leur est notifiée, identifient et vérifient l'identité de la personne au profit de laquelle le contrat est cédé ainsi que, le cas échéant, du bénéficiaire effectif de celle-ci, selon les modalités définies respectivement aux articles R. 561-5, R. 561-5-1 et R. 561-7. Elles identifient également, s'il y a lieu, le nouveau bénéficiaire du contrat selon les modalités définies aux 1° et 2° de l'article R. 561-10-3.	In the event of the transfer to a third party of a life insurance or capitalisation contract, the persons mentioned in Articles L. 561-2, 2° to 2° sexies and 3° bis, when they take note of the transfer or, where applicable, when it is notified to them, shall identify and verify the identity of the person to whom the contract is transferred and, where applicable, of the beneficial owner of the contract, in accordance with the procedures set out respectively in Articles R. 561-5, R. 561-5-1 and R. 561-7 . They also identify, where applicable, the new beneficiary of the contract in accordance with the terms and conditions defined in 1° and 2° of article R. 561-10-3.
Article R. 561-12 MFC	Pour l'application de l'article L. 561-5-1, les personnes mentionnées à l'article L. 561-2 : 1° Avant d'entrer en relation d'affaires, recueillent et analysent les éléments d'information nécessaires à la connaissance de l'objet et de la nature de la relation d'affaires; 2° Pendant toute la durée de la relation d'affaires, recueillent, mettent à jour et	For the application of article L. 561-5-1, the persons mentioned in article L. 561-2: 1° Before entering into a business relationship, collect and analyze the information necessary to understand the purpose and nature of the business relationship; 2° Throughout the duration of the business relationship, collect, update

	analysent les éléments d'information qui permettent de conserver une connaissance appropriée et actualisée de leur relation d'affaires. La nature et l'étendue des informations collectées ainsi que la fréquence de la mise à jour de ces informations et l'étendue des analyses menées sont adaptés au risque de blanchiment de capitaux et de financement du terrorisme présenté par la relation d'affaires. Ils tiennent compte également des changements pertinents affectant la relation d'affaires ou la situation du client, y compris lorsque ces changements sont constatés par les personnes mentionnées à l'article L. 561-2 à l'occasion du réexamen de toute information pertinente relative aux bénéficiaires effectifs, notamment en application de la règlementation relative à l'échange d'informations dans le domaine fiscal. Les personnes mentionnées à l'article L. 561-2 sont en mesure de justifier auprès des autorités de contrôle mentionnées à l'article L. 561-36 de la mise en œuvre de ces mesures et de leur adéquation au risque de blanchiment de capitaux et de financement du terrorisme présenté par la relation d'affaires. Un arrêté du ministre chargé de l'économie précise les modalités d'application du présent article en ce qui concerne les éléments d'informations mentionnés aux 1° et 2°.	and analyze the information elements that make it possible to maintain an appropriate and up-to-date knowledge of their business relationship. The nature and scope of the information collected, the frequency with which this information is updated and the scope of the analyses carried out are adapted to the risk of money laundering and terrorist financing presented by the business relationship. They also take into account relevant changes affecting the business relationship or the customer's situation, including when such changes are observed by the persons mentioned in Article L. 561-2 when reviewing any relevant information relating to beneficial owners, in particular in application of the regulations relating to the exchange of information in the tax field. The persons mentioned in Article L. 561-2 are able to justify to the supervisory authorities mentioned in Article L. 561-36 the implementation of these measures and their adequacy to the risk of money laundering and terrorist financing presented by the business relationship. An order of the Minister in charge of the economy shall specify the methods of application of this Article with regard to the information mentioned in 1° and 2°.

Provisions of the MFC relating to the financial instruments and the different categories of clients and the level of protection for each of category.

Article L.211-1	I. – Les instruments financiers sont les titres financiers et les contrats financiers. II. – Les titres financiers sont :	I. – Financial instruments include both financial securities and financial contracts. II. – Financial securities include :

	1. Les titres de capital émis par les sociétés par actions ; 2. Les titres de créance ; 3. Les parts ou actions d'organismes de placement collectif. III. – Les contrats financiers, également dénommés " instruments financiers à terme ", sont les contrats à terme qui figurent sur une liste fixée par décret. IV. – Les effets de commerce et les bons de caisse ne sont pas des instruments financiers.	1. Equity securities isssued by joint-stock companies ; 2. Debt securities ; 3. Shares or stocks of collective investment undertakings. III. – Financial contracts, also named « derivatives financial instruments », are the contracts which appear on a list established by decree [article D.211.1A]. IV. – Bills of exchange and interest-bearing notes are not financial instruments.
Article D.211-1A	I.-Les contrats financiers mentionnés au III de l'article L. 211-1 sont : 1. Les contrats d'option, contrats à terme fermes, contrats d'échange, accords de taux futurs et tous autres contrats à terme relatifs à des instruments financiers, des devises, des taux d'intérêt, des rendements, des unités mentionnées à l'article L. 229-7 du code de l'environnement, à des indices financiers ou des mesures financières qui peuvent être réglés par une livraison physique ou en espèces; 2. Les contrats d'option, contrats à terme fermes, contrats d'échange, accords de taux futurs et tous autres contrats à terme relatifs à des matières premières qui doivent être réglés en espèces ou peuvent être réglés en espèces à la demande d'une des parties pour des raisons autres qu'une défaillance ou d'autre incident conduisant à la résiliation ; 3. Les contrats d'option, contrats à terme fermes, contrats d'échange et tous autres contrats à terme relatif à des matières premières qui peuvent être réglés par livraison physique, à condition qu'ils soient négociés sur un marché réglementé un système multilatéral de négociation ou	I – Financial contracts mentioned in article L.211-1 III MFC include: 1. Options, futures, swaps, forward rate agreements, and any other derivative contracts relating to financial instruments, currencies, interest rates or yields, units mentioned in Article L.229-7 of the Environnent Code [emission allowances] or financial indices or financial measures which may be settled physically or in cash; 2. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event; 3. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled, provided that they are traded on a regulated market, a multilateral trading facility, or an organised trading facility, except for wholesale energy products, within the meaning of article 2(4) of Regulation (EU) n°1227/2011 of the European Parliament and

	un système organisé de négociation, à l'exception des produits énergétiques de gros, au sens du point 4 de l'article 2 du règlement (UE) n° 1227/2011 du Parlement européen et du Conseil du 25 octobre 2011 concernant l'intégrité et la transparence du marché de gros de l'énergie, qui sont négociés sur un système organisé de négociation et qui doivent être réglés par livraison physique ; 4. Les contrats d'options, contrats à terme fermes, contrats d'échange et tous autres contrats à terme relatifs à des matières premières qui peuvent être réglés par livraison physique, non mentionnés par ailleurs au 3, et non destinés à des fins commerciales, qui présentent les caractéristiques d'autres instruments financiers à terme ; 5. Les contrats à terme servant au transfert du risque de crédit ; 6. Les contrats financiers avec paiement d'un différentiel ; 7. Les contrats d'options, contrats à terme fermes, contrats d'échanges, accords de taux futurs et tous autres contrats à terme relatifs à des variables climatiques, à des tarifs de fret ou à des taux d'inflation ou d'autres statistiques économiques officielles qui doivent être réglés en espèces ou peuvent être réglés en espèces à la demande d'une des parties pour des raisons autres qu'une défaillance ou d'autre incident amenant la résiliation ; 8. Tout autre contrat à terme concernant des actifs, des droits, des obligations, des indices et des mesures, non mentionné par ailleurs aux 1 à 7 ci-dessus, qui présente les caractéristiques d'autres instruments financiers à terme, en tenant compte de ce que, notamment, il est négocié sur un marché réglementé un système multilatéral de négociation ou un système organisé de négociation.	Council of 25 October 2011 on wholesale energy market integrity and transparency, which are traded on an organised trading facility and that must be physically settled; 4. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled, not otherwise mentioned in paragraph 3 above and not being for commercial purposes, which have the characteristics of other derivative financial instruments ; 5. Derivative instruments for the transfer of credit risk; 6. Financial contracts for differences; 7. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event ; 8. Any other derivative contract relating to assets, rights, obligations, indices and measures not otherwise mentioned in paragraphs 1 to 7 above, which has the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, a multilateral trading facility, or an organised trading facility; II. – In this article, a commodity means any good which has the characteristics

	II.- Dans cet article, une matière première est un bien ayant les caractéristiques mentionnées au paragraphe 6 de l'article 2 du règlement délégué (UE) 2017/565 de la Commission du 25 avril 2016.	mentioned in article 2(6) of the Commission Delegated Regulation (UE) 2017/565 of 25 April 2016.
Article L.321-1	Les services d'investissement portent sur les instruments financiers énumérés à l'article L. 211-1 et sur les unités mentionnées à l'article L. 229-7 du code de l'environnement et comprennent les services et activités suivants : 1. La réception et la transmission d'ordres pour le compte de tiers ; 2. L'exécution d'ordres pour le compte de tiers ; 3. La négociation pour compte propre ; 4. La gestion de portefeuille pour le compte de tiers ; 5. Le conseil en investissement ; 6-1. La prise ferme ; 6-2. Le placement garanti ; 7. Le placement non garanti ; 8. L'exploitation d'un système multilatéral de négociation au sens de l'article L. 424-1 ; 9. L'exploitation d'un système organisé de négociation au sens de l'article L. 425-1. Un décret précise la définition de ces services. Les services rendus à l'Etat et à la Banque de France, dans le cadre des politiques de gestion de la monnaie, des taux de change, de la dette publique et des réserves de l'Etat ne sont pas soumis aux dispositions du présent code applicables aux services d'investissement mentionnés au présent article.	Investment services are services in relation to financial instruments listed in article L.211-1 and units mentioned in Article L.229-7 of the Environnent Code [emission allowances] and comprised of the following services and activities : 1. Reception and transmission of orders on behalf of clients ; 2. Execution of orders on behalf of clients ; 3. Dealing on own account ; 4. Porfolio management on behalf of clients ; 5. Investment advice ; 6-1. Underwriting of financial instruments ; 6-2. Placing of financial instruments on a firm commitment basis ; 7. Placing of financial instruments without a firm commitment basis ; 8. Operation of a multilateral trading facility in according with article L.424-1 MFC ; 9. Operation of an organised trading facility in accordance with article L.425-1 MFC. A precise definition of these services is mentioned in a decree [article D.321-1 MFC]. Services provided to the State and to the *Banque de France*, in the context of currency management policy, exchange rates, public debt and State reserves, are not submitted to the provisions of this Monetary and Financial Code applicable to

		investment services mentioned in this article.
Article D.321-1	Les services d'investissement mentionnés à l'article L. 321-1 sont définis comme suit : 1. Constitue le service de réception et transmission d'ordres pour le compte de tiers le fait de recevoir et de transmettre à un prestataire de services d'investissement ou à une entité relevant d'un Etat non membre de l'Union européenne et non partie à l'accord sur l'Espace économique européen et ayant un statut équivalent, pour le compte d'un tiers, des ordres portant sur des instruments financiers ou sur une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement ; 2. Constitue le service d'exécution d'ordres pour le compte de tiers le fait de conclure des accords d'achat ou de vente portant sur un ou plusieurs instruments financiers ou sur une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement, pour le compte d'un tiers. L'exécution d'ordres inclut la conclusion d'accords de souscription d'instruments financiers et d'unités mentionnées à l'article L. 229-7 du code de l'environnement, émis par une entreprise d'investissement ou un établissement de crédit au moment de leur émission. Toutefois, l'exécution des ordres résultant des décisions d'investissement prises par les prestataires de services d'investissement dans le cadre du service mentionné au 4 ou de la gestion d'un placement collectif relève, selon le cas, dudit service mentionné au 4 ou de l'activité de gestion d'OPCVM ou de FIA relevant des dispositions précitées ; 3. Constitue le service de négociation pour compte propre le fait de négocier en engageant ses propres capitaux un ou	Investment services mentioned in article L.321-1 are defined as following : 1. Reception and transmission of orders on behalf of clients consists in receiving and transmitting to an investment services provider or to an entity from a Member State of the European Union and not party to the European Economic Area, having an equivalent status, on behalf of clients, orders relating to financial instruments or one or several units mentioned in article L.229-7 of the Environment Code. 2. Execution of orders on behalf of clients consists in entering into purchase or sale agreements relating to one or more financial instruments or one or several units mentioned in article L.229-7 of the Environment Code, on behalf of a third-party. Execution of orders includes the conclusion of agreements for subscription of financial instruments and units mentioned in article L.229-7 of the Environment Code, issued by a investment firm or a credit institution at the time of issue. However, the execution of orders resulting from investment decisions taken by investment service providers within the framework of the service in the context of the service mention in paragraph 4 or management of a collective investment falls, as the case may be, within the scope of the service mentioned in point 4 or within the scope of the activity of management of UCITS or AIFs subject to the aforementioned provisions ; 3. Dealing on own accout consists in trading against proprietary capital, one or several financial instruments or one

	plusieurs instruments financiers ou une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement, en vue de conclure des transactions ; 4. Constitue le service de gestion de portefeuille pour le compte de tiers le fait de gérer, de façon discrétionnaire et individualisée, des portefeuilles incluant un ou plusieurs instruments financiers ou une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement dans le cadre d'un mandat donné par un tiers ; 5. Constitue le service de conseil en investissement le fait de fournir des recommandations personnalisées à un tiers, soit à sa demande, soit à l'initiative de l'entreprise qui fournit le conseil, concernant une ou plusieurs transactions portant sur des instruments financiers ou sur une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement ; 6-1. Constitue le service de prise ferme le fait de souscrire ou d'acquérir directement auprès de l'émetteur ou du cédant des instruments financiers ou sur une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement, en vue de procéder à leur vente ; 6-2. Constitue le service de placement garanti le fait de rechercher des souscripteurs ou des acquéreurs pour le compte d'un émetteur ou d'un cédant d'instruments financiers ou sur une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement et de lui garantir un montant minimal de souscriptions ou d'achats en s'engageant à souscrire ou acquérir les instruments financiers non placés; 7. Constitue le service de placement non garanti le fait de rechercher des	or several units mentioned in article L.229-7 of the Environment Code, in order to enter into transactions. 4. Portfolio management on behalf of clients consists in the management, on a discretionary and invididually basis, of portfolios including one or several financial instruments or one or several units mentioned in article L.229-7 of the Environment Code, in the context of mandate given by a third-party. 5. Investment advice consists in providing personal recommandation to a third-party, either on its request, or on the initiative of the entity providing the advice, regarding one or several financial instruments or one or several units mentioned in article L.229-7 of the Environment Code. 6-1. Underwriting of financial instruments consists in the subscribing or acquiring directly from the issuer or the seller, financial instruments or one or several units mentioned in article L.229-7 of the Environment Code, in order to sell them ; 6-2. Placing of financial instruments on a firm commitment basis consists in searching for subscribers or purchasers of financial instruments or one or several units mentioned in article L.229-7 of the Environment Code, on behalf of an issuer or a seller, and to guarantee a minimum amount of subscriptions or purchase by committing to subscribe or purchase financial instruments non placed ; 7. Placing of financial instruments without a firm commitment basis consists in searching for subscribers or purchasers of financial instruments or one or several units mentioned in article L.229-7 of the Environment Code, on behalf of an

	souscripteurs ou des acquéreurs pour le compte d'un émetteur ou d'un cédant d'instruments financiers ou sur une ou plusieurs unités mentionnées à l'article L. 229-7 du code de l'environnement sans lui garantir un montant de souscription ou d'acquisition ; 8. Constitue le service d'exploitation d'un système multilatéral de négociation le fait de gérer un ou plusieurs systèmes mentionnés à l'article L. 424-1 ; 9. Constitue le service d'exploitation d'un système organisé de négociation le fait de gérer un ou plusieurs systèmes mentionnés à l'article L. 425-1.	issuer or a seller, without providing any guarantee regarding the amount of the subscription or purchase ; 8. Operation of a multilateral trading facility consists in managing one or several systems mentioned in article L.424-1 MFC. 9. Operation of an organised trading facility consists in managing one or several systems mentioned in article L.425-1 MFC.
Article D.533-4	I. – Le prestataire de services d'investissement autre qu'une société de gestion de portefeuille établit et met en œuvre des politiques et des procédures appropriées et écrites permettant de classer ses clients dans les catégories de clients non professionnels, clients professionnels ou contreparties éligibles. Les clients non professionnels par nature sont les clients, y compris les clients visés au premier alinéa du 1 du II de l'annexe 2 de la directive 2014/65/UE du 15 mai 2014, autres que ceux mentionnés à l'article D. 533-11. II. – Le prestataire de services d'investissement autre qu'une société de gestion de portefeuille informe ses clients de leur catégorisation en qualité de client non professionnel, de client professionnel ou de contrepartie éligible. Il les informe également en cas de changement de catégorie. Il informe ses clients sur un support durable de leur droit à demander une catégorisation différente et des conséquences qui en résulteraient quant à leur degré de protection.	I. – Investment service providers, other than portfolio management companies, shall develop and implement adequate written policies and procedures allowing to classify their clients in one of the following categories : retail clients, professional clients or eligible counterparties. Retail clients by nature are clients, including clients reffered to in the first subparagraph of paragraph II.1 of Annex 2 of Directive 2014/65/UE of 15 May 2014, other than those mentioned in article D.533-11 MFC. II. – Investment service providers, other than portfolio management companies, shall inform their clients of their categorization as retail clients, professional clients or eligible counterparties. They shall also inform them in case of change of category. They shall inform their clients, on a durable medium, that they have the right to request for a different categorization and the consequences

	III. – Il incombe au client professionnel ou à la contrepartie éligible d'informer le prestataire de services d'investissement autre qu'une société de gestion de portefeuille de tout changement susceptible de modifier sa catégorisation. IV. – Le prestataire de services d'investissement autre qu'une société de gestion de portefeuille qui constate qu'un client professionnel ou une contrepartie éligible ne remplit plus les conditions qui lui valaient d'être catégorisé comme tel prend les mesures appropriées. V. – Il incombe au client professionnel par nature ou à la contrepartie éligible conformément au 4 de l'article 71 du règlement délégué (UE) 2017/565 de la Commission du 25 avril 2016 de demander à être placé dans une catégorie offrant une plus grande protection s'il estime ne pas être en mesure d'évaluer ou de gérer correctement les risques auxquels il est amené à s'exposer.	that may result on their level of protection. III. – It is the responsibility of the professional client or the eligible counterparty to inform the investment service provider, other than a portfolio management company, of any change which may impact its categorization. IV. – Investment service providers, other than portfolio management companies, which notice that a professional client or an eligible counterparty does not meet anymore the conditions which led to its categorization, shall take the appropriate measures. V. – It is the responsibility of the professional client by nature or the eligible counterparty, in accordance with article 71(4) of the Commission Delegated Regulation (UE) 2017/565 of 25 April 2016, to ask for a higher level of protection, when it deems it is unable to properly assess or manage the risks to which it is involved.
Article D.533-11	Ont la qualité de clients professionnels au sens de l'article L. 533-16, pour tous les services d'investissement et tous les instruments financiers : 1. a) Les établissements de crédit mentionnés à l'article L. 511-9 ; b) Les entreprises d'investissement mentionnées à l'article L. 531-4 ; c) Les autres établissements financiers agréés ou réglementés ; d) Les entreprises d'assurance et de réassurance mentionnées respectivement au premier alinéa de l'article L. 310-1 et à l'article L. 310-1-1 du code des assurances, les sociétés de groupe d'assurance mentionnées à l'article L. 322-1-2 du même code, les mutuelles et	Shall be categorised as professional clients within the meaning of article L.533-16 FMC, for all the investment services and all the financial instruments : 1.a) Credit institutions mentioned in article L.511-9 FMC ; b) Investment firms mentioned in article L.531-4 FMC ; c) Other authorised or recognised financial institutions ; d) Insurance and reinsurance companies respectively mentioned in the first paragraph of article L.310-1 and article L.310-1-1 of the Insurance

	unions de mutuelles relevant du livre II du code de la mutualité, les unions mutualistes de groupe mentionnés à l'article L. 111-4-2 du même code, les institutions de prévoyance et leurs unions régies par le titre III du livre IX du code de la sécurité sociale ainsi que les sociétés de groupe assurantiel de protection sociale mentionnées à l'article L. 931-2-2 du même code ; e) Les placements collectifs mentionnés au I de l'article L. 214-1 ainsi que les sociétés de gestion de placements collectifs mentionnées à l'article L. 543-1 ; f) Le fonds de réserve pour les retraites mentionné à l'article L. 135-6 du code de la sécurité sociale, les institutions de retraites professionnelles mentionnées à l'article L. 370-1 du code des assurances pour leurs opérations mentionnées à l'article L. 370-2 du même code, ainsi que les personnes morales administrant une institution de retraite professionnelle mentionnée à l'article 8 de l'ordonnance n° 2006-344 du 23 mars 2006 relative aux retraites professionnelles supplémentaires ; g) Les personnes dont l'activité principale consiste à négocier pour compte propre des matières premières ou des instruments dérivés sur matières premières, mentionnés au j du 2° de l'article L. 531-2 ; h) Les entreprises locales, au sens du 4 du paragraphe 1 de l'article 4 du règlement (UE) n° 575/2013 du Parlement européen et du Conseil du 28 juin 2013 ; i) La Caisse des dépôts et consignations et les autres investisseurs institutionnels agréés ou réglementés.	Code, insurance group companies mentioned in article L.322-1-2 of the same Code, mutual insurance companies and mutual insurance unions governed by Book II of the Mutual Insurance Code, mutualist group unions mentioned in article L.111-4-2 of the same Code, and pension institutions and their unions governed by Title III of Book IX of the Social Security Code, as well as the social protection insurance group companies mentioned in article L.931-2-2 of the same Code ; e) Collective investments mentioned in article L.214-1 I MFC, as well as management companies of collective investment undertakings mentioned in article L.543-1 MFC ; f) The pension reserve fund mentioned in article L.135-6 of the Social Security Code, professional pensions institutions mentioned in article L.370-1 of the Insurance Code for their operations mentioned in article L.370-2 of the same Code, as well as the legal entities which manage a professional pensions institution as mentioned in article 8 of Ordinance n°2006-344 of 23 March 2006 regarding the supplementary professional pensions. g) Persons whose main activity is the negociation for own account of commodities or commodity derivatives, mentioned in article L.531-2 j 2° MFC ; h) Local companies, within the meaning of article 4(1)4 of Regulation (UE) n°575/2013 of the European Parliament and the Council of 28 June 2013 ;

	2. Les entités remplissant au moins deux des trois critères suivants, sur la base des états comptables individuels : – total du bilan égal ou supérieur à 20 millions d'euros ; – chiffre d'affaires net ou recettes nettes égaux ou supérieurs à 40 millions d'euros ; – capitaux propres égaux ou supérieurs à 2 millions d'euros ; 3. L'Etat, la Caisse de la dette publique, la Caisse d'amortissement de la dette sociale, la Banque de France, l'Institut d'émission des départements d'outre-mer, l'Institut d'émission d'outre-mer ; 4. Les autres investisseurs institutionnels dont l'activité principale consiste à investir dans des instruments financiers, et notamment les sociétés d'investissement mentionnées à l'article 6 de l'ordonnance du 2 novembre 1945, les sociétés de capital-risque mentionnées à l'article 1er de la loi n° 85-695 du 11 juillet 1985 et les sociétés financières d'innovation mentionnées au III de l'article 4 de la loi n° 72-650 du 11 juillet 1972 ; 5. Les entités de droit étranger qui sont équivalentes à celles mentionnées aux 1 à 4 ou qui ont un statut de client professionnel dans un autre Etat membre de l'Union européenne ou un autre Etat partie à l'accord sur l'Espace économique européen ; 6. Les organismes financiers internationaux à caractère public auxquels la France ou tout autre Etat membre de l'Organisation de coopération	i) The *Caisse des dépôts et consignations* and the other authorised or regulated institutional investors. 2. Entities which meet at least two of the three following criteria, based on individual accounting statements : - total balance sheet equal or superior to 20 million EUR ; - net turnover or net revenues equal or superior to 40 million EUR ; - capitalisation equal or superior to 2 million EUR. 3. The State, the *Caisse de la dette publique* [government debt fund], la *Caisse d'amortissement de la dette sociale* [social security debt reimbursement fund], the *Banque de France*, *l'Institution d'émission des départements d'outre-mer* [French overseas departments issuance Institute], *l'Institution d'émission d'outre-mer* [French oversas issuance Institute] ; 4. Other financial institutions, whose main activity is the investment in financial instruments, and notably investment companies mentioned in article 6 of Ordinance of 2 November 1945, venture capital companies mentioned in article 1 of Law n°85-695 of 11 July 1985 and innovation financial companies mentioned in article 4 III of Law n°72-650 of 11 July 1972. 5. Foreign entities equivalent to the ones mentioned in paragraphs 1 to 4 or which are categorised as professional clients in another Member State of the European Union or another State party to the European Economic Area agreement.

	et de développement économiques adhère.	6. International financial organizations of public nature, to which France or any other State party to the Organisation for Economic Cooperation and Development, is a member.
Article D.533-13	Ont la qualité de contreparties éligibles au sens de l'article L. 533-20 : 1. a) Les établissements de crédit mentionnés à l'article L. 511-9 ; b) Les entreprises d'investissement mentionnées à l'article L. 531-4 ; c) Les autres établissements financiers agréés ou réglementés ; d) Les entreprises d'assurance et de réassurance mentionnées respectivement au premier alinéa de l'article L. 310-1 et à l'article L. 310-1-1 du code des assurances, les sociétés de groupe d'assurance mentionnées à l'article L. 322-1-2 du même code, les mutuelles et unions de mutuelles relevant du livre II du code de la mutualité, les unions mutualistes de groupe mentionnées à l'article L. 111-4-2 du même code, ainsi que les institutions de prévoyance et leurs unions régies par le titre III du livre IX du code de la sécurité sociale, ainsi que les sociétés de groupe assurantiel de protection sociale mentionnées à l'article L. 931-2-2 du même code ; e) Les placements collectifs mentionnés au I de l'article L. 214-1 ainsi que les sociétés de gestion de placements collectifs mentionnées à l'article L. 543-1 ; f) Le fonds de réserve pour les retraites mentionné à l'article L. 135-6 du code de la sécurité sociale, les institutions de retraites professionnelles mentionnées à l'article L. 370-1 du code des assurances pour leurs opérations mentionnées à l'article L. 370-2 du même code, ainsi que les personnes morales administrant	Shall be considered as eligible counterparties, within the meaning of article L.533-20 MFC : 1.a) Credit institutions mentioned in article L.511-9 MFC ; b) Investment firms mentioned in article L.531-4 MFC ; c) Other authorised or regulated financial institutions ; d) Insurance and reinsurance companies respectively mentioned in the first paragraph of article L.310-1 and article L.310-1-1 of the Insurance Code, insurance group companies mentioned in article L.322-1-2 of the same Code, mutual insurance companies and mutual insurance unions governed by Book II of the Mutual Insurance Code, mutualist group unions mentioned in article L.111-4-2 of the same Code, and pension institutions and their unions governed by Title III of Book IX of the Social Security Code, as well as the social protection insurance group companies mentioned in article L.931-2-2 of the same Code ; e) Collective investments mentioned in article L.214-1 I MFC, as well as management companies of collective investment undertakings mentioned in article L.543-1 MFC ; f) The pension reserve fund mentioned in article L.135-6 of the Social Security Code, professional pensions institutions mentioned in article L.370-

	une institution de retraite professionnelle mentionnée à l'article 8 de l'ordonnance n° 2006-344 du 23 mars 2006 relative aux retraites professionnelles supplémentaires ; g) Les personnes dont l'activité principale consiste à négocier pour compte propre des matières premières ou des instruments dérivés sur matières premières, mentionnées au j du 2° de l'article L. 531-2 ; h) Les entreprises locales, au sens du 4 du paragraphe 1 de l'article 4 du règlement (UE) n° 575/2013 du Parlement européen et du Conseil du 28 juin 2013 ; 2. L'Etat, la Caisse de la dette publique, la Caisse d'amortissement de la dette sociale, la Banque de France, l'Institut d'émission des départements d'outre-mer, l'Institut d'émission d'outre-mer. 3. Les organismes financiers internationaux à caractère public auxquels la France ou tout autre Etat membre de l'Organisation de coopération et de développement économiques adhère. 4. Les personnes morales remplissant au moins deux des trois critères suivants, sur la base des états comptables individuels : – total du bilan égal ou supérieur à 20 millions d'euros ; – chiffre d'affaires net ou recettes nettes égaux ou supérieurs à 40 millions d'euros ; – capitaux propres égaux ou supérieurs à 2 millions d'euros. Le prestataire de services d'investissement autre qu'une société de gestion de portefeuille qui conclut des transactions conformément aux dispositions de l'article L. 533-20 avec une personne morale mentionnée au	1 of the Insurance Code for their operations mentioned in article L.370-2 of the same Code, as well as the legal entities which manage a professional pensions institution as mentioned in article 8 of Ordinance n°2006-344 of 23 March 2006 regarding the supplementary professional pensions. g) Persons whose main activity is the negociation for own account of commodities or commodity derivatives, mentioned in article L.531-2 j 2° MFC ; h) Local companies, within the meaning of article 4(1)4 of Regulation (UE) n°575/2013 of the European Parliament and the Council of 28 June 2013 ; 2. The State, the *Caisse de la dette publique* [government debt fund], la *Caisse d'amortissement de la dette sociale* [social security debt reimbursement fund], the *Banque de France*, *l'Institution d'émission des départements d'outre-mer* [French overseas departments issuance Institute], *l'Institution d'émission d'outre-mer* [French oversas issuance Institute]. 3. International financial organizations of public nature, to which France or any other State party to the Organisation for Economic Cooperation and Development, is a member. 4. Legal entities which meet at least two of the three following criteria, based on individual accounting statements : - total balance sheet equal or superior to 20 million EUR ; - net turnover or net revenues equal or superior to 40 million EUR ;

	premier alinéa du présent 4 doit obtenir de celle-ci la confirmation expresse qu'elle accepte d'être traitée comme contrepartie éligible. Le prestataire de services d'investissement peut obtenir cette confirmation soit sous la forme d'un accord général, soit pour chaque transaction. 5. La Caisse des dépôts et consignations et les autres investisseurs institutionnels agréés ou réglementés ; 6. A leur demande, les personnes morales mentionnées à l'article D. 533-11. Dans ce cas, la personne morale concernée ne doit être reconnue comme une contrepartie éligible que pour les services ou transactions pour lesquels elle serait traitée comme un client professionnel ; 7. Les entités de droit étranger équivalentes à celles mentionnées aux 1,2 et 4. Lorsqu'une personne morale mentionnée au 4 a son siège social ou sa direction effective en dehors de la France métropolitaine, de la Guadeloupe, de la Guyane, de la Martinique, et de La Réunion de Mayotte, le prestataire de services d'investissement autre qu'une société de gestion de portefeuille tient compte du statut de ladite personne morale tel qu'il est défini par les dispositions en vigueur dans l'Etat où elle a son siège social ou sa direction effective.	- capitalisation equal or superior to 2 million EUR. Investment service providers, other than a portfolio management companies, which enter into transactions according to the provisions of article L.533-20 MFC with a legal entity mentioned in the first subparagraph of this paragraph 4, shall obtain from such legal entity the express confirmation that it agrees to be considered as an eligible counterparty. Investment service providers can obtain such confirmation either as a general agreement or for each transaction. 5. The *Caisse des dépôts et consignations* and the other authorised or regulated institutional investors ; 6. At their request, the legal entities mentioned in article D.533-11 MFC. In such case, the legal entity concerned shall be considered as an eligible counterparty only for the services or transactions for which it would be considered as a professional client ; 7. Foreign entities equivalent to the ones mentioned in paragraphs 1,2 and 4. When the registered office or the effective management of a legal entity mentioned in paragraph 4 is located outside the metropolitan France, Guadeloupe, Guyane, Martinique, La Réunion or Mayotte, the investment service provider, other than a portfolio management company, shall take into account the status of such legal entity as determined by the law applicable in the country where the registered office or the effective management is located.
Article D.533-15	Pour l'application du II de l'article L. 533-12, les informations communiquées aux clients sont les suivantes :	For the implementation of article L.533-12 II MFC, information

	1° Lorsqu'ils fournissent le service d'investissement mentionné au 5° de l'article L. 321-1, les prestataires de services d'investissement autres que les sociétés de gestion de portefeuille indiquent au client, en temps utile avant la fourniture du service : – si les conseils en investissement sont fournis de manière indépendante ; – si les conseils en investissement reposent sur une analyse large ou plus restreinte de différents types d'instruments financiers et en particulier si l'éventail se limite aux instruments financiers émis ou proposés par des entités ayant des liens étroits avec les prestataires de services d'investissement ou toute autre relation juridique ou économique, telle qu'une relation contractuelle si étroite qu'elle risque de nuire à l'indépendance du conseil fourni ; – s'ils fournissent au client une évaluation périodique du caractère adéquat des instruments financiers qui lui sont recommandés. 2° Les informations sur les instruments financiers et les stratégies d'investissement proposées incluent des orientations et des mises en garde appropriées sur les risques inhérents à l'investissement dans ces instruments ou à certaines stratégies d'investissement ainsi qu'une information sur le fait que l'instrument financier est destiné à des clients non professionnels ou à des clients professionnels, compte tenu du marché cible défini conformément à l'article L. 533-24. 3° Les informations sur tous les coûts et frais liés incluent des informations relatives aux services d'investissement et aux services connexes, y compris le coût des conseils, s'il y a lieu, le coût des instruments financiers recommandés au	provided to the clients shall be as following : 1° When providing the investment service mentioned on article L.321-1 5° [investment advice], the service providers, other than asset management companies, shall, in good time before they provide the service, inform the client : - Whether or not the advice is provided on an independent basis ; - Whether the investment advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided; - whether they provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client. 2° the information on financial instruments and proposed investment strategies must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with article L.533-24 MFC.

	client ou commercialisés auprès du client ainsi que la manière dont le client peut s'en acquitter, ce qui comprend également tout paiement par des tiers, dans les conditions prévues par l'article 50 du règlement délégué (UE) 2017/565 de la Commission du 25 avril 2016 complétant la directive 2014/65/UE. Les informations relatives à l'ensemble des coûts et frais, y compris les coûts et frais liés au service d'investissement et à l'instrument financier, qui ne sont pas causés par la survenance d'un risque du marché sous-jacent, sont agrégées afin de permettre au client de saisir le coût total, ainsi que l'effet cumulé sur le retour sur investissement. Si le client le demande, une ventilation par poste est fournie. Le cas échéant, ces informations sont fournies au client régulièrement, au minimum chaque année, pendant la durée de vie de l'investissement, dans les conditions prévues par l'article 50.9 du règlement délégué (UE) 2017/565 de la Commission du 25 avril 2016 complétant la directive 2014/65/UE.	3° the information on all costs and associated charges must include information relating to both investment and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments, under the conditions mentioned by article 50 of Delegated regulation (UE) 2017/565 of the Commission of April 25, 2016, amending Directive 2014/65/UE. The information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment. Where the client so requests, an itemised breakdown shall be provided. Where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment, under the conditions mentioned by article 50.9 of Delegated regulation (UE) 2017/565 of the Commission of April 25, 2016, amending Directive 2014/65/UE.

Article 314-17 of AMF General Regulation

As regards any payment or benefit received from or paid or provided to third parties, the investment services provider shall disclose the following information to the client:

1. prior to the provision of the relevant investment or ancillary service, it shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article L. 533-12-4 of the Monetary and Financial Code.
   Minor non-monetary benefits may be described in a generic way.
   Other non-monetary benefits provided or received in connection with the investment service provided to the client shall be priced and disclosed separately.

2. prior to the provision of an investment or ancillary service to a client, where it has been unable to ascertain the amount of any payment or benefit to be received or paid, it shall disclose to the client the method for calculating that amount. In this case, after providing the service, it shall provide its client with information on the exact amount of the abovementioned payment or benefit received or paid; and

3. at least once a year, as long as ongoing fees, commissions or benefits are received by it in relation to the investment or ancillary services provided to the relevant clients, it shall inform its clients on an individual basis about the actual amount of payments or benefits received, paid or provided.

Minor non-monetary benefits may be described in a generic way.

Where the investment services provider implements the obligations mentioned in this article, it shall take into account the provisions on costs and charges set out in point 3° of Article D. 533-15 of the Monetary and Financial Code and in Article 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

Where more firms are involved in a distribution channel, each investment services provider providing an investment or ancillary service shall comply with its disclosure obligations to its own clients.

Information to be included in the Application (Element 4)

1. For each of the areas of regulation for which substituted compliance is requested, identify whether the AMF, ACPR, (each an "Authority") or ECB is the primary supervisor and has primary authority for enforcing violations of such regulations.

   The AMF is in charge of the supervision of investment services providers, including the French investment firms and credit institutions applying with the SEC to register as security-based swap dealers or major security-based swap participants (the "Regulated Entities"). The AMF exercises its supervision authority together with the ACPR. The day-to-day supervision of the Regulated Entities regarding their swap dealing activities however lies within the remit of the AMF. With respect of the French Regulated Entities, the ACPR's supervisory powers mainly pertain to licensing matters and prudential requirements (which are out of the scope of the substituted compliance request). ACPR and AMF cooperate closely and have frequent communications regarding the supervision of Regulated Entities and are authorized to exchange confidential information for the accomplishment of their respective missions.

   - Recordkeeping and reporting requirements

     AMF is primarily responsible for the supervision and enforcement of recordkeeping and reporting requirements with respect to the swap dealing activities of Regulated Entities.

     ACPR is primarily responsible for the supervision and enforcement of prudential recordkeeping and reporting requirements regarding investment firms.

     The ECB is primarily responsible for the supervision and enforcement of prudential recordkeeping and reporting requirements regarding credit institutions.

   - Trade acknowledgement and verification requirements

     AMF is primarily responsible for the supervision and enforcement of trade acknowledgement and verification requirements with respect to the swap dealing activities of Regulated Entities.

   - Supervision and chief compliance officer requirements

     The AMF has authority to issue professional licenses for compliance officers of investment services providers, including the Regulated Entities. For this purpose, the AMF organizes each year two examination sessions and two training sessions.

The AMF also requires the Regulated Entities to notify the AMF for any significant changes in key personnel, changes in the compliance officer etc. Any changes that are not properly documented and/or explained will be detected and investigated.

Regulated Entities shall designate a person responsible for ensuring the consistency and effectiveness of the control of compliance risk, whose identity they shall communicate to the Autorité de contrôle prudentiel et de résolution.

- Counterparty protection requirements

  The AMF is primarily responsible for the supervision and enforcement of counterparty protection requirements with respect to the swap dealing activities of Regulated Entities.

- Additional requirements regarding eligible contract participant verification, special entities and political contributions

  The ACPR is primarily responsible for the supervision and enforcement of anti-money laundering and counter terrorism financing requirements with respect to the swap dealing activities of Regulated Entities, including KYC requirements and requirements pertaining to politically exposed persons.

- Risk mitigation requirements

  The AMF is primarily responsible for the supervision and enforcement of risk mitigation requirements stemming from the provision of MiFID/MiFIR and EMIR.

  ACPR is primarily responsible for the supervision and enforcement of the risk mitigation requirements stemming from the provisions of CRD IV and Regulation (EU) n° 575/2013 (CRR) for credit institutions.

  The ECB, is primarily responsible for the supervision and enforcement of the risk mitigation requirements stemming from the provisions of CRD IV and Regulation (EU) n° 575/2013 (CRR) for credit institutions.

- Capital and margin requirements

  Please see below answers to the questions dedicated to the supervision of capital and margin requirements.

2. If any of the regulations for which substituted compliance is requested do not apply to certain cross-border transactions, please explain (e.g., transactions with counterparties located outside the EU).

N/A

3. Explain the supervisory process over credit institutions and investment firms by the AMF. ***Your response to all the remaining questions should be tailored to those institutions that will be registering as security-based swap entities in the United States.*** Please include a list of the main reports reviewed by the portfolio managers (e.g., compliance report), a brief summary of the general contents of each report, how often the report is filed with the AMF, and the process the AMF undertakes to review the report, including what happens when it sees areas of concern within the report.

   The portfolio managers review the following main reports submitted by the Regulated Entities to the AMF:

   - A risk mapping provided at least once a year by Regulated Entities, which contains information regarding any kind of identified risks and their importance.
   - The control plan prepared on a yearly basis by the compliance function, based on the risk mapping, representing how identified risks will be mitigated and handled, the contingency process the corrective actions.
   - The detailed questionnaire on compliance aspects filled each year providing information on the main following topics:
     - Distribution of the net banking product and employees between the business lines;
     - Internal and External resources of the compliance function;
     - Types of services provided and types of clients;
     - How the appropriateness of services provided to clients is verified;
     - How complaints are handled;
     - Any personal transactions entered into by targeted employees;
     - How the requirements regarding custody and protection of clients' assets are complied with;
     - How conflicts of interests are handled and controlled;
     - How the minimum level of knowledge of certain employees is verified;
     - How record-keeping requirements are complied with;
     - How the best execution requirements are complied with; and
     - How anti-market abuse regulations are complied with.
     - How transparency and reporting requirements are met.

   The AMF risk based approach of supervision encompassing tiered supervision is determined on the basis of information contained in these documents as well as outcomes of meetings with the firms, and internal or external alerts related to the firm's compliance. However, it does not result in determining an individual annual plan / risk mapping formally shared with the firm. Our key concerns are nonetheless, when appropriate, shared with the Head of Compliance and/or Senior executives within the firm, either on ad hoc basis or during periodic meetings.

AMF will treat all Regulated Entities benefiting from substituted compliance as Tier 1 firms.

The AMF's supervisory team maintains a constant dialogue with Tier 1 firms and the monitoring actions can be:

- individual, in response to specific alerts or as part of the periodic coverage of Tier 1 firms, calibrated according to a risk-based approach;
- thematic, in particular to ensure implementation of new regulations or to coordinate a dedicated ESMA supervisory action.

Each portfolio manager elaborates on this basis its supervisory plan for Tier 1 firms.

Please include the following information:

a. The approximate number of portfolio managers assigned to a credit institution or investment firm.

The Regulated Entities that will be registering as security-based swap entities in the United States are all authorised to provide investment services.

Two dedicated AMF portfolio managers are assigned to each Regulated Entity:

- one covering the markets activities (including custody and clearing activities) within the investment firm supervision division (markets directorate);
- another one covering the retail, private banking, depositary activities and the marketing of financial instruments within the asset management directorate.

The allocation of two dedicated portfolio managers allows for a better understanding of the business of the Regulated Entity. It offers single points of contact at the AMF for any question the firm might have.

The two portfolio managers can also rely on legal expertise (4 legal experts from the Markets Directorate) as well as on the market surveillance department (20 people) and on other departments at the AMF such as for example the legal department or the policy department.

In addition, the portfolio manager in charge of the monitoring of market activities works in close cooperation with data scientists/analysts of the data driven supervision team also belonging to the investment firm supervision division (see section 4.). There is a high value added for the data analysts to be close to the portfolio managers as it ensures that:

- data quality improvement actions are chosen and prioritized according to data usage,
- dashboards provided to supervisors or data analysis are relevant.

b. The ways in which, and how often, the portfolio managers interact with the credit institution or investment firm (including on-site meetings, phone calls, etc.).

The AMF has adopted a risk-based approach of supervision (encompassing tiered supervision), whereby investment services providers are categorised within four Tiers. Tier 1 and Tier 2 firms receive more supervisory attention than Tier 3 and Tier 4. Entities are allocated to tiers based on a thematic risk map fed by past experience (areas where failures where identified in some firms) and by new regulations to implement (areas where firms need to adapt a new framework). Individual risks detected through the use of various tools to detect "red flags" are also taken into account as well as quantitative data, expert judgment and specific tools such as analysis of client complaints. Large investment services providers, such as large investment banks and large investment firms, fall within Tier 1. The AMF's supervisory team maintains a constant dialogue with Tier 1 firms, with weekly calls with compliance officers and regular in-person meetings with senior operational management and compliance officers (at least twice a year).

These monitoring actions can be:

- individual, in response to specific alerts or as part of the periodic coverage of regulated entities, calibrated according to a risk-based approach;
- thematic, in particular to ensure implementation of new regulations.

The AMF has mechanisms to detect general failure of compliance of other regulatory requirements:

- The AMF requires Regulated Entities to provide specific information on a regular basis. This information includes among other things disclosure of accounts, revenues, profits, organization of internal controls, information on transactions (EMIR reporting for example – see details below) etc. Any suspicious item can therefore be detected and analyzed.
- The AMF also requires the Regulated Entities to notify the regulator for any significant changes compared with the licensing file that was provided when the license of the relevant Regulated Entity was granted or updated; For instance, it includes changes in key personnel, changes in the compliance officer etc. Any changes that are not properly documented and/or explained will be detected and investigated.
- The AMF has adopted a risk assessment approach of Regulated Entities using the information contained in the annual control reports written by the compliance officers at the request of the AMF. The reports provide details of how the Regulated Entities have put systems in place in order to comply with the regulation. The information is used to determine the tiering approach of Regulated Entities.
- The AMF asks the Regulated Entities to provide answers on regulatory questions (annual questionnaire further described in section (c) below). That way, the AMF can detect if an entity has adequate measures in place to comply with particular regulatory requirements or any inconsistency, by comparing compliance reports from one year to another.

This approach is complemented by an analysis of complaints by investors or third parties. All these risks contribute to our case-by-case analysis which can lead, where relevant, to an on-going monitoring (e.g. exchange of letters…) or an on-site inspection.

This on-going monitoring is carried out by the Markets Directorate for market intermediaries.

Supervisory resources and attention are allocated by taking into account:

i) a thematic risk mapping based on past experience (i.e., areas where failures were identified in some firms) and in the light of new regulations to be implemented (i.e., areas where firms need to adapt to a new framework);
ii) individual risks detected through the use of supervisory tools, in order to identify "red flags;" and
iii) tiered supervision, whereby Tier 1 and Tier 2 firms (which generally include the Regulated Entities) receive more supervisory attention than Tier 3 and Tier 4, as measured in periodic reports to the management.

The AMF recently introduced Spot Inspections as part of its risk-based approach. These are shorter inspections which involve assessing the same topic in parallel across several investment services providers. This approach aims at increasing the coverage of firms subject to inspections and relies on transparency: the topics to be covered are announced publicly at the beginning of each year and, at the end of these thematic reviews, the good and bad practices identified are also communicated to the market. Seven of such topics were identified for 2019, to be assessed across 36 investment services providers. This was in addition to the 21 standard on-site inspections planned for the same period.

Regulated Entities benefiting from substituted compliance will all be treated as Tier 1 firms, which implies for the portfolio managers a constant dialogue with the firms, with weekly calls with compliance officers, a number of discussions with senior management (twice per month in average) and regular on-site meetings with senior operational management and compliance officers (at least twice a year). Weekly calls and on-site meetings can be scheduled in the context of:

- Individual analysis, in response to specific alerts or as part of the periodic coverage of Tier 1 firms, calibrated according to a risk-based approach;
- Thematic work, in particular to ensure implementation of new regulations or to coordinate a dedicated ESMA supervisory action.

Some weekly calls with different managers can be as structuring as on-site meetings. Consequently, it can be confirmed that the portfolio managers has frequent important meetings with the firm.

Regarding the markets activities, the dedicated portfolio manager has also access through dashboards built by the data scientists/analysts to a detailed view of regulatory reporting data of a Regulated Entity (see section 4.). The collection and the analysis of data help in improving the supervision of Regulated Entities. As such, the detection of drastic changes in the activity for a Regulated Entity or in a specific asset class or the identification of data completeness and data quality problems lead to the use of different supervisory tools (see below).

c. The supervisory tools the AMF uses to correct red flags/violations of law (e.g., requesting a specific investigation (whether by internal or external auditors), and the powers of the surveillance committee).

The AMF uses different supervisory tools to correct red flags/violations of laws for all entities providing investment services including Regulated Entities. As such, the AMF can schedule meetings with Regulated Entities; request information to Regulated Entities; send letters from the General Secretary or one of the AMF directors; ask Regulated Entities to carry out an external or internal audit or request them the implementation of corrective measures if weaknesses are identified through on-going supervision.

Regulated Entities have to respond by any relevant ways such as reports on corrective actions and bilateral exchanges with AMF. For every incident that is reported to the AMF, the Regulated Entity must provide the AMF supervision team with a "post-mortem" report with details on corrective actions undertaken. The corrective action plan can be challenged in case of insufficient corrective actions and/or late planning for their implementation. In addition, a lack of 2nd level control on key issues relating to the corrective actions is also challenged by the portfolio managers.

Enforcement actions are also proposed and decided when potential significant breaches are detected. Inspections proposals have focused more on "Tier 1" firms and have more often resulted in repressive measures.

Regulated Entities must report to the AMF, as soon as possible, all significant incidents that may occur. In addition, they have to notify the ACPR any significant incident detected by internal control processes in particular in case of potential or proven losses (Article 98 of November 2014 Order on internal control). They must also report to the AMF any suspicious orders or transactions which may characterize a market manipulation as required by Article 16 of Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation). The AMF should also be made aware of disciplinary measure taken against certain employees because of a breach of their professional obligations (i.e. those that hold a professional license (traders and sales, clearers of financial instruments, compliance officers, investment analysts) as per Article 312-27 of AMF General Regulation.

The AMF may also ask firms to report other information and/or, following a warning or an alert, the AMF may require firms to carry out audits.

The surveillance (or supervisory) committee is in charge of reviewing every alerts and significant supervisory events. This Committee comprises the General Secretary of the AMF as well as the directors/managers of several directorates (the market surveillance division and the investment services providers supervision division within the markets directorate; the issuers directorate and the directorates of the AMF in charge of the inspection) which meets every three weeks. Its role also consists in proposing to carry out specific supervisory actions such as, for example, the closer monitoring of an entity or an inspection. The final decision is not made by the supervisory committee. It is to be noted that the AMF supervisors operate separately from the inspectors and do not interfere with them during the course of the inspection.

The decision as to whether an inspection should be carried out or not is formally taken by the inspections committee or whenever needed in case a potential significant breach is detected.

d. How the AMF processes and responds to tips, complaints and referrals.

Investors can file complaints to the AMF on Regulated Entities. Similarly, the AMF ombudsman could help in solving disputes on matters relating to authorized financial intermediaries.

The AMF also has a dedicated online system where requests for information, requests for mediation or reporting of anomalies can be directly send to the AMF.

If needed, the portfolio manager asks the Regulated Entity to clarify the context of the weaknesses or potential breaches denounced in the complaint without revealing the identity of the complainant. This process may lead to improvements for instance in terms of information provided on financial instruments or the marking making activities of the Regulated Entities on a specific financial instrument.

In any case, the AMF provides an answer to each complaint or request for information.

The AMF can also receive and deal with alerts in relation to potentials breaches of regulatory obligations which are under the AMF's supervision (Article L. 634-1 of the French MFC). The anonymity of the person notifying the breach is ensured. The AMF has also issued an instruction (DOC-2018-13) on procedures allowing the reporting to the AMF of potential breaches to market abuse regulations. This instruction provides for precise information regarding the process, the record keeping and the protection of whistleblowers.

e. Any areas for which substituted compliance has been requested where the supervisory process is not applicable.

N/A.

f. Confirm which reports reviewed by the AMF can be shared with the SEC under an MOU without ECB or other third party consent.

Many sections from the detailed questionnaire on compliance aspects filled each year by Regulated Entities cover all the areas of substituted compliance. Those relevant sections of the annual questionnaire can be shared with the SEC under the terms of an MOU without ECB or third party consent.

The main following topics are detailed in this questionnaire:

- Distribution of the net banking product and employees between the business lines;
- Internal and External resources of the compliance function;
- Types of services provided and types of clients;
- How is verified the appropriateness of services provided to clients;
- How complaints are handled;
- Any personal transactions entered into by targeted employees;
- How the requirements regarding custody and protection of clients' assets are complied with;
- How conflicts of interests are handled and controlled;
- How the minimum level of knowledge of certain employees is verified;
- How record-keeping requirements are complied with;
- How the best execution requirements are complied with;
- How anti market abuse regulations are complied with.
- How transparency and reporting requirements are met.

For most of the sections in this report/questionnaire, the Regulated Entity must provide information on the latest internal controls carried out in relation to the topic at stake, the outcome of such controls and the remediation actions which may have been undertaken by the firm. As such, the AMF has directly access to the information contained in the internal control report submitted to the ACPR each year on the areas under the AMF remit.

This report generally includes:

- A description of the main actions carried out in the context of the internal control and the lessons which emerge therefrom ;
- An inventory of the internal audits carried out, highlighting the main lessons learned and, in particular, the main shortcomings identified, as well as a follow-up of the corrective measures taken ;
- A description of significant changes in the fields of permanent and periodic inspections during the period under review, in particular taking into account changes in activity and risks;
- A description of the conditions under which the procedures set up for new activities are applied;

- A description of the permanent and periodic controls of foreign branches;
- A presentation of the main actions planned in the field of internal control; and
- An updated description of the classification of the risks of money laundering and terrorist financing, as well as a presentation of the analyses on which this classification is based.

The portfolio manager uses the details about the controls implemented by a Regulated Entity, the systems in place to comply with regulatory requirement, any inconsistency resulting from the comparison of the information provided from one year to another.

When seeing areas of concern within the report, the portfolio managers also analyses other type of information including among other things, disclosure of accounts, revenues, profits, organization of internal controls, information on transactions (MiFIR and EMIR reporting), complaints by investors or third parties, any significant incident reported by the Regulated Entity. This case-by-case analysis can lead, where relevant, to an on-going supervision (e.g. exchange of letters…) or an on-site inspection.

4. Explain the supervisory authority over credit institutions and investment firms of the data driven supervision team within the AMF. Please include a brief summary of the data reviewed by the DDS team, including what happens when the DDS team sees areas of concern within the data. Please include the following information:

   a. The supervisory tools the AMF uses to correct red flags/violations of law found by the DDS team.

      The DDS team uses the analytical tool "ICY" developed by the AMF to fulfil its regulatory mission. This monitoring system based on big data technologies has been developed internally with the backing of the IT company called Neurones.

      The DDS team relies on the capabilities offered by this new platform to make it easier for portfolio managers to access data from regulatory reporting. In particular, the new reportings introduced by European law (EMIR on derivatives (transactions and positions), MIFIR on all transactions on financial instruments) are both rich (many fields, detailed to transaction level) and complex (much information reported). The MiFIR and EMIR dashboards built by the DDS team allow the portfolio manager to quickly screen live data representing large and varied trading volumes reported by the Regulated Entity. By using those tools, the portfolio manager has a detailed knowledge of the activity of the Regulated Entity (for example the number of transactions/positions of a Regulated Entity over a certain period by asset class, by trading capacity, with a specific counterparty…) and can analyze the following:

      - Changes in the activity
      - Consistency of the scope of the license

- Positioning of a Regulated Entity in the market and compared to peers
- Exposures with specific counterparties (EMIR)
- (…)

Other dashboards on more specific topic (for example, activity conducted through branches or with retail clients only) can also be created with specific pre-treatments of raw data.

b. Identify any areas for which substituted compliance has been requested where the DDS team supervisory process is not applicable.

All data from regulatory reporting analyzed by the DDS team can be used in many areas for which substituted compliance has been requested.

5. Explain the supervisory process over credit institutions and investment firms by the ACPR. Please include a list of the main reports reviewed by the supervisors for anti-money laundering regulations ("AML supervisors"), a brief summary of the general contents of each report, how often the report is filed with the ACPR, and the process the ACPR undertakes to review the report, including what happens when it sees areas of concern within the report. Please include the following information:

AML off-site controllers review two annual reports: (i) an AML-CFT questionnaire which includes compliance questions as well as statistical queries and (ii) an internal control report dedicated to the AML/CFT control framework of the supervised institutions (description of AML policies and processes as well as results of internal controls applied to the implementation of AML processes). In addition to these two annual reports AML off-site controllers review information send by the French FIU, internal audit reports and organize regular meetings with the institutions to collect information on dedicated thematic issues (such as correspondent banking ; STR delays; assets freezing process…)

Please also refer to answer to question 9

The same process is also applicable to investment firms

a. The approximate number of AML supervisors assigned to a credit institution or investment firm.

On average at least two people (FTEs) are in charge of AML off-site supervisory issues in each supervisory team of Regulated Entities. In addition to AML supervisors dedicated to a specific Regulated Entity (off-site supervision), on-site inspections are performed by specific teams belonging to the On-site supervision Directorate ("Délégation au contrôle sur place") of the ACPR. Each AML/CFT-related on-site investigation mobilizes in

average 350 person-days (e.g. a team of four FTEs for a more than four-month investigation).

Teams are not assigned to a firm. Teams rotate from firm to firm to carry on the on site inspection program determined mainly on the basis of the risk assessment of the firms. Also, teams are not permanent as a team is set up for each specific mission.

Due to the fact that each team is built for each mission, there are no permanent AML inspections teams. On average, about a quarter of the workforce (i.e. about 40 staff members) of the on-site directorate (heads of mission and team members) is allocated to AML inspections each year.

Please note that a dedicated unit with specialized supervisors on AML supervisory issues ("*Pôle de contrôle permanent LCB-FT*") may also support the supervisory teams for carrying out their mission. This unit is composed of about ten permanent supervisors (off-site supervision).

Finally, a specific division specialized in anti-money laundering regulation and internal control within the ACPR Legal Department provides legal support to supervisory teams on AML/CTF-related issues.

b. The ways in which, and how often, the AML supervisors interact with the credit institution or investment firm (including on-site meetings, phone calls, etc.).

AML supervisors of Regulated Entities interact as frequently as necessary with Regulated Entities on AML supervisory issues. There is no limitation regarding the way of which these interactions are carried out by the supervisors (phone calls, emails, meetings, including on-site with prior notice). As an illustration, for each of the largest SIs (GSIBs), an average of about 5 physical meetings and 10 conference calls fully dedicated to AML/CFT at group level are generally scheduled every year, plus 5 meetings related with AML/CFT at the level of subsidiaries.

c. The supervisory tools the ACPR uses to correct red flags/violations of law.

When the ACPR detects a deterioration of the situation of a Regulated Entityas regards its AML/CFT obligations it will, as a first step, ask the institution (through an operational act) to take corrective measures.

In case the institution does not implement swiftly appropriate remedial actions and continues to violate its regulatory obligation in terms of AML/CFT, the ACPR may send a formal notice to the Regulated Entity ordering/instructing/requiring it to correct the situation (ie. to strengthen its AML/CFT framework, or its governance and internal control

processes). It can also, when deemed appropriate, take protective measures such as the temporary interdiction of certain operations, the temporary suspension of managing directors or the restriction of access to certain assets.

Besides if the Regulated Entityfails to comply with its reporting obligation, a supervisor request of documentation or information, a prior notification requirement, or a convocation for an audition, the ACPR may order an administrative injunction to constrain the Regulated Entityto comply and may impose periodic payment penalties (with the upper limit of EUR 15,000 per day of violation).

Finally, if a Regulated Entityhas failed to comply with a formal notice or if an investigation team reported serious infringement to applicable regulations, the ACPR may open a disciplinary proceeding that will be examined by the Sanction committee of the ACPR. If the Sanction committee concludes there was a breach of law, it may issue one of the following disciplinary measures: warning, reprimand, temporary ban for certain activities (up to ten years), temporary suspension of managing directors (up to ten years), and compulsory retirement of management directors. The Sanction committee may also decide to impose administrative pecuniary penalties to the Regulated Entity (with the upper limit of EUR 100,000,000 or 10% of the total annual net revenues) and may impose a periodic penalty payment.

d. Any areas for which substituted compliance has been requested where the AML supervisory process is not applicable.

No.

e. Confirm which reports reviewed by AML supervisors can be shared with the SEC under an MOU without ECB or other third party approval.

The ACPR may share with the SEC, under the terms of an MoU, AML reports it produces provided that the information communicated is subject to guarantees of professional secrecy at least equivalent to those to which the French authorities are subject and are exclusively intended for the execution of the tasks of the ACPR and the SEC. However, when the reports available to the ACPR originally come from another AML supervisor through national, European or international cooperation, the ACPR must obtain the prior agreement of the Authority from which the report originates before transferring it.

The ECB approval is not necessary for AML reports.

6. Please describe how the ACPR and ECB work together as part of the joint supervisory teams ("JST"). Please include a list of the main reports reviewed by JSTs, a brief summary of the general contents of each report, how often the report is filed with the JSTs, and the process the

JSTs undertake to review the report, including what happens when the JST sees areas of concern within the report. Please include the following information:

According to the SSM Framework Regulation, the joint supervisory teams (JST) carry out the ongoing supervision of significant institutions of Members states participating in the banking union. JSTs are formed of staff of the ECB and the relevant national supervisors, in particular staff of the competent authority of the member state in which the institution is established. The size, overall composition and organisation of a JST is tailored to the size, business model and risk profile of the bank it supervises. A JST coordinator leads the team of supervisors and steers its supervisory activities. A JST is established for each significant institution.

As part of the ongoing supervision, the JSTs review in particular for each significant institution the annual report on internal control, which requires the bank to report on the functioning of the internal control function for the past year and to describe the mechanisms, procedures and policies that allows the bank to identify, manage, monitor and report the risks to which they might be exposed. This report shall describe the principal measures taken for the accomplishment of internal control and present the conclusions that the institution has reached. The report shall also include an inventory of the investigations pursued by the central periodic control function of the institutions and report the conclusion reached by the institution, the insufficiencies that have been observed, and the remedies that have been implemented. A description of all significant changes in the organisation of periodic and ongoing control, in particular all changes that have been introduced to take into account an evolution of the activity and the risks to which the institution might be exposed, is also required. Finally, the report shall include a description of the implementation of the internal procedures established for every new business area, a description of the control on third country branches, a presentation of the future initiatives that the institution intends to take in the field of internal control, an inventory of all operations involving executive directors and board members of the firm, and last but not least, a presentation of the AML risk classification.

More information regarding the ECB supervisory process can be found at the following link : https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisorymanual201803.en.pdf

Please note that investment firms are supervised directly and exclusively by the ACPR, and that the ECB is not involved in this supervision.

a. The approximate number of JST supervisors assigned to a credit institution.

   On average about thirty to forty people (FTEs) are involved in the supervision of a Regulated Entity.

b. The ways in which, and how often, the JST interacts with the credit institution (including on-site meetings, phone calls, etc.).

Supervisory teams of credit institutions interact on a daily basis with credit institutions on every kind of supervisory aspects. There is no limitation regarding the way in which these interactions are carried out by the supervisors.

ACPR have offsite supervisors in charge of AML supervision of the firms and carry on, periodically, onsite inspections of the firms on AML issues (no permanent onsite supervisors).

Please refer to answer to question 5 and 9 for the description of the role of ACPR's offsite supervisors and on-site inspection teams.

c. The supervisory tools the JST uses to correct red flags/violations of law.

In the case the JST has evidence that a credit institution is likely to breach regulatory requirements, they can use a wide-range of supervisory powers, including the following: require institutions to hold funds in excess of the capital requirements; require reinforcement of the arrangements, processes, mechanism and strategies; require institutions to present a plan to restore compliance; require institutions to apply a specific provisioning policy or treatment; restrict or limit the business or networks or divestment of activities; require the reduction of the risk inherent to activities, products and systems of institutions; require institutions to limit variable remuneration which is inconsistent with a sound capital base; to require institution to use net profits to strengthen own funds; to restrict or prohibit distribution to shareholders; to impose additional or more frequent reporting; to impose specific liquidity requirements; to require additional disclosure; to remove at any time members from the management body who do not fulfil applicable requirements.

In the case of the identification of a failure to comply with obligations under applicable regulations, the JST may take supervisory measures.

The ECB may impose fines and periodic penalty payments (with the upper limit of EUR 500,000 for fines and EUR 10,000 per day of infringement for a maximum period of six months for periodic penalty payments).

In the case of the identification of a breach of law, the JST may decide effective, proportionate and dissuasive sanctions. In particular, the ECB may impose administrative pecuniary penalties (up to 10% of the total annual turnover).

The ECB may also require NCA by way of instruction to make use of their own enforcement powers.

d. Any areas for which substituted compliance has been requested where the JST supervisory process is not applicable.

No.

e. If the JST has examination authority, please describe that authority including how the examinations are scoped and how often examinations are conducted.

The JST is in charge of the supervision of a significant institution.

Examinations related to these missions are conducted on a day-to-day basis by the JST and entail in particular the evaluations of the risks to which the institution is or might be exposed, the risks that the institution may pose to the financial system and the risks revealed by stress testing. The JST reviews the adequacy of all arrangements, strategies, processes and mechanisms implemented by the institution to ensure sound management of these risks. These review and evaluation by the JST cover every requirement that stood in the directive 2013/36/UE and the regulation (UE) no. 575/2013 and is carried out on a permanent basis, with regular reporting of the institutions (on a quarterly, semi-annual or annual basis).

f. Clarify whether the ACPR members of the JST are affiliated with ACPR's supervisory or enforcement teams. If the members are associated with the enforcement teams, confirm that the reports may be shared with ACPR's supervisory teams.

First of all, please note that each JST of French credit institution applying for the registration as US security-based swap dealer is composed of staff members from the ECB, from the ACPR, as well as from other EU national competent authorities the institution is established in, working under the coordination of a designated ECB staff member (the JST coordinator).

Regarding the interaction of supervisory teams with the enforcement teams, please consider that any enforcement proceeding relating to infringements of prudential requirements would be initiated and conducted by ECB's enforcement teams. Supervisory teams and enforcement teams operate separately in order to guarantee the independence and impartiality.

g. Confirm which reports reviewed by the JST supervisors can be shared by ACPR with the SEC under an MOU without ECB or other third party approval.

The ECB approval is necessary for the sharing of any information related to the prudential supervision of significant credit institutions supervised directly by the ECB.

7. Briefly describe the inspection and investigation processes over relevant institutions' security-based swap ("SBS") activities by each Authority. Please include the following information:

   a. The systems, tools, and the methods each Authority employs to detect misconduct.

      The AMF monitors on an ongoing basis all professionals under its supervision based on information submitted on a regular basis (annual control and compliance reports, reporting data, declarations, etc.) or on request (additional information requested from service providers, interviews, etc.). The AMF also receives information about the activities of service providers licensed in France directly through other channels (the AMF Épargne Info Service platform, monitoring tools, whistleblowers, exchanges of information with other regulators in France and abroad, etc.).

      These monitoring actions can be:

      - individual, in response to specific alerts or as part of the periodic coverage of regulated entities, calibrated according to a risk-based approach;
      - thematic, in particular to ensure implementation of new regulations.

      This ongoing monitoring is carried out by the Asset Management Directorate for management companies and distributors (investment services providers (ISPs) or FIAs) and by the Markets Directorate for market intermediaries.

      Inspections, which are carried out according to a procedure governed by law and by the AMF General Regulation, are also undertaken by the Inspections Directorate. Once an inspection has been completed, the findings are presented in a report that is sent to the supervised entity. Around 60 inspections will be carried out in 2020 (compared with 65 in 2019), more or less evenly split between two types of inspections with different aims:

      - Regular inspections of large market participants or those that present particular risks or have been the subject of specific alerts ("standard" inspections carried out under a risk-based approach).
      - Theme-based inspections of a sample of market participants (usually five per theme) to better understand a given activity or practice, assess implementation of applicable rules or explore potential risks to investors or the market. These inspections, conducted concurrently across a number of participants and over a shorter timescale than standard inspections, were introduced in 2018 and are known as SPOT inspections (for *Supervision des Pratiques Opérationnelle et Thématique* – "operational and thematic supervision of practices").

   b. The powers, tools, and methods available to each Authority in conducting inspections and investigations, including whether the Authorities have the power to obtain witness

interviews, sworn testimony, or documents on a voluntary or compelled basis. Confirm that the Authorities may sanction parties who do not comply with such requests.

Purpose of inspections

The purpose of AMF inspections is to ensure that industry professionals regulated by the AMF and the individuals acting under their authority or on their behalf meet their professional obligations.

Scope of inspections

Inspections cover:

- Portfolio asset management companies, investment companies, credit institutions and investment services providers,
- Market operators that run regulated markets in France,
- Investment companies that operate a multilateral trading facility (MTF) in France,
- Organised trading platforms (OTF) operating in France,
- Systematic internalisers registered in France,
- Post-trade infrastructures (clearing houses and central securities depositories) operating in France,
- Miscellaneous asset intermediaries,
- Financial investment advisers (FIA), crowdfunding investment advisors and their industry associations.

Powers of inspectors

Inspectors may:

- request any document/information from all persons: audited entity, third person (statutory auditor, depository, client, etc.),

- order any information to be retained,

- hear all persons including members of the audited entity, third persons,

- access professional premises.

Article 143-4 of the AMF General Regulation provides for the mentioning in the inspection report if the proper performance of the inspection has been hindered. Furthermore, article L621-15 f of the Monetary and Financial Code provides for the possible imposition of an administrative and/or criminal penalty on anyone who obstructs the inspectors' investigation.
In addition, Article L. 642-2 of the Monetary and Financial Code stipulates that "whoever obstructs an inspection [...] of the AMF carried out as determined in Articles L. 621-9 to L. 621-9-2 of the Monetary and Financial Code, or who provides it with inaccurate information, shall incur a penalty of two years' imprisonment and a fine of €300,000".

c. Briefly describe the role of the rapporteur in the enforcement process, including any guidelines or timeline to which the rapporteur must adhere.

If the AMF Board decides to open sanction proceeding, the file is transferred to the Enforcement Committee. At the same time, the Chairman of the AMF informs the persons of the allegations made against them.

Those persons, who may be assisted or represented by counsel, have two months to submit their observations to the chair of the Enforcement Committee. The latter, upon receipt of a file from the Chairman of the AMF, appoints a committee member to act as the rapporteur for the case.

The rapporteur may interview the persons concerned, a Board representative or any other person who may be deemed necessary. The rapporteur's own report is sent to the persons involved, the respondents, as well as to the representative of the Board, both of whom are entitled to make observations.

At the public hearing of the Enforcement Committee, which is adversarial, the rapporteur presents his/her report. The Board representative explains the objections that have been served and proposed a financial sanction &/or disciplinary sanction. The respondents and/or their counsel present their defense.

Once the hearing is over, the Enforcement Committee rules on the case. Only its members, with the exception of the rapporteur take part in the deliberations.

There are no timelines provided for in the texts establishing the proceedings of the Enforcement Committee.

d. Any substituted compliance areas where these processes are not applicable.

No

e. Confirm which reports reviewed by the Authorities can be shared with the SEC under an MOU, without ECB or other third party consent.

The reports reviewed by the AMF in the normal course of its supervision are usually not related to the ECB activities. The reports reviewed by the ACPR regarding significant credit institutions are related to the ECB activities. To the extent that the AMF or ACPR enters into a MoU compliant with Article L.632-7 of the French Monetary and Financial Code with the SEC, it should be able to share with the SEC, under the terms of such MoU but without ECB prior consent, those reports prepared by the Regulated Entities that it reviews. The information communicated must however be subject to guarantees of professional secrecy at least equivalent to those to which the French authorities are subject and must be intended exclusively for the performance of the tasks of the AMF and the SEC. It should be noted that any information relating to significant institutions supervised

directly by the ECB shall not be passed on without the prior approval of the ECB. This requirement is only applicable to credit institutions, and not to investment firms.

It should also be noted that Article 1 of law No. 68-678 (the "blocking statute") prohibits any natural person of French nationality or habitually resident on French territory and for any director, representative, agent or employee of a legal entity having its headquarters or an establishment there to communicate in writing, orally or in any other form, in any place whatsoever, to foreign public authorities, documents or information of an economic, commercial, industrial, financial or technical nature, the communication of which is likely to undermine the sovereignty, security, essential economic interests of France or public order, specified by the administrative authority as necessary.

8. Explain the use of SPOT reviews for credit institutions and investment firms. Explain how these SPOT reviews relate to the development of priorities and the supervision process.

As part of its strategic plan, one of the AMF's goals is a better coordination between our ongoing supervision and our inspections, and the development of an additional inspection format. The AMF recently introduced Spot Inspections as part of its risk-based approach. These are shorter inspections which involve assessing the same topic in parallel across several investment services providers. This approach aims at increasing the coverage of firms subject to inspections and relies on transparency: the topics to be covered are announced publicly at the beginning of each year and, at the end of these thematic reviews, the good and bad practices identified are also communicated to the market. Seven of such topics were identified for 2019, to be assessed across 36 investment services providers. This was in addition to the 21 standard on-site inspections planned for the same period. These reviews are included in the AMF's annual priorities.

In addition, in the context of the constant dialogue maintained with Tier 1 firms, the AMF's supervisory team discusses these findings on weekly calls with compliance officers. This is part of the thematic monitoring actions performed by the supervisory team.

The implementation of these shorter, more limited inspections has allowed and will continue to allow us to cover more market participants without adding to the workload. Increasing the number of inspections performed on an annual basis (36 in 2019, 36 expected in 2020) will also strengthen their role in prevention and in understanding the reality on the ground. At the same time, certain complex themes will continue to be subject to more thorough inspections, to which more resources and time will be allocated. These SPOT reviews are performed on Regulated Entities in the same manner as for the other entities regulated by the AMF.

9. If the ACPR conducts examinations or thematic reviews related to the anti-money laundering laws, explain how these examinations and/or reviews are conducted and how they relate to the overall supervisory process.

The ACPR ensures that all entities under its supervision, including investment firms, as well as large credit institutions ("SIs - Significant Institutions") supervised directly by the ECB as regards prudential aspects, comply with their anti-money laundering and counter-terrorist financing (AML/CTF) obligations through on-site and off-site activities.

On-site inspections dedicated to AML/CTF integrate the internal control framework regarding this particular risk. Specific attention is given to the riskiest activities as defined by the ACPR's AML "Sector Risk Assessment" analysis and to entities and activities pointed out as riskier by TRACFIN, the French Financial Intelligence Unit (FIU).

ACPR on-site inspections can lead to follow-up letters associated with recommendations monitored by the ACPR's off-site unit. They can also be followed by administrative police measures, notably enforcement measure procedures, or, for the most serious cases, by disciplinary proceeding that could lead to various types of sanctions and fines (cf. answer to question 5.c).

The off-site control is mainly based on the analysis of an annual questionnaire on the compliance and the efficiency of the AML/CTF and freezing of assets framework (known as the "QLB" for its initials in French: "Questionnaire sur la Lutte contre le Blanchiment") sent to all credit institutions and investment firms. The ACPR regularly reviews and adapts the questionnaire in order to integrate new regulatory requirements and, if needed, topics which require special attention. In addition, the ACPR regularly sends specific questionnaires concerning new activities or rising risks, according to control priorities.

The QLB questionnaire has been complemented and reinforced by an Annual Report on AML/CTF Internal Control in 2019, which includes a description of the institution's own ML-FT risk assessment results, an overview of its AML/CFT risk mitigation policies and systems and results of its internal control activities applied to AML.

Regular written exchanges and supervisory meetings complete the range of AML supervision tools. Finally, the off-site control activity includes the ACPR follow-ups of on-site inspection and, in particular, of the implementation of the recommendations issued to the institutions on the basis of the outcomes of the on-site inspections.

10. Identify how the AMF's annual priorities are used to ensure compliance with and enforcement of the rules where substituted compliance has been requested.

The AMF draws up a five-year strategic plan which gives rise each year to a year-specific supervisory priorities plan. The priorities identified each year are based on identified risks and

may be adapted based on the evolution of identified or the emergence of new risks. The annual priorities cover the monitoring and supervision of professionals authorised to provide investment and collective investment management services. Publication of these thematic priorities serves to highlight certain areas of risk the regulator has identified and encourage regulated firms to look more specifically at some of their practices in the light of applicable professional obligations. It is also an opportunity for the regulator to draw attention to specific areas where it will focus its supervisory activities while also identifying the operational issues associated with practical implementation of the regulations.

This publication supplements efforts already underway to communicate with and reach out to the marketplace, for example by holding meetings with compliance officers annually. Where relevant, the AMF will also publish key takeaways from its supervisory activities as and when the need arises.

As a matter of example, the AMF has included recordkeeping and retention requirements in its supervision priorities for 2020 and therefore contemplates finalizing dedicated Spot Inspections on this matter this year. A communication concerning the main findings of these Spot Inspections should also be published during the year.

The five year strategic plan is approved by the Board of the AMF.

11. If the ACPR has annual priorities related to the anti-money laundering laws, identify how the ACPR's annual priorities are used to ensure compliance with the AML rules.

ACPR annual priorities related to AML/CFT are defined both at a general level, for transversal or specific issues, and at the level of each entity based on the result of the assessment of their ML/TF risk profile.

The ACPR published in December 2019 the "Sector Risk Assessment" (SRA) document with the purpose of identifying the ML/TF threats and the resulting risk level for the activities subject to its supervision. This SRA distinguishes three levels of risk exposure (high, medium and low). For instance, wealth management and funds remittance activities are classed as high risk activities.

To assess the threats and vulnerabilities of the activities, the ACPR took into account, among other things, the French "National Risk Analysis" reports from the French Financial Intelligence Unit (TRACFIN) and from FATF, and feedback from ACPR units in charge of AML offsite supervision.

In addition to this top-down approach, Regulated Entities are subject to an annual and individual assessment of the risks to which they are exposed.

This provides an overall assessment of the risk profile of each financial institution, which is used to determine supervisory actions with an intensity and a frequency which can vary

following a risk-based approach as promoted in the 4th AML Directive. Close and ongoing cooperation between TRACFIN – the French FIU - and the ACPR is important in helping the ACPR to implement risk-based supervision.

12. Explain the Authorities' power to obtain records from credit institutions and investment firms through the supervisory process. Explain any limitations on the Authorities' ability to share records it receives from credit institutions and investment firms with the SEC.

    Pursuant to Article L. 621-8-4 of the MFC, the AMF can obtain communication from any investment services provider (including investment firms and credit institutions licensed for the provision of investment services) established in France and their employees of all documents or information useful to the AMF's mission of monitoring and surveillance. Such power is enforceable against both the head office and its foreign branches and applies with respect to both domestic and cross-border activities.

    The ACPR determines the list, model, frequency and deadlines for the transmission of documents and information that must be submitted to it periodically. The ACPR may also request from the persons subject to its supervision all information, documents, whatever their medium, and obtain copies thereof, as well as any clarification or justification necessary for the performance of its duties.

    For the performance of its duties, the ACPR has, with respect to the persons under its supervision, the power to take administrative police measures and the power to impose sanctions.

    As regards more specifically the power to obtain records from Regulated Entities, the ACPR may order an administrative injunction to constrain the Regulated Entity to comply and may impose periodic payment penalties (with the upper limit of EUR 15,000 per day of violation).

    In accordance with the French Monetary and Financial Code, the ACPR may share such information with the SEC provided that the information communicated are subject to guarantees of professional secrecy at least equivalent to those to which the French authorities are subject and are exclusively intended for the performance of the tasks of the ACPR and the SEC.

    As regard limitations on the Authorities' ability to share records it receives from Regulated Entities with the SEC, please see answer to answer to question 7e above.

13. Explain any limitations on the ability of the Authorities to share with the SEC supervisory or enforcement analysis or other work product created by the Authorities or JST supervisory staff related to the SBS business of credit institutions and investment firms or enforcement inspections or investigations of such entities. In particular, please specify any limitations on

sharing interviews or documents with SEC enforcement, or permitting SEC enforcement to interview witnesses.

Article L. 632-7 of the French monetary and financial Code authorises the French Authorities to enter into memoranda of understanding with a view to share information provided that such exchange of information is intended for the performance of the tasks of the said third country authorities and is exclusively intended for the performance of the tasks of the AMF and the SEC. It should however be noted that Article 1 of law No. 68-678 (the "blocking statute") prohibits any natural person of French nationality or habitually resident on French territory and for any director, representative, agent or employee of a legal entity having its headquarters or an establishment there to communicate in writing, orally or in any other form, in any place whatsoever, to foreign public authorities, documents or information of an economic, commercial, industrial, financial or technical nature, the communication of which is likely to undermine the sovereignty, security, essential economic interests of France or public order, specified by the administrative authority as necessary.

When the AMF starts an inspection, this information and the documents collected are confidential. Should any information relate to the entity's swap dealing activity, the AMF may share it with the SEC under the terms of a MoU (*e.g.* for enforcement purposes, the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (revised May 2012) ("IOSCO MMOU")) and provided that the information communicated are subject to guarantees of professional secrecy at least equivalent to those to which the French authorities are subject and are exclusively intended for the performance of the tasks of the AMF and the SEC. This also holds true for the conclusions of the inspection. Otherwise, information would not be shared.

Regarding interviews carried out for enforcement purposes, the SEC should submit a request for the AMF to conduct it on their behalf. SEC staff could, of course, attend and send questions ahead of time.

ACPR may share with the SEC its own supervisory or enforcement analysis or other work related to the SBS business of Regulated Entities or enforcement inspections or investigations of such entities, in accordance with the terms of the applicable MoU entered into by the ACPR and the SEC and provided that the information communicated are subject to guarantees of professional secrecy at least equivalent to those to which the French authorities are subject and are exclusively intended for the performance of the tasks of the ACPR and the SEC. It should be noted, however, that any information relating to the financial soundness and prudential supervision of significant credit institutions supervised directly by the ECB may not be passed on without the prior approval of the ECB.

The possibility for the SEC to interview witnesses may be authorised only under the conditions laid down in the draft MoU concerning Consultation, Cooperation and the Exchange of

Information Related to the Supervision and Oversight of Certain Cross-Border Over-the-Counter Derivatives Entities.).

14. If self-regulatory organizations or exchanges have any supervisory or enforcement role over the areas under consideration for substituted compliance, please explain that role, including a discussion of their competence, their powers to investigate and sanction, any tools available to them, who may be subject to their authority, and any limitations on their authority.

N/A

15. Describe any limits on the Authorities' ability to share information with other French regulatory or criminal authorities, including receiving information from those authorities.

All information made available to the ACPR and AMF in the performance of its tasks shall be subject to professional secrecy. However, ACPR and AMF are generally authorized to share with other French authorities (listed in Article L. 631-1 of the French monetary and financial Code – which include ACPR, AMF, Banque de France among others) any information useful to the accomplishment of the respective missions of such other French authorities.

AMF is also required to provide any information required by judicial and criminal authorities in the context of criminal or tax procedures as well as procedures set out in titles II, III and IV of book VI of the French commercial Code initiated against any person listed in article L. 621-9 of the French monetary and financial Code.

In any case, confidential information passed on by foreign Authorities within the framework of cooperation agreements are subject to professional secrecy rules (articles L. 632-7 II bis and article L. 632-1 A of the French Monetary and Financial Code). Therefore, this information cannot be passed on to third parties without the prior consent of the Authority that has passed on the information to the French authorities and for the sole purposes for which its consent was given.

Indeed, the confidentiality of information received from the authorities of a third country is strictly observed by the French authorities and their staff unless an exception is provided for by specific legislation.

The exceptions whereby the ACPR cannot guarantee such confidentiality and is obliged to disclose information are strictly limited to (Cf. Article L. 612-17 of the French Monetary and Financial Code):

- the judicial authority in the framework of a judicial liquidation instituted against a credit institution, an investment firm or a financial company, or a criminal proceeding;

- the administrative jurisdictions acting in a litigation case regarding the activity of the ACPR,

- the French Parliament in a hearing by a commission of inquiry and

- the "Cour des Comptes" (a financial jurisdiction) in the framework of its audits.

16. Please describe the enforceable tools and remedies the Authorities have to deter misconduct, including administrative fines, remediation, license revocation, or suspension of individuals associated with credit institutions or investment firms. With respect to the SBS business of credit institutions or investment firms, please provide any public data indicating how frequently such sanctions are imposed, by which relevant Authority, and, if possible, indicate the number of inspections and investigations that have been conducted or sanctions imposed in connection with the areas under consideration for substituted compliance.

ACPR:

The ACPR may take supervisory measures (see for instance: https://acpr.banque-france.fr/en/acpr/colleges-and-committees/supervisory-college/enforcement-and-protective-measures). The Supervisory Board decides on the appropriate measures whether administrative, enforcement or disciplinary.

There are different kinds of administrative measures:

- injunctions under Article L. 511-41-3 of the French Monetary and Financial Code;

- "mesures de police administrative" under Articles L. 612-30 to L. 612-34 of the French Monetary and Financial Code, especially warnings, formal notices, conservative measures and the appointment of a provisional administrator;

- injunctions with a coercive fine under Article L. 612-25 of the French Monetary and Financial Code.

If an entity's liquidity or solvability is being or may be jeopardised or if the entity is likely to be in breach of the requirement laid out in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 the European ('CRR'), the ACPR may take protective measures in accordance with Article L. 612-33 of the French Monetary and Financial Code such as:

- limiting or temporarily prohibiting the execution of certain transactions by an entity, including acceptance of deposits;

- suspending, restricting or temporarily prohibiting the free disposal of all or some of the supervised entity's assets ;

- requiring the bank to sell some activities;

Moreover the Supervisory Board may decide to introduce disciplinary proceedings under Articles L.612-38, L. 612-39 and L. 612-40 of the French Monetary and Financial Code, as well as under Article L. 561-36-1 of the same Code for anti-money laundering and counter terrorist financing (AML-CFT). The decision-making body in charge of the decision to sanction is a separate body, the Sanctions Committee, to which the Supervisory Board refers the case after addressing the statement of objections to the concerned entity.

In its annual report, ACPR features the number of enforcement measures taken every year.

AMF:

In accordance with MAR, article L. 621-15 II, c of the MFC specifies that the AMF's power to pronounce administrative sanctions, including pecuniary sanctions, applies to any person who, on French soil or abroad, engages in or attempts to engage in market abuse or any other breach regarding instruments admitted to trading on markets operating in France which may jeopardise investor protection or the proper functioning of the markets.

With regards to MIF (markets in financial instruments directive of 2014), in addition to French investment service providers, the AMF is empowered only to inspect the investment services providers authorized in other Member States acting under the provision of the freedom to provide investment services in France. This text also empowers the AMF to inspect certain aspects of the activities of a branch established in France of an investment service provider authorized in another Member State. This text finally empowers the AMF to control certain aspects of the activities of a branch established in France of an investment services provider of third country firm (a "third country" firm is a firm which, if its central administration or its head office are located in a Member State of the European Union or party to the European Economic Area (EEA) agreement, would be an investment firm in accordance with MIF).

The amounts of the sanctions are capped by French law article L 621-15 of the MFC.

With regards to non-judicial forms of actions, the AMF is empowered to take decisions including, but not limited to:

1. the suspension of trading in a listed financial instrument – at the request of the chairman of the AMF and after having informed the issuer concerned, the trading venue can suspend trading for a specific period of time if the trading conditions do not respect market rules. More generally, trading can be suspended upon decision of the Chairman of the AMF, if an exceptional event has occurred disrupting the functioning of a regulated market;
2. the AMF can withdraw the authorization of an asset management company if it does not respect the conditions set out for authorization;
3. the AMF can withdraw the status of market operator if important changes occur relating to elements of the authorization request (for ex. statutes, shareholders etc.) or in the

case of repeated malfunctions or failures in the regulated market or on a multilateral trading facilities (MTF).

4. the AMF can ask a company to publish corrective statements in the event that inaccuracies or omissions were noted in public documents. Should the company not respond to the demand, the AMF can publish the request it has made.

17. Please identify the factors the Authorities consider in levying a sanction, including, e.g., size of the institution or guidelines on the size of penalties, potential for mitigation through remediation of violations, and whether the Authorities negotiate anticipated sanctions with entities. Please confirm that the Authorities have the power to compel adherence to a sanction once imposed.

ACPR:

When deciding of a proportionate sanction, the Sanctions Committee considers the gravity of the infringements, the number of breaches, their duration, their impact on clients, as well as the eventual profits or savings for the undertaking derived from the breaches. It also takes into account the swiftness and scale of the remedial actions, and the financial situation of the entity. It may consider the potential systemic consequences of the infringement as aggravating circumstances for prudential breaches.

The Sanctions Committee does not negotiate anticipated sanctions with entities.

To compel adherence to the sanction imposed, the Sanctions Committee may join a coercive fine to the sanction, in respect of which it shall determine the amount and the effective date. In case of non-execution, even partial, the Sanctions Committee proceeds with the liquidation of the fine, taking into account the behavior of the sanctioned entity and its eventual difficulties in complying with the sanction. The fine is not liquidated or only partially when the non-execution is due to a foreign cause. As for the collection of pecuniary sanctions, it falls under the remit of the French Treasury.

AMF:

In accordance with article L621-15 III ter, the implementation of the sanctions shall take into particular account:

- the seriousness and duration of the breach;
- the quality/position and degree of involvement of the person involved; the financial situation and capacity of the person in question, having regard in particular to his assets and liabilities and, in the case of a natural person of his annual income, in the case of a legal person of his total turnover; the significance of the gains or benefits obtained or the losses or costs avoided by the

person concerned, to the extent that they can be determined; losses incurred by third parties as a result of the default, to the extent that they can be determined;
the degree of cooperation with the Autorité des marchés financiers

- breaches previously committed by the person involved;
- any circumstances specific to the person concerned, in particular the measures taken by that person to remedy the dysfunctions found to have been caused by the failure attributable to the person and, where appropriate, to compensate for the damage caused to third parties and to avoid any repetition of the breach.

The AMF is not responsible for the recovery of financial sanctions imposed by the Enforcement Committee. This is performed either by the Ministry of finance or the Guarantee Fund to which investment firms belong.

18. Please describe the investigative powers at each Authority's disposal and any limitations on those powers, including the ability to take interviews under oath, listen into calls, etc. In particular, please confirm (i) the relevant Authority's ability to require documents and interviews of significant institutions and their related individuals; (ii) the relevant Authority's ability to obtain records from third parties, including telephone records and electronic communications/text messages; and (iii) the relevant Authority's ability to conduct on-site reviews of records.

ACPR:

For permanent supervision, the ACPR does have extensive reporting tools insofar as it determines the list, the model, the frequency and the deadlines for transmission of the documents and information that must be submitted to it periodically.

Furthermore, in accordance with the provisions of Article L. 612-24 of the French Monetary and Financial Code, the Secretary General of the ACPR may request from the entities subject to its supervision any information or documents on whatever medium and obtain a copy thereof, as well as any clarification or proof required to perform its duties. It may ask said entities to provide it with the statutory auditors' reports and, more generally, with any accounting document and may, where necessary, request certification thereof. Under this Article, the Secretary General has also the power to summon and question any supervised person, to intervene before the entity's Board or to summon the members of the Board. When an entity provides services online, the ACPR controllers may also use an assumed identity to access information on those services, without being held criminally liable.

Pursuant to Article R. 612-26 of the French Monetary and Financial Code, the ACPR controllers can have access and check, on-site and off-site, all documents relative to the undertaking's situation and its operations, notably the books, records, contracts, minutes of

proceedings and accounting documents. However, the ACPR does not have any seizure power; only copies are collected. The controllers may undertake the necessary checks by having access to the electronic data and tools used by the entity. They may interview any manager or collaborator of the undertaking who might provide useful information to the control. In the event of an emergency or another requirement to urgently establish the facts relating to acts or misconduct likely to constitute violations of the provisions applicable to the entities supervised, the ACPR's controllers may draw up reports ("procès-verbaux").

The fact of any senior manager of a credit institution, a financing company, an investment firm or of a legal entity or subsidiary referred to in Articles L. 612-24 and L. 612-26 of the French Monetary and Financial Code failing to respond, after service of a letter of formal notice, to requests for information from the ACPR, or in any way obstructing performance of the latter's supervisory duties, or providing it with inaccurate information, shall incur a penalty of one year's imprisonment and a fine of fifteen thousand euros (Article L. 571-4 of the French Monetary and Financial Code).

The investigative powers described above are part of the ACPR's inspection process and not part of the enforcement process.

AMF:

The AMF is empowered to request and obtain data-traffic records from internet service providers in the context of market abuse investigations; such requests are subject to prior approval by a magistrate. It may also search domiciles and seize information in either domiciles or professional premises provided that a civil liberties judge has approved the search (art L. 621-12 MFC).

In accordance with the provisions of the market abuse regulation (MAR) and the Markets in financial instruments directive (MIF), the AMF has the power to access any document and data in any form and to receive or take a copy of it. It can also require or demand information from any person and if necessary to summon and question any persons with a view to obtain information.

French law allows the AMF to call upon external experts in the context of its inspections and investigations. The experts may include for example, auditors, experts registered on a list of judicial experts or other competent authorities.

The AMF does not use any Self-Regulatory Organisation or exchanges to perform supervisory functions.

19. Using an example of a rule under consideration for substituted compliance, please describe the steps of an enforcement process from the initial identification of misconduct through final resolution by the Authorities and indicate whether criminal sanctions could result. Please distinguish between the inspection process and the investigation process.

ACPR:

To be noted that the ACPR only conducts inspections.

In the case of an on-site inspection, a final report explaining the findings shall be addressed to the effective managers of the institution after a contradictory procedure. According to the content of the findings, their seriousness and the ACPR's objective with their respect, the type of follow-up to the inspection is retained. For instance, if breaches of an EMIR obligation under ACPR's remit are detected, the on-site controllers and the permanent controllers in charge of the entity, in concertation with the legal department, may consider a formal notice ("mise en demeure"). One of the aims of the formal notice is to swiftly fix the material shortcomings and ask for corrective measures to be put in place according to a defined timeline (not longer than 12 months). This measure is decided by the President of the ACPR after a contradictory procedure.

The implementation of the corrective measures is then monitored by ACPR off-site controllers who analyse the written information provided by the institution in a documented way. In addition, an internal audit mission may be requested by the ACPR to close the recommendations and a new on-site inspection will take place, except in cases which are justified, in order to check that the documents provided by the entity correspond to effective measures and that the entity has complied with its obligations.

In the framework of off-site supervision, the ACPR may also identify the need for corrective measures: 1) on an ad hoc basis for instance following meetings with the entity, or based on documents received from the entity; 2) following a transversal review achieved by the ACPR. According to the case, simple email communications, targeted formal letters or follow-up letters (especially in the case of a transversal review) may be sent to the entity, deadlines being always set and the implementation of corrective measures being always monitored.

Disciplinary sanctions can result from non-compliance with certain enforcement measures. In particular, if a supervised entity has not submitted the recovery programme requested to the ACPR, has not heeded a warning or has not responded to a formal notice, the Sanctions Committee may impose a disciplinary sanction (Article L.612-39 of the French Monetary and Financial Code).

The managers of an undertaking can receive a fine if they do not submit the recovery programme requested by the ACPR under Article L.612-32 of the French Monetary and

Financial Code (Article R.641-1 of the French Monetary and Financial Code). Moreover, when the ACPR suspends, restricts or temporarily prohibits the free disposal of all or some of the supervised entity's assets and decides that these assets shall be transferred to the Banque de France on a blocked account, the managers can receive a fine if they do not make this transfer (Article R.641-2 of the French Monetary and Financial Code).

AMF:

Opening an investigation

It is the AMF Secretary General who decides to open an investigation based on observations gathered during market supervision, the monitoring of listed companies, information sent to the AMF or at the request of foreign authorities. The AMF Secretary General authorizes the investigators by name.

The investigators gather information, which includes press releases from listed companies, trading data, statutory auditors' reports, correspondence, diaries, bank statements, telephone records, trading room telephone recordings and international requests.

They analyse the data collected. They conduct interviews of persons likely to contribute to the progress of the investigation. Before closing an investigation, the AMF Investigations Directorate sends a letter to persons likely to be implicated, setting out its analysis of the factual and legal information gathered during the investigation. If they so wish, these persons have one month to respond. The investigators draft an investigation report that states whether the facts constitute market offences of an administrative and/or criminal nature.

The Secretary General sends the investigation report to the AMF Board. The report is not made public. This is because the AMF is bound by professional secrecy and presumption of innocence obligations.

The possible outcomes of an investigation

Following examination of the investigation report, the Board, as the AMF's prosecuting authority, decides on the action to be taken:

- Serve a statement of objections to the defendant and open sanction proceedings.
- Serve a statement of objections to the defendant and propose a settlement,
- Transfer the case to the Public Prosecutor's Office if the facts noted in the report point to a criminal offence,
- Transfer to other French or foreign administrative authorities for matters within their jurisdiction,
- Send a letter of observations to persons under investigation to remind them of current obligations,

- Close the case

The length of time from the initiation of an investigation to the charge or closure is approximately 3 years for decisions concerning breaches of organizational rules and operations of investment service providers and between 3 and 4 years for decisions concerning offences related to financial information or market abuse issues.

Opening an inspection

The AMF Secretary General takes the decision to open an inspection following a risk-based approach that considers events, behaviour or incidents likely to constitute a breach of professional obligations). He issues a nominatively designated inspection order to inspectors, specifying the purpose of the inspection.

The inspectors gather information (documents/information) from the entity, third persons (statutory auditor, depository, clients, etc), order the entity to retain information, hear all persons including members of the entity and third person, access professional premises.

The possible outcomes of an inspection:

Based on the conclusions of the inspection report and any observations that may have been received, the AMF decides on the action to take after the inspection:

- Initiate a sanction procedure
- Send the report to other administrative authorities
- Send a follow-up letter or a closing letter
- Initiate an out of court settlement procedure
- Send the case to the public prosecutor
- Issue an injunction.

Enforcement Committee Procedure and Hearings

If the AMF Board decides to open sanction proceeding, the file is transferred to the Enforcement Committee. At the same time, the Chairman of the AMF informs the persons of the allegations made against them.

Those persons, who may be assisted or represented by counsel, have two months to submit their observations to the chair of the Enforcement Committee. The latter, upon receipt of a file from the Chairman of the AMF, appoints a committee member to act as the rapporteur for the case.

The rapporteur may interview the persons concerned, a Board representative or any other person who may be deemed necessary. The rapporteur's own report is sent to the persons

involved, the respondents, as well as to the representative of the Board, both of whom are entitled to make observations.

At the public hearing of the Enforcement Committee, which is adversarial, the rapporteur presents his/her report. The Board representative explains the objections that have been served and proposed a financial sanction &/or disciplinary sanction. The respondents and/or their counsel present their defense.

Once the hearing is over, the Enforcement Committee rules on the case. Only its members, with the exception of the rapporteur take part in the deliberations. The decision and the corresponding press release are published on the AMF's website.

In case of non-compliance with corrective actions, the AMF has the power to sanction any natural or legal person that has been the object of an investigation or an inspection (Article L. 621-15 of the MFC), to a maximum of, for a legal person: 100M€ for a legal person (or 10X the ill-gained benefit, or 15% of the firm annual total turnover; for a natural person: 15M€ (or 10X the ill-gained benefit). Also, in accordance with Article L. 642-2 of the MFC, any person that tries to obstruct, or give inaccurate information in the course of an inspection or an investigation may be subject to a 300.000€ fine, and potentially 2 years of imprisonment.

The AMF also has the power to conclude enforcement cases by operating settlement (public) with a willing counterpart, where the firm will agree to pay a certain amount of money (decided through negotiation), and to rectify any wrongdoings. Via this settlement procedure, the AMF may also order the cessation of all breaches of obligations imposed by laws or regulations or by professional rules and any other breach likely to jeopardise investors' interests.

The AMF may also refer cases to other authorities, such as the ACPR who also has sanction powers and may, for example, withdraw the licenses of Regulated Entities.

The persons (legal and physical) which are subject to the sanctioning powers of the AMF are listed in Article L621-15, III of the MFC. Legal persons (such as investment services providers, market infrastructures, management companies) may be the object of disciplinary sanctions (warning, reprimand, prohibition from exercising a certain activity) and of pecuniary sanctions with a maximum of 100 million euros. Physical persons (in particular those under the authority of or acting on behalf of one of the above-mentioned persons) may be the object of disciplinary sanctions as well and of financial sanctions with a maximum of 15 million euros or ten times the profit made.

Decisions by the AMF's Enforcement Committee do not include the payment of compensation to victims. Nonetheless, the settlement procedure does include the possibility of compensation to harmed investors.

The Chairman of the AMF can request the courts to freeze assets (including money, valuables, securities) or other rights belonging to the persons accused of wrong doing, to temporarily prohibit the person from a professional activity and to oblige the person charged with the offence to deposit an amount of money.

The Chairman of the AMF can also among other things, request the courts to suspend the voting rights, to relieve an auditor from his functions.
If the AMF has information which it believes may constitute a criminal offence, it is required to inform the public prosecutor for financial matters. If the information that it wishes to communicate has been provided by another financial market authority through international cooperation, the AMF must obtain that authority's permission to transfer it.

Please see in the table below information for the years 2016, 2017, 2018 and 2019 on the number of investigations carried out by the Inspection and Investigations Department and the number of sanctions imposed, with a breakdown by type of market intermediary.

	2016	**2017**	**2018**	**2019**
Nb. of inspections	**36**	**47**	**63**	**65**
Investment services providers	12	12	25	21
Asset Management companies	17	24	30	36
Investment advisors	7	11	8	8
Including thematic (2017) and Spot (2018, 2019) Inspections		15	35	36
Number of inspection reports sent	39	49	64	59
Including Spot Inspections (2018, 2019)			35	36
Number of follow-up letters	14	29	39	46
Number of notices of complaints	18	19	13	14
Including a proposal for a settlement	9	12	3	5

20. Please describe what enforcement investigations, sanction proceedings, and/or other final resolutions the Authorities make public and what information is included in a public notice.

ACPR:

For the performance of its duties, the ACPR may make known to the public any information that it considers necessary for the performance of its duties, notwithstanding the professional

secrecy referred to in Article L. 612-17 of the French Monetary and Financial Code. For instance, the ACPR published a press release informing the public that it has issued a warning against a credit institution or an investment firm to cease practices concerning loan insurance insofar as they breached the good practice rules of the profession (see: https://acpr.banque-france.fr/communique-de-presse/mise-en-garde-de-lacpr-en-matiere-de-pratiques-commerciales-relatives-lassurance-emprunteur).

Furthermore, according to the French Monetary and Financial Code, the decisions taken by the Sanctions Committee are published in the official register of the ACPR and may be made public in any publications, newspapers or media it may wish to use, and in a format that corresponds to the violation committed and the sanction imposed. Please refer to the official register of the ACPR: https://acpr.banque-france.fr/page-tableau-filtre/decisions. However, the Committee's decision may be made public without specifying names in certain exceptional cases where there could be a "risk of seriously disrupting financial markets or of causing a disproportionate prejudice to the parties involved".

According to the SSM Regulation, penalties imposed by the ECB are published (see https://www.bankingsupervision.europa.eu/banking/sanctions/html/index.en.html).

AMF:

It has always been the AMF's practice to publish the decisions of the Enforcement Committee on its website unless the Committee is of the view that the publication of the identity of the person would be disproportionate or whether such publication might jeopardise an ongoing investigation or the stability of the financial market. In such cases, it may decide to publish the decision anonymously. The Market abuse regulation confirmed this approach and has added as an option not to publish the decision.

The AMF informs the public about enforcement initiatives in several ways in addition to the publication of enforcement decisions. At least on an annual basis, the AMF organizes a full day of presentations and information for compliance officers of investment service providers and asset management companies. In addition, the Enforcement Committee holds an annual conference presenting the major themes and topics encountered during the year as well as for the following year. The AMF's annual report also contains a review of the inspections and investigations of the year which can highlight certain points.

The AMF is authorized to inform the public of the observations that it may have made to issuers. For example, it published on its website, the names of the companies which have published their financial statements late.

Finally, the AMF can publish the administrative injunctions that it has addressed to an investment service provider or an issuer.

21. Please confirm the statutes of limitations for violations of the relevant rules.

The general limitation applicable in France is five years.

However, there is no limitation rule before the ACPR Sanctions Committee. Nevertheless, the Sanctions Committee takes into account the length of time between the breach and the sanction. In this regard, breaches committed more than 15 years before the disciplinary procedure could not contribute to a disciplinary sanction (decision n°2014-01 ALLIANZ VIE, 19 December 2014). However, contracts concluded between 2008 and 2009 were not deemed too old to be examined in a disciplinary procedure opened in 2014 (decision n°2014-11 VAILLANCE COURTAGE, 20 July 2015).

The Sanction Commission of the AMF may not be seized of facts dating back more than six years if no action has been taken during this period to investigate, establish or sanction them. The starting point of this limitation period is set at the day on which the breach was committed or, if the breach is concealed or hidden, the day on which the breach appeared and could be observed under conditions allowing the AMF to carry out its investigation or control missions. In the latter case, the limitation period may not exceed twelve completed years (Article L. 621-15 I of the French Monetary and Financial Code).

Supervision of capital and margin requirements

22. For capital and margin requirements for credit institutions and investment firms, explain whether the ACPR or the ECB is the primary supervisor. Explain the role of the Single Supervisory Mechanism ("SSM") and how it applies to credit institutions and investment firms

The ACPR is the primary supervisor for capital and margin requirements applicable to investment firms, and to less significant credit institutions[1]. The ECB is the primary supervisor, within the SSM, for capital requirements applicable to significant credit institutions. NCAs (including ACPR) remain the only competent authorities on margin requirement for Significant institutions.

For investment firms, ACPR is in charge of their supervision including the enforcement of capital and margin requirements.

ACPR enforces the capital requirements set in the Regulation (EU) n° 575/2013 (Capital Requirement Regulation - "CRR") and in the Directive (EU) 2013/36 (Capital Requirement Directive IV – "CRD IV).

[11] Please note that none of the French less significant credit institutions is, to our knowledge, currently carrying out an SBSD activity for which a registration with the SEC is contemplated.

ACPR enforces the margin requirements stemming from Regulation (EU) n° 648/2012 ("European Market Infrastructure Regulation – "EMIR") applicable to investment firms. This includes:

- processing requests of intragroup transactions exemption from central clearing obligation
- processing requests of intragroup exemption from collateral exchange for transactions non centrally cleared
- enforcing the margin obligation and soundness of calculation in the global counterparty risk framework (Initial margin model validation, Mark to market calculation, Variation margin, CSA, dispute protocol, custodian banks risks, etc).

The AMF is also involved in the supervision and enforcement of these margin requirement, In particular, AMF enforces for instance:

- the central clearing obligations of products covered by the EMIR regulation ;
- the reporting obligation of supervised entities to the central depositories ;
- related to contracts non centrally cleared: the reporting obligation of disputes, the reporting of transactions not confirmed

The Single Supervisory Mechanism (SSM) is the system of banking supervision, composed of the ECB and the national competent authorities of the participating Member States of the European Union, which includes ACPR for France. The SSM is the primary supervisor for Significant credit institutions but is not involved in the supervision and enforcement stemming from the above mentioned regulations for the investment firms.

ECB directly supervises the 113 banks deemed "significant" due to their sizes, economic importance or cross-border activities. For each significant institution, this supervision is carried out by Joint Supervisory Teams (JSTs) comprising staff of the ECB and the national supervisors. The ECB supervision ensures compliance with EU prudential rules with notably supervisory reviews, on-site inspections, and granting/withdrawing banking licenses. In the course of 2021, the Investment Firm Regulation and Investment Firm Directive will replace the CRD/CRR framework for investment firms. This new regime will notably entail the direct supervision of Significant Investment firms that will have to apply for a banking license granted by ECB.

23. Explain the ACPR's day-to-day supervision over the capital and margin of security-based swap ("SBS") activities. Include the following information:

a. The approximate number of supervisors assigned to a firm.

In ACPR, the number of supervisors assigned to a firm is determined on a risk-based approach taking into consideration criteria including the size, the business model, the complexity and the risk profile of the supervised entity.

Based on that approach, the number of supervisors assigned to a regulated entity can range from two supervisors for the least complex investment firms to some twenty supervisors for the most significant banks.

b. The ways in which, and how often, the supervisors interact with the firm (including meetings, phone calls, etc.).

ACPR and JST/ECB supervisors interact on a daily basis with firms on every kind of supervisory aspects. There is no limitation regarding the way in which these interactions are carried out by the supervisors.

ACPR has also defined minimum engagement levels of supervision, through a risk-based approach, that frame the minimum frequency of our risk assessment and meetings with regulated entities.

ACPR also has dedicated offsite supervisors that carry on, periodically, onsite inspections on regulated entities (on both prudential and AML/CFT areas).

c. What dedicated reports the supervisor reviews related to capital and margin on a daily, monthly or quarterly basis and how the review works.

Firms are required to upload in a dedicated ACPR data base very granular and detailed information on a quarterly basis about the firm, including capital and liquidity metrics. This information is processed by ACPR supervisors who are required to check the information and who check alerts triggered by the information system analytics.

Also, ACPR receives the annual report on internal control. In this report, investment firms report on the functioning of the internal control function for the past year and the mechanisms, procedures and policies that allows the bank to identify, manage, monitor and report the risks to which they are exposed. This report also describes the measures taken for the accomplishment of internal control and present the conclusions that the institution has reached. The report requires a section on Credit and counterparty risks focused on the procedures and frequency of revaluation of guarantees and collaterals. Also a section covers the Internal control system relating to the protection of customers' funds in which the firm any modification to the collateral arrangement or guarantee contract and any element linked to the adjustment of the amount of the coverage created in respect of the development of business volume (and provide an annex with the new collateral agreement or guarantee contract where appropriate). The ACPR team analyses the report on an annual basis and revert to the firm on it if needed.

Dedicated ad-hoc meetings and follow-up questions are performed by ACPR supervisors on a risk based approach on the matters covered by the information received on capital and margin.

d. The supervisory tools the ACPR uses to correct red flags/violations of law (for example speaking with or written communication to management, requiring a deep dive, requiring capital charges, referring to enforcement).

ACPR supervisors have a good knowledge of the firms they supervise through the multiple interactions, the detailed and granular data and reports they receive. Any sign of potential deterioration of its regulatory obligations is treated in a proportional way. As an illustration:

i. As a first step, the institution could be asked by a written communication to take corrective measures and a specific monitoring accompanied with an enhanced communication with ACPR on the matter;

ii. An on-site inspection can be sent in the firm which will draw a report that off-site supervisor can leverage on;

If the credit institution or investment firm fails to comply with applicable regulatory obligations, the ACPR may send a formal notice to the credit institution or investment firm ordering/instructing/requiring it to correct the situation. In particular, the ACPR may send a formal notice to a credit institution or investment firm ordering/instructing/requiring it to strengthen its financial situation, or its governance and internal control processes.

If a credit institution or investment firm has failed to comply with a formal notice or if an investigation team reported infringement to applicable regulations, the ACPR may request the opening of an enforcement proceeding. The Sanction committee of the ACPR may examine the request. If the Sanction committee concludes there was a breach of law, it may issue one of the following disciplinary measures: warning, reprimand, temporary ban for certain activities (up to ten years), temporary suspension of managing directors (up to ten years), and compulsory retirement of management directors. The Sanction committee may also decide to impose administrative pecuniary penalties to the credit institution or investment firm (with the upper limit of EUR 100,000,000 or 10% of the total annual net revenues) and may impose a periodic penalty payment.

e. If the ACPR has onsite supervisors, explain their role in the supervisory process for capital and margin.

ACPR onsite inspections in firm premises are mostly requested by offsite supervisors to conduct a general review or to investigate a particular item of interest. During the course of the mission that also covers the broad risk framework and the governance set up, inspectors can investigate any subject they encounter that signals a potential violation of the regulatory obligations. In that context, capital and margin requirements are among the subject that can be investigated for the purpose of corrective measures to be implemented by the firm under the control of the offsite supervisors.

f. If there is a difference in the supervisory process the ACPR uses for an investment firm vs. a less significant institution, please describe.

Less significant institutions are banks that do not fulfil any of the significance criteria specified in the SSM Regulation. Where necessary, in exceptional cases, the ECB may take over direct supervision of LSIs. In France, LSIs are supervised by ACPR under the oversight of the ECB.

The difference between the supervisory process of investment firms and the less signification institutions is the fact that ECB has not been involved in the supervision of investment firms for the time being. Hence, ACPR uses its own information system and own format to perform the annual Supervisory Review Process whereas for LSIs, ACPR uses the ECB information system and Supervisory Review Process methodology. However, in practice, the standards, the risks analyzed and the supervisory tools used are broadly the same. To be noted that AML is in any case (SI, LSI, out of SSM) a national competence for ACPR.

24. Explain how the ACPR conducts on-site inspections or thematic reviews related to the capital and margin laws and how these inspections related to the overall supervisory process. (For example, do supervisors follow up on findings from the examinations.) Include how often the on-site inspections occur and the role of the ECB.

On an annual basis, and based on the risks assessments performed, off-site supervisors propose a list of firms to be investigated for an on-site inspection with a rational motivating the request (a particular item to investigate, a general review, a risk methodology to validate). Transversal thematic reviews are also performed by offsite supervisors, in coherence with the risks assessments performed and weaknesses identified among supervised entities. The on-site inspection investigates the matter and deliver a report to the off-site supervisors listing the findings. Based on this report, the off-site supervisors draw the corrective measures to be implemented and set deadlines to do so. This process would also apply to capital and margin laws. In 2019, 58 on-site inspections were conducted on the matter of prudential requirements.

25. If the ACPR develops priorities related to capital and margin, explain how those priorities are developed and how they fit into the supervisory process.

The High Council for Financial Stability (HCSF) for which the Chairman of the ACPR is an ex-officio member had adopted several priorities in 2018 and the start of 2019 to encourage institutions to accumulate capital in favorable periods to cope with a possible subsequent turnaround in the financial cycle. The HCSF decided in June 2018 – with one year's notice – to activate the counter-cyclical capital cushion set at 0.25% of French banks' exposure. This rate was raised to 0.5% in March 2019 in the context of ongoing credit growth. Second, given the sharp rise in corporate debt, the HCSF set, in July 2018, a stricter limit for French systemic banks' exposures to the most indebted firms. It was thus set at a maximum of 5% of the capital of French systemic banks per firm.

A high priority was put on an on-site reviews to check the quality of the internal models used by banks to measure their Pillar 1 capital requirements (core capital requirements to which are added capital buffers and Pillar 2 requirements as required). ACPR supervisors were closely associated with this project.

On margin, supervisors check with their firms any modification to the collateral arrangement or guarantee contract and any element linked to the adjustment of the amount of the coverage created in respect of the development of business volume. Also, a key priority of ACPR is to implement the recommendations of the European systemic risk board on liquidity risks arising from exchanges of margins for non-centrally cleared transactions.

26. Explain the ECB's day-to-day supervision, through Joint Supervisory Teams ("JST"), over the capital and margin of a significant institution's SBS activities. Include the following information (refer to Question 6 of your original Element IV response where appropriate):

a. The approximate number of JST supervisors assigned to a firm.

On average about thirty to forty people (FTEs) are involved in the supervision of a credit institution applying for the registration as US security-based swap dealer.

b. The approximate number of ACPR supervisors assigned to a JST for a French firm.

On average about fifteen to twenty people (FTEs) are involved in the supervision of a credit institution applying for the registration as US security-based swap dealer.

c. Describe the ways in which, and how often, the JST interacts with the firm on capital and margin issues (including weekly and quarterly meetings, phone calls, etc.).

Supervisory teams of credit institutions interact on a daily basis with credit institutions on every kind of supervisory aspects. There is no limitation regarding the way in which these interactions are carried out by the supervisors.

d. Describe the reports the JST reviews as part of the day-to-day supervision for capital and margin (including daily, weekly, and quarterly reports).

JSTs receive a wide range of data reports used for on-going supervision. As an illustration the quarterly reports listed below are among those processed by JSTs :

- Own Funds vs Own Requirement
- Income statement
- Balance sheet
- Net interest margin
- operating margin
- Fees/Costs breakdown

- Profit or Loss after tax
- ROA/ROE ratios

Also, a "Review of the packages for capital (CET1, T1 or T2) emissions" is regularly received and analyzed.

e. The supervisory tools the JST uses to correct red flags/violations of law (including requesting written responses, raising capital charges, operational acts, risk mitigation plans, etc.).

If a significant bank does not comply with its regulatory obligations, ECB can take measures to remedy the situation. For example, the ECB can require banks to hold additional own funds, submit a plan to restore compliance with supervisory requirements, apply a specific provisioning policy or treatment of assets in terms of own funds requirements, use their net profits to strengthen own funds, restrict or prohibit distributions to shareholders or holders of AT1 instruments.

In case of breach of prudential requirements, the JST can also initiate the process for enforcement of sanctioning measures.

27. Explain how the JST conducts onsite inspections related to capital and margin, including how often these inspections occur. Explain how these inspections fit into the overall supervisory process.

The ECB inspection team acts independently of, but in cooperation with, the JST while a JST member can be part of an inspection team. The inspection team can be composed of ECB inspectors, supervisors employed by the national competent authority of the inspected legal entity's participating Member State, and supervisors from other NCAs, as well as JST members. Capital requirement is among the matters that can be investigated through the on-site inspection process. As mentioned above, ECB is not competent for the application of the EMIR regulation related to initial margin models.

The JST contributes to on-site activities through preparing the supervisory review process, communicating with the inspection team during the inspection, and preparing recommendations or preparing/contributing to draft decisions resulting from the inspection findings and subsequently following up on any remedial actions or supervisory measures.

28. Explain the ACPR's role in the supervision of significant institutions, including membership in the JST, conducting onsite inspections, and the supervisory review and evaluation process ("SREP").

The ACPR provides significant support in the ongoing supervision of France's 11 major banking groups, or significant institutions (SIs), that are directly supervised by the ECB. This supervision

is performed by Joint Supervisory Teams (JSTs), which are more than 50% made up of ACPR employees, with the Authority providing around 113 FTE staff in addition to the personnel supplied by the ECB and the other national authorities from countries where these banks do business. ACPR staff are also involved in the work of eight other JSTs in charge of supervising European SIs operating in France through subsidiaries or branches. Thus, ACPR staff a fully involved in the daily offsite supervision on regulated entities. ACPR staff working within JSTs can also be part of onsite inspections performed on the request of JSTs.

29. Explain the role the SREP plays in supervising the capital and margin for both significant institutions and less significant institutions.

Under the SREP process, each institution is assigned an overall score, which may give rise to additional Pillar 2 capital requirements (P2R). It evaluates notably:

- the business model and profitability of establishments;
- governance and the risk management system;
- solvency risks (credit, market, operational, rate in the banking book and equity risks). The analysis is made on the basis of continuous supervision, institutional self-assessment (ICAAP) and stress tests;
- liquidity risks. The analysis is made on the basis of continuous supervision, self-assessment of establishments (ILAAP) and stress tests.

As mentioned above, ECB is not competent for the application of the EMIR regulation related to initial margin models.

30. Explain the role the Supervisory Examination Program ("SEP") plays in supervising the capital and margin of significant institutions.

For each significant bank, JSTs produce a Supervisory Examination Programme (SEP), which sets out the main supervisory tasks and activities for the following 12 months, their tentative schedules and objectives and the need for on-site inspections and internal model investigations. Capital is a matter that can be included in the SEP as part of the ongoing supervision or onsite inspection focus.

Initial margin models as per the EMIR regulation remain a NCA competence.

31. Explain the ECB's oversight of the supervision of less significant institutions.

ACPR holds the responsibility for conducting a SREP exercise on LSIs, including the assignment of scores, the assessment of the LSIs' ICAAPs / ILAAPs and the adoption of final Supervisory Review (SREP) decisions which is uploaded in the ECB database. ECB collaborates closely with

NCAs in ensuring that all material risks within the LSIs are addressed in a prudent manner by the NCA. It can also provide views on individual supervisory cases.

ECB develops and monitors how the joint supervisory standards are implemented by national competent authorities (inc. ACPR) and collects feedback on their implementation of the joint standards.

32. Explain the ECB's use of thematic reviews in the oversight of less significant institutions.

Thematic reviews (or "deep dives") are focused on certain risks or matter of interest affecting all or a sample of banks of potentially several national competent authorities. It allows for a benchmarking across the SSM. It can be performed off-site or on-site in particular circumstances. Thematic reviews are planned and conducted in close coordination with the NCAs. Synergies with sectoral oversight are exploited in carrying out these reviews.

33. Explain how the ACPR and the ECB work together to supervise significant institutions and less significant institutions, including the fact that the supervisors are in frequent contact.

Every significant institution is supervised by a JST. The team is made up of employees of the ECB and the national competent authorities, headed by a JST Coordinator from the ECB.

The setting of priorities and supervisory activities are planned for the next 12 to 18 months. An annual SEP is conducted for every significant institution and the operational planning is undertaken by the JSTs.

The JST Coordinator is responsible to the implementation of the relevant supervisory tasks and activities in accordance with the respective SEP. The coordinator is the point of contact for the credit institutions, coordinates the JST activities, allocates tasks to the respective team members and organizes the team meetings or conference calls.

A sub-coordinator for every national supervisory authority is also designated. The sub-coordinators support the JST Coordinator in the ongoing supervision and while also introducing the perspective of the national competent authorities.

34. Explain the ECB's authority to obtain records from firms through the supervisory process in the areas of law where substituted compliance has been requested.

Documents and reports received by the ACPR from significant institutions and relating to capital and margin requirements are forwarded to the ECB. In addition to these documents, the ECB is entitled to use the supervisory and investigatory powers to obtain all information that is necessary in order to carry out its tasks, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purpose, pursuant to article 10 of Council regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European

Central Bank concerning policies relating to the prudential supervision of credit institutions (the "SSM regulation").

Moreover, pursuant to article 11 of the SSM Regulation, the ECB may conduct all necessary investigations of significant institutions, and, to that end, the ECB has the right to:

- require the submission of documents;
- examine books and records and take copies or extracts from such books and records;
- obtain written or oral explanations;
- interview any other person who consents to be interviewed.

35. Describe any limitations on sharing supervisory information related to capital and margin with the SEC where the ACPR is the direct supervisor.

To the extent that the ACPR enters into a MoU compliant with Article L.632-7 of the French Monetary and Financial Code with the SEC, it should be able to share with the SEC information related to capital and margin, in accordance with the terms and conditions of this MOU. The information communicated must however be subject to guarantees of professional secrecy at least equivalent to those to which the French authorities are subject and must be intended exclusively for the performance of the tasks of the ACPR and the SEC.

36. If any part of the above supervisory process by the ACPR and/or the ECB is not applicable to a branch or subsidiary located in France, please explain any differences.

The supervisory process is applicable without difference.

37. Please confirm that with respect to capital and margin, ACPR does not initiate or conduct enforcement proceedings. Relatedly, please discuss any ACPR/ECB coordination of enforcement of infringements of prudential regulations. Is the ACPR empowered to take any investigative steps in connection with ECB's enforcement of the infringements?

As described above, the ACPR is the primary regulator for capital and margin requirements applicable to investment firms. The ACPR is then entitled to initiate and conduct enforcement proceedings relating to this task. Enforcement proceedings applicable to significant credit institutions are initiated and conducted by the ECB.

In case of infringements of prudential regulations by a significant institution, the ECB is entitled to take investigative steps and to initiate and conduct enforcement proceedings. The investigatory powers available to the ECB are described by articles 10 to 13 of the SSM regulation. These powers comprise in particular:

- The right to request information pursuant to article 10 of the SSM Regulation, as described above (please see response to question 13);

- The right to conduct general investigations pursuant to article 11 of the SSM Regulation, as described above (please see response to question 13);
- The right to conduct on-site inspections pursuant to articles 12 and 13 of the SSM Regulation. Such on-site inspections may involve agents of the ACPR.

The ECB is also entitled to use its supervisory powers, in accordance with article 16 of the SSM Regulation. Such powers includes the right:

- to require institutions to hold own funds in excess of the capital requirements laid down in relevant regulations;
- to require the reinforcement of the arrangements, processes, mechanisms and strategies;
- to require institutions to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- to require the reduction of the risk inherent in the activities, products and systems of institutions;
- to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;
- to require institutions to use net profits to strengthen own funds;
- to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1instruments where the prohibition does not constitute an event of default of the institution;
- to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- to require additional disclosures;
- to remove at any time members from the management body of credit institutions who do not fulfil the requirements set out in the relevant regulations.

Should a significant institution breach applicable prudential regulations, then the ECB is entitled to impose administrative penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10 % of the total annual turnover, in accordance with article 18 of the SSM Regulation.

Substituted Compliance Assessment Questionnaire

The Securities and Exchange Commission ("Commission" or "SEC") has adopted rules under the Securities Exchange Act of 1934 ("Exchange Act") that provide that the Commission may, conditionally or unconditionally, determine that a registered non-U.S. security-based swap dealer[1] or major security-based swap participant[2] (together, "Regulated Entities"), or class thereof, may satisfy certain Exchange Act provisions and SEC rules governing these non-U.S. Regulated Entities by complying with specified requirements under a foreign financial regulatory system. This regime is known as "substituted compliance."[3] A foreign financial regulatory authority or authorities may request substituted compliance by filing an application with the Commission.[4]

Before the Commission may make a substituted compliance determination, it must determine that the foreign requirements are comparable to the corresponding U.S. requirements, taking into account factors such as the scope and objectives of the foreign requirements, the effectiveness of the foreign supervisory compliance program, and the exercise of foreign enforcement authority.[5] Substituted compliance also will be predicated, in part, on there being an arrangement between

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[1] Subject to certain exceptions, a security-based swap dealer is defined as any person who (a) holds itself out as a dealer in security-based swaps; (b) makes a market in security-based swaps; (c) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (d) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. See Exchange Act Rule 3a71-1 for the complete definition.

[2] The definition of major security-based swap participant is set forth in Exchange Act Rule 3a67-1, and generally includes any person that is not a security-based swap dealer and (a) maintains a substantial position in security-based swaps for any of the major security-based swap categories (subject to certain exclusions); (b) whose outstanding security-based swaps create substantial counterparty exposure; or (c) is a financial entity that (i) is highly leveraged relative to the amount of capital it holds and not subject to the capital requirements of a federal banking agency and (ii) maintains a substantial position in outstanding security-based swaps in any major category.

[3] See Exchange Act Rule 3a71-6, which sets forth the requirements for substituted compliance, and is available at: https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf.

[4] See Exchange Act Rule 3a71-6(c). The application must be submitted pursuant to Exchange Act Rule 0-13, which requires an application in the form of a letter, along with the supporting documents necessary to make the application complete. Commission staff anticipates that the responses to this questionnaire will serve as a key part of an application for substituted compliance. For more information on the procedures to submit an application, see Exchange Act Rule 0-13, which is available at: https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-0-13.pdf.

[5] For each set of U.S. requirements described in the table below, a separate set of questions is available to assist applicants in providing relevant information about the requirements of the applicable foreign financial regulatory system. These separate questions provide (i) a plain-language explanation of each U.S. requirement for which substituted compliance potentially is available and (ii) a framework to assist the applicant in identifying comparable foreign requirements. As noted above, in assessing comparability the Commission expects to consider the scope and objectives of the relevant foreign requirements.

the Commission and the relevant foreign authority(ies) addressing supervisory and enforcement cooperation and other matters related to substituted compliance.

This questionnaire is intended to assist you in preparing an application for substituted compliance as well as assist the Commission in conducting its comparability assessment of your jurisdiction's regulatory regime. Part I of this questionnaire provides a list of the U.S. requirements for which substituted compliance potentially is available. The questions in Part II of the questionnaire contain questions relating to the supervision and enforcement portions of the comparability assessment. Section III of Part II has specific questions relating to supervisory and enforcement cooperation, including the requirements of Exchange Act Rule 3a-71-6(c)(3). In completing these questionnaires, please provide detailed responses and hyperlinks to the relevant laws, regulations, policies, or other sources, as applicable.

Please note, Commission staff intends to keep the information provided in response to this questionnaire non-public to the extent permitted by law. However, in accordance with Exchange Act Rule 0-13, once a completed application has been submitted, the Commission will publish a notice in the Federal Register for public comment. Commission staff anticipates that the published notice will include the information contained in the filed application, which may incorporate the information provided in response to this questionnaire. As such, please note that the information provided in response to this questionnaire could become public.

Furthermore, under the Freedom of Information Act (FOIA), the information provided in response to this questionnaire may be provided to any person unless the records are protected by an exemption to FOIA. However, certain records received from foreign securities authorities may be considered exempt from disclosure by the Commission under the Exchange Act.[6]

Part I

The Commission is considering applications for substituted compliance to permit Regulated Entities that are not U.S. persons to satisfy certain U.S. requirements by complying with comparable foreign requirements. The U.S. requirements for which substituted compliance potentially is available are set forth in the table below. Please indicate in the table below the regulations for which you would like to seek substituted compliance in your jurisdiction:

Area of Regulation	Substituted Compliance?
1. Capital requirements for nonbank firms	N
2. Margin requirements for nonbank firms	N
3. Recordkeeping and reporting requirements	Y

[6] Exchange Act Section 24(d) provides that the Commission generally shall not be compelled to disclose records obtained from a foreign securities authority if: (1) the foreign authority in good faith determines and represents that public disclosure of the records would violate the laws applicable to that foreign securities authority; and (2) the Commission obtains the records pursuant to procedures authorized for use in connection with the administration or enforcement of the securities laws, or a memorandum of understanding. Please indicate in your response whether you believe there are portions of your response that could qualify for this exemption.

4. Trade acknowledgement and verification requirements	Y
5. Supervision and chief compliance officer requirements	Y
6. Counterparty protection requirements	Y
7. Additional requirements regarding eligible contract participant verification, special entities and political contributions	Y
8. Risk mitigation requirements[7]	Y

Part II

Section I - Supervisory Framework
1. Please generally describe your jurisdiction's supervisory authority and related requirements or procedures to identify deficiencies and weaknesses in its Regulated Entities' relevant market activities. To the extent relevant, please consider the following: a. the statutory, regulatory or other provisions under law that grant the relevant supervisory authority, or that otherwise describe or limit the scope of this supervisory authority; b. a description of how you supervise recordkeeping and retention requirements applied to Regulated Entities; c. a description of the authority of the applicable regulator to access and inspect the records of Regulated Entities for domestic and cross-border activities, including activities in foreign offices or branches; d. a description of the authority of the applicable regulator to conduct on-site or off-site inspections of Regulated Entities, including the ability to inspect foreign offices or branches; e. a description of the authority of the applicable regulator to obtain information related to the customers, clients, or employees of Regulated Entities; f. a description of the ability of the applicable regulator to test or verify responses or other information obtained from the Regulated Entities during the course of supervisory efforts; g. a description of how examination priorities are developed and the process for adjusting and updating such priorities, including what factors are used in developing priorities; and h. any other information that would assist in understanding the scope of the relevant supervisory authority.

[7] Substituted compliance for risk mitigation requirements has been proposed, but not yet adopted.

a. **General description of the AMF's supervisory, regulatory and enforcement authority.**

The Autorité des Marchés Financiers (AMF) was set up in 2003 and is a legally, functionally and financially independent public authority. The AMF is responsible for ensuring that savings invested in financial products are protected, providing investors with adequate information and supervising the orderly operation of markets. The AMF regulates the French financial market place, its participants and the investment products distributed via the markets. It also ensures that investors are properly informed and is a driving force behind regulatory change at both European and international levels. As an independent public authority, it possesses regulatory powers and a substantial level of financial and managerial independence.

The AMF possesses broad powers over the entities (the scope of these entities is set out below) for whom it is the competent authority. These include: regulation, licensing, on-going supervision, and enforcement.

- Regulation: to carry out its missions, the AMF can enact enforceable regulations (Article L. 621-6 of the Monetary and Financial Code (MFC)). These regulations combined make up the AMF General Regulation available on the AMF's website (link). The AMF also sets the conduct of business rules and other requirements applicable to investment services providers (credit institutions authorised to provide investment services, investment firms, asset managers) (Book 3 of AMF Regulation).

- Licensing: the AMF is involved in the licensing process for Regulated Entities (Articles L. 532-1 and L. 532-4 of the MFC). In particular, the AMF assesses the organisational structure and procedures foreseen by investment services providers to carry out their activities (the "*programme d'activités*") and provides the *Autorité de Contrôle Prudentiel et de Résolution* (ACPR), in charge of granting licenses, with its opinion.

- Supervision: In accordance with Article L. 621-1 of the MFC the AMF supervises all transactions which involve financial instruments as defined in Article L. 211-1 of the MFC (including derivatives, bonds, stocks, etc.), and has authority over all natural and legal persons listed in Articles L. 621-9 to L. 621-12 of the MFC (including Regulated Entities) as well as natural persons under their authority or acting on their behalf (supervising compliance with their professional obligations). The AMF also issues professional licenses for compliance officers of investment services providers other than portfolio management companies, as well as for compliance officers in charge of internal control in portfolio management companies.

- Enforcement: Pursuant to Article L 621-9 of the MFC, the AMF carries out inspections (ensuring that regulated entities comply with their professional duties) and investigations (related to market abuse). The AMF incorporates a court (Enforcement committee), that has the power to sanction any natural or legal person that has been the object of an investigation or an inspection (Article L. 621-15 of the MFC), to a maximum of: for a legal person 100M€ (or 10X the ill-gained benefit, or 15% of the firm's annual total turnover; for a natural person 15M€ (or 10X the ill-gained benefit). Also, in accordance with article L. 642-2 of the MFC, any person

that attempts to obstruct, or gives inaccurate information in the course of an inspection or an investigation may be subject to a 300.000€ fine, and potentially 2 years of imprisonment.

The AMF may refer any breach to comply with the laws or regulations to French courts (article L. 621-14 of the MFC).

The AMF also has the power to conclude enforcement cases by entering into settlement (public) with a willing counterpart, where a firm agrees to pay a certain amount of money (decided via negotiation), and to rectify any wrongdoings (Article L. 621-14-1 of the MFC). Via this settlement procedure, the AMF may also order the cessation of all breaches of obligations imposed by laws or regulations or by professional rules and any other breach likely to jeopardise investor protection or the orderly functioning of the market.

Finally, in order to to provide investors with further assistance, the AMF provides conciliation and mediation procedure for disputes brought to its attention (Article L. 621-19 of the MFC). This service is run by the AMF Ombudsman.

b. **Supervision of recordkeeping and retention requirements applied to regulated entities**

In accordance with the Market in Financial Instruments Directive which has been transposed into French law and Regulation which is directly applicable (Directive 2014/65/EU – "MiFID", Regulation (EU) No 600/2014 – "MiFIR")), stringent recordkeeping requirements apply to investment service providers. This covers all communications that relate to reception and transmission as well as execution of client orders as well as all telephone calls and electronic communications that might result in a transaction.

Article 25 of MiFIR provides that investment firms should keep at the disposal of the competent authority (the AMF) for five years the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of clients. In the case of transactions carried out on behalf of clients, the records should notably contain all the information and details of the identity of the client.

Compliance by Regulated Entities with requirements on recordkeeping and retention requirements is supervised through both (i) ongoing monitoring and (ii) specific on-site or off-site inspections, including "SPOT" (*Supervision des Pratiques Opérationnelle et Thématique* – operational and thematic supervision of practices) inspections (i.e. brief and thematic inspections, see question 3.a – the "Spot Inspections"). The AMF's supervision and inspection practices are further described below in our answers to questions 2 and 3. By way of of example, the questionnaire that compliance officers must submit to the AMF on an annual basis (further described in our answer to question 2 below), includes a specific section regarding recordkeeping and retention requirements.
It should also be noted that the AMF has included this specific topic in its supervision priorities for 2020 and therefore contemplates finalizing dedicated Spot Inspections on this matter this year. A communication concerning the main findings of these Spot Inspections should also be published during the year.

In addition, additional checks can be performed within the course of investigations and inspections by the enforcement department and any request for information from the supervision department.

c. **Authority access and inspection of records for domestic and cross-border activities (including foreign offices/branches)**

Pursuant to Article L. 621-8-4 of the MFC, the AMF can obtain communication from any investment services provider established in France and their employees of all documents or information useful to the AMF's mission of monitoring and surveillance. Such power is enforceable against both the head office and its foreign branches and applies with respect to both domestic and cross-border activities.

d. **On-site or off-site inspections (including foreign offices and branches)**

The AMF has the power to conduct on-site and off-site investigations and inspections (Articles L. 621-9 *et seq.* of the MFC). Such inspections may be carried out within the French headquarters and foreign offices and branches, where appropriate in accordance with respective MoUs.

Investigations and inspections are conducted by AMF investigators and inspectors, who work closely with other French and foreign authorities that supervise the banking and finance industries. As mentioned above, the AMF differentiates between inspections and investigations as follows:

Inspections are conducted to check compliance by regulated entities as defined by Article L 621-9 II with their professional duties (see above).

The purpose of investigations is to identify market offences (insider dealing, price manipulation and dissemination of false information), be they committed by a listed company, an individual or institutional investor, or a market professional.

Investigations are conducted based upon facts or events that could constitute a breach of market laws and regulations, such as:

- market abuse, i.e. insider dealing, price manipulation or dissemination of false information
- anything that could impair investor protection or interfere with orderly market operation (in terms of financial disclosures provided by listed companies or the marketing of financial instruments)
- trading by companies and their executives in the securities of these companies.

The AMF General Secretary takes the decision to open an investigation, based on observations gathered during market surveillance, supervision of disclosure by listed companies, information sent to the AMF or at the request of foreign authorities. The General Secretary appoints the investigators.

The investigation procedure is governed by law and AMF General Regulation. An Investigation Charter published in September 2012 describes the principles of good conduct for AMF investigators, as well as expectations placed on persons summoned in connection with an investigation. An investigation comprises six stages.

1. The investigators gather information, including press releases issued by listed companies, trading data, auditor reports, correspondence, diaries, bank statements, phone records, phone tapes from trading rooms and international requests.
2. The investigators analyse the data.
3. They conduct interviews.
4. Before closing the investigation, the AMF Investigations Division sends a letter to potential respondents setting out its analysis of the factual and legal information gathered during the investigation. The persons contacted have one month to respond.
5. The investigators draft an investigation report that indicates whether the facts constitute market offences of an administrative and/or criminal nature.
6. The General Secretary forwards the report to the AMF Board. The report is not made public. The AMF is bound by professional secrecy and presumption of innocence obligations.

e. Obtaining information related to the customers, clients, or employees of Regulated Entities

The AMF has the power to request any document which, and interview anyone whom may be useful to the progress of the investigation, enter business premises, carry out house searches and seize documents based on a reasoned order from a judge with territorial jurisdiction (Article L. 621-10 of the MFC).

Information may not be withheld from investigators on professional secrecy grounds except by officers of law or for reasons of national security (Article L. 621-9-3 of the French MFC).

As mentioned in paragraph c. above, the AMF can also obtain communication from any investment services provider and their employees of all documents or information useful to the AMF's mission of monitoring and surveillance (Article L. 621-8-4 of the MFC).

f. Ability to test or verify responses or other information obtained from the Regulated Entities during the course of supervisory efforts

Information and responses provided by Regulated Entities can be verified and challenged by the AMF by cross checking with other information obtained through various alternative channels, e.g. reporting of transactions by Regulated Entities (to which the AMF has access), reporting of suspicious transactions and orders, on-site inspections and investigations, regular discussions that the supervisory team has with Regulated Entities, information sent to the AMF by other regulators, coordination with other French regulators (notably the ACPR), etc.

g. **a description of how examination priorities are developed and the process for adjusting and updating such priorities, including what factors are used in developing priorities**

The AMF draws up a five-year strategic plan which gives rise each year to a year-specific supervisory priorities plan. The priorities identified each year are based on identified risks and may be adapted based on the evolution of identified or the emergence of new risks. The annual priorities cover the monitoring and supervision of professionals authorised to provide investment and collective investment management services. Publication of these thematic priorities serves to highlight certain areas of risk the regulator has identified and encourage regulated firms to look more specifically at some of their practices in the light of applicable professional obligations. It is also an opportunity for the regulator to draw attention to specific areas where it will focus its supervisory activities while also identifying the operational issues associated with practical implementation of the regulations.

This publication supplements efforts already underway to communicate with and reach out to the marketplace, for example by holding meetings with compliance officers annually. Where relevant, the AMF will also publish key takeaways from its supervisory activities as and when the need arises.

The five year strategic plan is approved by the Board of the AMF.

h. **Other information to understand the scope of the relevant supervisory authority**.

The AMF is in charge of the supervision of investment services providers, including the Regulated Entities as defined in this assessment questionnaire. The AMF exercises its supervision authority together with the ACPR. The day to day supervision of the Regulated Entities regarding their swap dealing activities however lies within the remit of the AMF. With respect of the French Regulated Entities, the ACPR's supervisory powers mainly pertain to licensing matters and prudential requirements (which are out of the scope of this questionnaire, as indicated in Part I.

2. Please describe the supervisory tools your jurisdiction uses in practice to identify risk and detect potential breaches of law. To the extent relevant, please consider the following:
   a. any form(s) of ongoing or ad hoc monitoring and surveillance by the regulator or another organization;
   b. any process to receive tips or complaints about the activities of a Regulated Entity;
   c. the submission of periodic filings from Regulated Entities; and
   d. the submission of reports from Regulated Entities based on any event or trigger.

a. Ongoing or ad hoc monitoring and surveillance

The AMF has at its disposal a number of supervisory tools, ranging from on-going monitoring to specific inspections.

The AMF continuously monitors all professionals under its supervision based on information submitted on a regular basis (annual control and compliance reports, reporting data, declarations, etc.) or on request (additional information requested from investment service providers, interviews, etc.). The AMF also receives information about the activities of Regulated Entities directly through other channels (the AMF *Épargne Info Servic*e platform, monitoring tools, whistleblowers, exchanges of information with other regulators in France and abroad, etc.).

The monitoring of Regulated Entities involves regular exchanges with them (letters, meetings, visits), in addition to on-site inspections by the Inspections and Investigations Department.

The AMF has adopted a risk-based approach of supervision (encompassing tiered supervision), whereby investment firms are categorised within four Tiers. Tier 1 and Tier 2 firms receive more supervisory attention than Tier 3 and Tier 4. Entities are allocated to tiers based on a thematic risk map fed by past experience (areas where failures where identified in some firms) and by new regulations to implement (areas where firms need to adapt a new framework). Individual risks detected through the use of various tools to detect "red flags" are also taken into account as well as quantitative data, expert judgment and specific tools such as analysis of client complaints. Large investment banks fall within Tier 1. The AMF's supervisory team maintains a constant dialogue with Tier 1 firms, with weekly calls with compliance officers and regular in-person meetings with senior operational management and compliance officers (at least twice a year).

These monitoring actions can be:

- individual, in response to specific alerts or as part of the periodic coverage of regulated entities, calibrated according to a risk-based approach;
- thematic, in particular to ensure implementation of new regulations.

The AMF has mechanisms to detect general failure of compliance of other regulatory requirements:

- The AMF requires investment services providers to provide specific information on a regular basis. This information includes among other things disclosure of accounts, revenues, profits, organization of internal controls, information on transactions (EMIR reporting for example – see details below) etc. Any suspicious item can therefore be detected and analyzed.
- The AMF also requires the regulated entity to notify the regulator for any significant changes compared with the licensing file that was provided when the license of the relevant Regulated Entity was granted or updated; For instance, it includes changes in key personnel, changes in the compliance officer etc. Any changes that are not properly documented and/or explained will be detected and investigated.
- The AMF has adopted a risk assessment approach of Regulated Entities using the information contained in the annual control reports written by the compliance officers at the request of the AMF. The reports provide details of how the Regulated Entities have put systems in place in order to comply with the regulation. The information is used to determine the tiering approach of Regulated Entities.

- The AMF asks the Regulated Entities to provide answers on regulatory questions (annual questionnaire further described in section (c) below). That way, the AMF can detect if an entity has adequate measures in place to comply with particular regulatory requirements or any inconsistency, by comparing compliance reports from one year to another.

This approach is complemented by an analysis of complaints by investors or third parties.
All these risks contribute to our case-by-case analysis which can lead, where relevant, to an on-going monitoring (e.g. exchange of letters…) or an on-site inspection.

This on-going monitoring is carried out by the Markets Directorate for market intermediaries.

b. Any process to receive tips or complaints about the activities of a Regulated Entity

Investors can file complaints with the AMF on investment services providers, including the Regulated Entities. Similarly, the AMF ombudsman could help solve disputes on matters involving authorized financial intermediaries.

The AMF also has a dedicated online system where requests for information, requests for mediation or reporting of anomalies can be directly sent to the AMF.

The AMF can also receive and deal with alerts in relation to potential breaches of regulatory obligations which are under the AMF's supervision (Article L. 634-1 of the French MFC). Anonymity of the person notifying the breach is ensured. The AMF has also issued an instruction (DOC-2018-13) on procedures allowing the reporting to the AMF of potential breaches to market abuse regulations.

The AMF also receives information about the activities of investment service providers licensed in France directly through other channels such as the *AMF Épargne Info Service* platform (dedicated to retail investors), its monitoring tools, whistleblowers, exchanges of information with other regulators in France and abroad.

c. **the submission of periodic filings from Regulated Entities**;

At least once a year, Regulated Entities shall prepare and submit a report to the ACPR on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as corrective actions undertaken or to be undertaken. The ACPR transmits to the AMF the information which is under AMF remit.

This report generally includes :

- A description of the main actions carried out in the context of the internal control and the lessons which emerge therefrom ;
- An inventory of the internal audits carried out, highlighting the main lessons learned and, in particular, the main shortcomings identified, as well as a follow-up of the corrective measures taken ;

- A description of significant changes in the fields of permanent and periodic inspections during the period under review, in particular taking into account changes in activity and risks;
- A description of the conditions under which the procedures set up for new activities are applied;
- A description of the permanent and periodic controls of foreign branches;
- A presentation of the main actions planned in the field of internal control; and
- An updated description of the classification of the risks of money laundering and terrorist financing, as well as a presentation of the analyses on which this classification is based.

At least once a year, Regulated Entities shall prepare a risk mapping in which the Regulated Entities shall provide information regarding any kind of identified risks and their importance. The control plan is based on this risk mapping and aims at determining how they will be mitigated and handled, the contingency process and the corrective actions. Many Regulated Entities are asked to submit their risk mapping to the AMF as well as their control plan. This is practically the case for Tier 1 entities and in general for all Regulated Entities within the course of the assessment of a new investment service or a new activity, when identifying a major failure or incident highlighting internal control deficiencies, when assessing a specific thematic supervisory priority.

Regulated Entities shall also fill and submit to the AMF, on a yearly basis, a detailed questionnaire on compliance aspects. In such questionnaire, Regulated Entities must provide the AMF with information on, among other things:

- Distribution of the net banking product and employees between the business lines;
- Internal and External resources of the compliance function;
- Types of services provided and types of clients;
- How the appropriateness of services provided to clients is verified;
- How complaints are handled;
- Any personal transactions entered into by targeted employees;
- How the requirements regarding custody and protection of clients' assets are complied with;
- How conflicts of interests are handled and controlled;
- How the minimum level of knowledge of certain employees is verified;
- How record-keeping requirements are complied with;
- How the best execution requirements are complied with; and
- How anti-market abuse regulations are complied with.
- How transparency and reporting requirements are met.

For most of the sections in this questionnaire the Regulated Entities must provide information on the latest internal controls carried out according to the topic concerned, the outcome of such controls and the corrective actions which may have been undertaken by the firm.

Regulated Entities must also submit regular data reporting to the AMF regarding their derivatives transactions. In particular, EMIR Article 9, RTS 148/2013 and ITS 1247/2012 set

out a reporting obligation under which counterparties and CCPs must report to a registered or recognised trade repository (or to ESMA) the details of concluded derivatives contracts and any modifications or terminations of such contracts.

- Reports must specify:
  - the parties and any beneficiaries/obligations; and
  - the main characteristics of the relevant contract, including type, underlying maturity, notional value, price and settlement date.
- Reports must be made within one working day of the conclusion, modification or termination of the relevant contract.
- The reporting obligation may be delegated.
- Records shall be kept for at least five years.
- Reporting shall not entail a breach of any restrictions on disclosure of information imposed by the relevant contract or by any applicable legislation/regulations.

MiFIR Article 26 also contains a general obligation for investment firms to report transactions in certain financial instruments to the competent authority as quickly as possible. In -cope financial instruments include those which are admitted to trading, those where the underlying is a financial instrument admitted to trading and those where the underlying is an index or basket composed of financial instruments admitted to trading. Reports shall include, amongst others, the names and numbers of the relevant financial instruments, dates and times of execution, transaction prices and clients on whose behalf the transaction was executed.

The AMF can also request additional information from investment service providers on an *ad hoc* basis.

d. **the submission of reports from Regulated Entities based on any event or trigger**.

Regulated Entities must report to the AMF, as soon as possible, all significant incidents that may occur. In addition, they have to notify the ACPR any significant incident detected by internal control processes in particular in case of potential or proven losses (Article 98 of November 2014 Order on internal control). They must also report to the AMF any suspicious orders or transactions which may characterize a market manipulation as required by Article 16 of Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation). The AMF should also be made aware of disciplinary measure taken against certain employees because of a breach of their professional obligations (i.e. those that hold a professional license (traders and sales, clearers of financial instruments, compliance officers, investment analysts) as per Article 312-27 of AMF General Regulation.
The AMF may also ask Regulated Entities to report other information and/or, following a warning or an alert, the AMF may require Regulated Entities to carry out audits.

3. Please describe your jurisdiction's examination or inspection processes. In responding, please include:
   a. a description of the examination cycle (e.g., routine periodic basis or risk-based). If the examination is periodic, please include the time frame;
   b. a description of the processes and factors considered when selecting Regulated Entities for examination (e.g. time since last examination, tip, complaint or referral, etc.);

c. a description of the processes, including factors considered, to determine the scope for examination or inspection and the process for amending the scope if warranted;
d. a description of the types of books and records typically reviewed during examinations;
e. whether you conduct interviews with employees of the Regulated Entities;
f. whether you test or verify responses given to you by the Regulated Entities;
g. how you communicate deficiencies or other areas of concern to Regulated Entities, whether such communications are public, and how such communications are documented;
h. to whom you direct communications (e.g., compliance office, senior management); and
i. how Regulated Entities respond to identified issues.

a. **a description of the examination cycle (e.g., routine periodic basis or risk-based). If the examination is periodic, please include the time frame**;

The AMF uses a risk-based approach to supervision of investment firms designed to cover a broad range of entities including notably the Regulated Entities.

Supervisory resources and attention are allocated by taking into account:

i) a thematic risk mapping based on past experience (i.e., areas where failures were identified in some firms) and in the light of new regulations to be implemented (i.e., areas where firms need to adapt to a new framework);
ii) individual risks detected through the use of supervisory tools, in order to identify "red flags;" and
iii) tiered supervision, whereby Tier 1 and Tier 2 firms (which generally include the Regulated Entities) receive more supervisory attention than Tier 3 and Tier 4, as measured in periodic reports to the management.

The AMF recently introduced Spot Inspections as part of its risk-based approach. These are shorter inspections which involve assessing the same topic in parallel across several investment firms. This approach aims at increasing the coverage of firms subject to inspections and relies on transparency: the topics to be covered are announced publicly at the beginning of each year and, at the end of these thematic reviews, the good and bad practices identified are also communicated to the market. Seven of such topics were identified for 2019, to be assessed across 36 investment firms. This was in addition to the 21 standard on-site inspections planned for the same period.

b. **a description of the processes and factors considered when selecting Regulated Entities for examination** (e.g. time since last examination, tip, complaint or referral, etc.);

All alerts and significant supervisory events are reported to a supervision committee that meets every third week. This committee may then propose to carry out specific supervisory actions such as, for example, the closer monitoring of an entity or an inspection.

Every six months a committee for the follow-up of inspections also is organized. This committee comprises the General Secretary of the AMF as well as the directors of several directorates of the AMF in charge of the supervision of entities as well as the directorates of the AMF in charge of the inspection. It formally decides whether an inspection should be launched or not. However, if a potentially significant breach is detected, an inspection may be launched before the next meeting of this committee.

When deciding whether an inspection should be launched regarding a specific topic the AMF takes into account various factors, such as the categorization of the entities (Tiers), the frequency of previous inspections carried out in respect of an entity on the same or related topics, if any alert was received (e.g. from a whistleblower), declarations of suspicious transactions etc.

c. **a description of the processes, including factors considered, to determine the scope for examination or inspection and the process for amending the scope if warranted**;

Every year the AMF determines a set of thematic inspections that must be carried out during the year. The scope of such thematic inspections is therefore determined *ex ante.* For example, for 2020, the AMF contemplates carrying out Spot Inspections on compliance with recordkeeping requirements.

The AMF may also decide to carry out *ad hoc* inspections, e.g. when it receives a complaint or is made aware of information on a potential breach or misconduct. In such case the scope of the inspection will be determined based on the event that triggered it, e.g. the scope of the potential breach/misconduct, the warning or the complaint.

d. **a description of the types of books and records typically reviewed during examinations**;

There are several standard common examinations when leading on-site inspections. The inspection team generally asks for :

- the organizational chart of the entity, focusing on the units or services that are stakeholders in the process examined by the mission;
- the internal procedures based on the topic of the mission, it is a pillar in the description of the organization of the regulated entity and it describes precisely its modalities of functioning;
- the financial, economics and business (as number of customers) statistics of the entity, focusing on the topic of the mission;
- the compliance and control framework focusing on the topic of the mission

In addition to these documents, if the members of inspection team consider that they need specific documents, focusing on one aspect of the mission (e.g.a record data, an email or a phone conversation for example), they can also ask for these kinds of data.

e. **whether you conduct interviews with employees of the Regulated Entities**;

Yes, indeed. For each mission, the inspection team conduct interviews with the employees who are involved in the process examined. It is important to hold exchanges with the operational staff orally in order to better understand the implementation of the procedures, in particular to have some illustrations.

f. **whether you test or verify responses given to you by the Regulated Entities**;

Yes. The inspection team can indeed check the responses given during the investigations. First of all, the inspection team can proceed by conducting a coherence control/check by comparing the collected data with different sources. The inspection team can also ask for extractions of data or ask for access to the IT system of the entity to proceed to other controls.

g. **how you communicate deficiencies or other areas of concern to Regulated Entities, whether such communications are public, and how such communications are documented**;

The AMF can communicate deficiencies to the investment service provider (for example to the compliance officer) over the course of its regular monitoring.

In case of investigation, before closing the investigation, the AMF Investigations Division sends a letter to potential respondents setting out its analysis of the factual and legal information gathered during the investigation. The persons contacted have one month to respond. Then, the investigators draft an investigation report that indicates whether the facts constitute market offences of an administrative and/or criminal nature. The investment service provider may also be invited to take corrective measures.

In case of standard on-site inspection, the deficiencies raised are factually reported in the inspection report. This document is confidential and is sent to the regulated entity.
For Spot Inspections, a report summarizing the results of all the Spot Inspections carried out on a specific topic is prepared by the AMF and is published on its website. Such reports are anonymised and published by the AMF in order to illustrate best practices that regulated entities should follow and the poor practices observed.

h. **to whom you direct communications (e.g., compliance office, senior management)**;

Regarding the results of inspections, communications are addressed to the effective director of the Regulated Entity.
For the day to day supervision, the AMF communicates with the compliance officer and, where relevant, other members of the senior management of the Regulated Entity. Follow-up letters can also be sent to the management on a specific issue.

i. **how Regulated Entities respond to identified issues**.

When receiving an inspection report, the regulated entity has to respond within one month. They should complete a table, answering each identified deficiencies. If the Entity agrees with

the deficiency, it can propose a corrective action, if it does not agree, the entity can comment and explain why. This phase is called the "adversarial debate".
Outside any inspection, during day-to-day supervision, Regulated Entities, respond by any relevant ways such as reports on corrective actions and bilateral exchanges with AMF. For every incident that is reported to the AMF, the Regulated Entity must provide the AMF supervision team with a "post-mortem" report with details on corrective actions undertaken. The corrective action plan can be challenged in case of insufficient corrective actions and/or late planning for their implementation.

4. Please describe the resources available for your supervisory efforts. In responding, please include:
    a. the typical background and qualification of your supervisory staff;
    b. the use of experts, such as persons who can analyze models or perform data analytics;
    c. the use of analytical software and tools in conducting examinations and other supervisory work;
    d. the use of SROs or exchanges to perform supervisory functions;
    e. training programs for supervisory staff; and
    ~~f.~~ the resources/size of the supervisory group relative to the volume and complexity of Regulated Entities.

a. Typical background and qualification of your supervisory staff;

From the last AMF analysis on its personnel qualification dating 2017, it can be observed that the AMF staff can be of different qualification and backgrounds. Three different types of background can be observed: 28% of staff has a finance background, 24% a law background and 19% a scientific background. In general the AMF staff has a post-secondary education degree, and most of them a post-graduate degree (61%). There is an important proportion of staff that hold more than one degree (41%) or degrees with dual majors (12% of law degrees for example were of two majors (e.g. law and finance).

The AMF staff is mainly composed of experienced staff with an average professional experience of 17 years.

b. Use of experts, such as persons who can analyze models or perform data analytics;

According to the most recent study in 2017,19% of the staff has a scientific background such as engineering. The AMF has identified over several years the need for quantitative experts to enhance its monitoring and inspection roles and the use of such experts is increasing (11,1% of staff in 2013 and currently stands at 19%).

c. Use of analytical software and tools in conducting examinations and other supervisory work;

The AMF have developed analytical tools to help the authority fulfill its missions of regulator such as for example "ICY".

In order to better supervise market intermediaries the AMF has launched a new monitoring system based on big data technologies called "ICY". The AMF's new ICY platform has been developed internally. This solution is used by the AMF to quickly screen data representing large and varied trading volumes. Hence, the AMF has significantly greater capacity to archive data and perform multivariate analyses, while also adding innovative new functions.

This tool thus reinforces the AMF ability to examine transactions in real time, make it quicker to react, and improve the detection of market abuse through the use of artificial intelligence tools such as machine learning.

In addition, the AMF is also reviewing its information system (BIO2) and about to launch a BIO3 system. This system is used to follow authorization and the follow-up (supervision) of actors (such as provider of investment services) and products. This project's objective is to build a new platform to digitize filings and exchanges with actors, and to improve the quality of data.

e. Use of SROs or exchanges to perform supervisory functions;

The AMF does not use any Self-Regulatory Organisation or exchanges to perform supervisory functions. Nevertheless Regulated Markets (Stock exchanges) have the obligation to put in place surveillance and detection of market abuse systems and policies.

f. Training programs for supervisory staff;

The AMF is deeply involved in an ambitious training policy. Each year, the AMF issues internally a training catalogue, which lists every train course available, on a broad variety of topics : markets, derivatives, asset management, share, bonds, market infrastructures, front office / back office, risks, accounting, law, control, inspection, regulation, negotiation skills, etc.

In 2018 16 416 training hours were clocked up, which represent 32 hours per employee, and 99% of the staff had at least one training session in the year.

Since 2018, 6% of the AMF payroll is allocated to the training policy.

Moreover, the AMF has put in place an online training platform, allowing AMF employees to benefit from more online content, with quizzes to test the knowledge acquired. During the 1st semester of 2019, 611 hours of online training have been completed, by 394 staff members.

g. The resources/size of the supervisory group relative to the volume and complexity of Regulated Entities

Regarding the supervision of the investment service providers, the AMF continued to develop its monitoring teams, which now number 25 people. In addition, 20 experts from the market surveillance department and around 10 inspectors dedicated to investment firms are also to be considered as part of the supervisory team.

The supervisory team can also rely on other departments at the AMF, such as for example the legal department. It also collaborates closely with the supervisory teams at the ACPR, the French banking regulator (for the most significant banks, the ACPR supervisory teams are also part of the Joint Supervisory teams of the ECB).

5. Please describe whether your jurisdiction has regulatory authority and related requirements or procedures to obtain the information necessary from Regulated Entities (or their offices or branches) to support your supervisory functions.

As part of the AMF's investigation powers, it can request any document, interview anyone who may be useful to the progress of an investigation and carry out on-site and off-site inspections.

Pursuant to Article L. 621-8-4 of the MFC, the AMF can obtain communication from any investment services provider and their employees of all documents or information useful to the AMF's mission of monitoring and surveillance. Such power is enforceable against both the head office and its foreign branches and applies with respect to both domestic and cross-border activities

Information may not be withheld from investigators on professional secrecy grounds except by officers of law or for reasons of national security (Article L. 621-9-3 of the French MFC).

6. How do you communicate deficiencies or other areas of concern to Regulated Entities? For example, what remedies, or other corrective actions, are available to your supervisory program (e.g., deficiency letters, referrals to other regulators, enforcement actions, etc.)? Please include whether one type of action may be more prevalent than another and whether the actions are verbal or in writing. Please include recent statistics on how often each type of action is used.

After it has reviewed the investigation report, the Board of the AMF, which is the AMF's prosecutorial authority, decides what action to take, which may include one or more of the following:

- serve a statement of objections to the respondent and open sanction proceedings;
- serve a statement of objections to the respondent and propose a settlement;
- forward the case to the Public Prosecutor if the evidence in the report points to a criminal offence;
- forward the case to other French or foreign administrative authorities if the report points to matters within their jurisdiction;
- send a letter of observations to persons under investigation to remind them of current regulations; or
- close the case.

Please see in the table below information for the years 2016, 2017, 2018 and 2019 on the number of investigations carried out by the Inspection and Investigations Department and the number of sanctions imposed, with a breakdown by type of market intermediary.

	2016	**2017**	**2018**	**2019**
Nb. of inspections	**36**	**47**	**63**	**65**
Investment services providers	12	12	25	21
Asset Management companies	17	24	30	36
Investment advisors	7	11	8	8
Including thematic (2017) and Spot (2018, 2019) Inspections		15	35	36
Number of inspection reports sent	39	49	64	59
Including Spot Inspections (2018, 2019)			35	36
Number of follow-up letters	14	29	39	46
Number of notices of complaints	18	19	13	14
Including a proposal for a settlement	9	12	3	5

7. Does your jurisdiction use risk monitoring and assessment or surveillance as part of your supervisory framework? If so, how do you use this information and what actions do you take if potential violations are identified?

The AMF has a process that focuses on markets from a broad and macro perspective. This process is fed from all departments, and provides the capacity to analyze specific market developments and feed the AMF Risk Committee.

The AMF Risk Committee (*Comité des risques de l'AMF*) was created in 2010, with two main objectives: (i) to develop insights from the combination of macroeconomic analysis and aggregated/industry data with observations at the operational level, thereby leveraging institutional knowledge and ensuring appropriate sharing of information and confrontation of views; and (ii) to identify potential risks at an earlier stage and develop pro-active mitigating actions. Other objectives include the development of a risk culture within the AMF, as well as the development of tools for the monitoring of risks. The Committee brings together the experience from (i) operational supervision; (ii) the academic sphere; as well as (iii) broader macroeconomic and financial stability perspectives within the jurisdiction.

The AMF Risk Committee may decide on other actions such as policy initiatives, external communication, co-operation with other authorities, development of new monitoring tools and risk indicators, inspections, etc.

The AMF also operates a process embodied by the *Comité du suivi* that decides priorities, including which companies to inspect.

Also, some Regulated Entities are required to provide the French authorities with a risk mapping for their institution on a yearly basis. In this document, Regulated Entities shall provide information regarding any kind of identified risks and their importance. This helps the AMF in identifying new areas of risk and building the whole AMF risk assessment.

Finally, the supervision team at the AMF drafts and regularly updates its own internal thematic risks mapping.

8. Please describe how your jurisdiction reviews and evaluates corrective action undertaken by Regulated Entities.

After an inspection, supervised entities must systemically provide the AMF with an action plan describing corrective measures that they will implement to remedy any wrongdoings. The AMF can either verify itself whether such corrective actions have been adequately implemented or ask Regulated Entities to mandate an internal or external audit.

9. Please describe any regulatory consequences for non-compliance with corrective actions, including the form and frequency of referrals to enforcement or other judicial authorities.

After it has reviewed the investigation report, the Board of the AMF, which is the AMF's prosecutorial authority, decides what action to take, which may include one or more of the following:

- serve a statement of objections to the respondent and open sanction proceedings;
- serve a statement of objections to the respondent and propose a settlement;
- forward the case to the Public Prosecutor if the evidence in the report points to a criminal offence;
- forward the case to other French or foreign administrative authorities if the report points to matters within their jurisdiction;
- send a letter of observations to persons under investigation to remind them of current regulations; or
- close the case.

In case of non-compliance with corrective actions, the AMF has the power to sanction any natural or legal person that has been the object of an investigation or an inspection (Article L. 621-15 of the MFC), to a maximum of, for a legal person: 100M€ for a legal person (or 10X the ill-gained benefit, or 15% of the firm annual total turnover; for a natural person: 15M€ (or 10X the ill-gained benefit). Also, in accordance with Article L. 642-2 of the MFC, any person that tries to obstruct, or give inaccurate information in the course of an inspection or an investigation may be subject to a 300.000€ fine, and potentially 2 years of imprisonment.

The AMF also has the power to conclude enforcement cases by operating settlement (public) with a willing counterpart, where the firm will agree to pay a certain amount of money (decided through negotiation), and to rectify any wrongdoings. Via this settlement procedure, the AMF

may also order the cessation of all breaches of obligations imposed by laws or regulations or by professional rules and any other breach likely to jeopardise investors interests.

For an example of the frequency of referrals to enforcement please see the table on the number of investigations carried out by the Inspection and Investigations Department and the number of sanctions imposed in our answer to question 6.

The AMF may also refer cases to other authorities, such as the ACPR who also has sanction powers and may, for example, withdraw the licenses of Regulated Entities.

10. Please describe how your jurisdiction communicates with the industry and the public about best practices, common compliance issues or other areas of misconduct risk, including how Regulated Entities are informed about the consequences of misconduct or noncompliance.

The AMF uses diverse methods to communicate with the industry and the public about best practices, common compliance issues or other areas of misconduct risk.

The AMF organizes on a yearly basis a compliance officer convention for compliance and internal control officers (RCCIs) and investment services compliance officers (RCSIs). This convention usually attracts nearly 700 financial professionals working in these areas. The event aims to facilitate the task of regulatory oversight and raise awareness of the challenges these officers currently face. It also offers an opportunity to maintain a regular dialogue with the AMF.

In addition, the AMF organizes each year, two examination sessions and two training sessions for the Compliance Officer professional license exam.

As part of its new Supervision#2022 strategy, the AMF announced its intention to conduct short, theme-based inspections known as Spot Inspections, as well as its willingness to share the lessons learned from these exercises. It is then delivering a review of these short inspections carried out by publishing a review report. Three Spot Inspections were conducted in 2018 and five in 2019. The review reports are available on the AMF website.

The AMF also publishes various communications on good practices on its website (such as recommendations) as well as review reports on the findings of thematic inspections. In 2018, it carried out two rounds of five thematic inspections of investment service providers. On the basis of its observations, it prepared a list of good and poor practices and has issued reminders with respect to the rules applicable thereto.

In addition, the AMF publishes guidelines on a specific aspect to clarify its expectations. Some press releases also aim at achieving a similar objective.
The AMF is also in contact and holds meetings with professional associations regularly. The AMF always reviews guidance issued by professional associations even though it does not formally approve them.

11. Please describe your jurisdiction’s participation in international organizations of securities and other regulators, such as the IMF and IOSCO.

The AMF is an ordinary member of IOSCO and the AMF Chairman is a Member of the IOSCO Board. The AMF is actively involved in Policy Committee 1, Committee 2, Committee 3, Committee 4, Committee 5, Committee 6, Committee 7, and Committee 8. The AMF is a signatory of the IOSCO Multilateral Memorandum of Understanding since 2003. France is an original member of the IMF. France IMF Governor is Bruno Le Maire (Minister of Economy and Finance) and the Alternate is François Villeroy de Galhau (Governor of the Central Bank). France has 4.24% of voting power and 4.03% of quota shares.
12. Please provide a copy of Principles 10 and 12 from your most recent self-assessment for the FSAP.
We understand that this question refers to our answers to questions 29 to 31 of FSAP 2019 questionnaire. Please find in the annex a copy of the France's relevant extracts from such answers.

Section II - Enforcement Framework
1. Please describe your jurisdiction's ability to investigate and bring administrative or judicial actions against domestic and foreign parties to enforce your regulatory framework. In responding, please address: a. your jurisdiction's authority (statutory, regulatory or otherwise) to take enforcement action both domestically and in connection with cross-border activity, describing both judicial and non-judicial forms of action where applicable; and b. the impact of any privacy laws or other related provisions that may impede your ability to conduct thorough investigations.
The AMF has significant powers to inspect, investigate and to issue injunctions. It conducts "inspections" ("contrôles") and "investigations" ("enquêtes") in order to ensure that the applicable rules and regulations are being adhered to by the persons under its supervision and control. For infringements taking place outside the EU the AMF will, to the extent applicable, cooperate with foreign authorities in accordance with applicable MoUs (please see answer to question 7 below). **Investigations** are launched when a violation of financial regulation may have been committed (principally concerning offences related to market abuse and financial information of an issuer. With regard to market abuse and financial information of an issuer, the judicial authorities are also competent and may investigate. The French law of 21 June 2016 established a procedure for the allocation of competence as regards market abuse between the AMF and the public prosecutor for financial matters. The AMF and the judicial authorities cooperate on numerous investigations by means of the exchange of expertise or of information. Regarding cross-border activity, the French law of 2005 transposing the first market abuse directive of 2003 extended the scope of the AMF's power to allow it to take decisions related to facts established abroad. This law has been amended since then with the entry into application of the market abuse regulation of 2014 (MAR). Accordingly, in accordance with MAR, article L. 621-15 II, c of the MFC specifies that the AMF's power to pronounce administrative sanctions applies to any person who, on French soil or abroad, engages in or attempts to engage in market abuse or any other breach regarding instruments admitted to trading on markets operating in France which may jeopardise investor protection or the proper functioning of the markets. The goal of **inspections** is to verify that rules are followed. In other words, breaches are primarily related to rules governing organizational rules and operations of investment service providers. With regards to MIF (markets in financial instruments directive of 2014), in addition to French investment service providers, the AMF is empowered only to inspect the investment services providers authorized in other Member States acting under the provision of the

freedom to provide investment services in France. This text also empowers the AMF to inspect certain aspects of the activities of a branch established in France of an investment service provider authorized in another Member State. This text finally empowers the AMF to control certain aspects of the activities of a branch established in France of an investment services provider of third country firm (a "third country" firm is a firm which, if its central administration or its head office are located in a Member State of the European Union or party to the European Economic Area (EEA) agreement, would be an investment firm in accordance with MIF).

With regards to non-judicial forms of actions, the AMF is empowered to take decisions including, but not limited to:

1. the suspension of trading in a listed financial instrument – at the request of the chairman of the AMF and after having informed the issuer concerned, the trading venue can suspend trading for a specific period of time if the trading conditions do not respect market rules. More generally, trading can be suspended upon decision of the Chairman of the AMF, if an exceptional event has occurred disrupting the functioning of a regulated market;
2. the AMF can withdraw the authorization of an asset management company if it does not respect the conditions set out for authorization;
3. the AMF can withdraw the status of market operator if important changes occur relating to elements of the authorization request (for ex. statutes, shareholders etc.) or in the case of repeated malfunctions or failures in the regulated market or on a multilateral trading facilities (MTF).
4. the AMF can ask a company to publish corrective statements in the event that inaccuracies or omissions were noted in public documents. Should the company not respond to the demand, the AMF can publish the request it has made.
5. the AMF is empowered to receive from anyone all complaints which concerns its jurisdiction and to try to resolve it. It can also intervene in order to reach an amiable resolution through mediation.

In reply to the question about texts impeding the AMF to conduct investigations, we are not aware of any legal text which could prevent the AMF from conducting an investigation or inspection into facts that fall within its missions and fields of competence.

2. Please describe the tools your jurisdiction can utilize to conduct investigations, including the ability to obtain detailed records to reconstruct transactions and identify parties to a transaction. For example, please address the ability to:
    a. obtain electronic communication and other records from internet service providers or other third-parties;
    b. compel statements and information from witnesses; and
    c. receive tips, complaints and referrals from corporate insiders (such as whistleblowers) and the public.

    a. obtain electronic communication and other records from internet service providers or other third-parties;

The AMF is empowered to request and obtain data-traffic records from internet service providers in the context of market abuse investigations; such requests are subject to prior approval by a magistrate. It may also search domiciles and seize information in either domiciles or professional premises provided that a civil liberties judge has approved the search (art L. 621-12 MFC).

b. compel statements and information from witnesses; and

In accordance with the provisions of the market abuse regulation (MAR) and the Markets in financial instruments directive (MIF), the AMF has the power to access any document and data in any form and to receive or take a copy of it. It can also require or demand information from any person and if necessary to summon and question any persons with a view to obtain information.

c. receive tips, complaints and referrals from corporate insiders (such as whistleblowers) and the public.

In accordance with national law, the AMF has procedures in place to receive and manage tips, complaints and alerts insiders (such as whistleblowers). In particular, the procedures ensure that alerts relating to potential failures or breaches to regulation and rules (applicable EU texts, MFC, AMF General Regulation) for which it is competent are handled in such a manner as to ensure the confidentiality of the author of the alert and the persons mentioned therein (Law 2016-1691 of 9 December 2016).

3. Please describe the investigative capacities your jurisdiction has under relevant law, including methods and technology used for market surveillance. Please also describe the role of experts, self-regulatory organizations and exchanges in assisting or performing enforcement functions.

Market surveillance includes analysis of both transactions and the behavior of those trading. The market Surveillance Department at the AMF, consisting of about 20 experts, is based primarily on automated tools that detect anomalies based on a series of parameters set by the AMF. The surveillance covers the transactions in approximately 1000 listed companies, about the same number of investment service providers and all the financial instruments traded on Euronext Paris.
Once the automated system detects anomalies, the experts will then perform a preliminary analysis to determine if there is an explanation.

4. Please describe the legal proceedings, remedies, and sanctions available in your jurisdiction to support your enforcement mechanism, including, for example, available tribunals, types of penalties or other monetary sanctions, and the ability to seek prospective relief, temporary restraining orders, asset freezes or make criminal referrals.

The persons (legal and physical) which are subject to the sanctioning powers of the AMF are listed in Article L621-15, III of the MFC. Legal persons (such as investment services providers, market infrastructures, management companies) may be the object of disciplinary sanctions (warning, reprimand, prohibition from exercising a certain activity) and of

pecuniary sanctions with a maximum of 100 million euros. Physical persons (in particular those under the authority of or acting on behalf of one of the above-mentioned persons) may be the object of disciplinary sanctions as well and of financial sanctions with a maximum of 15 million euros or ten times the profit made.
The Chairman of the AMF can request the courts to freeze assets (including money, valuables, securities) or other rights belonging to the persons accused of wrong doing, to temporarily prohibit the person from a professional activity and to oblige the person charged with the offence to deposit an amount of money.
The Chairman of the AMF can also among other things, request the courts to suspend the voting rights, to relieve an auditor from his functions.
If the AMF has information which it believes may constitute a criminal offence, it is required to inform the public prosecutor for financial matters. If the information that it wishes to communicate has been provided by another financial market authority through international cooperation, the AMF must obtain that authority's permission to transfer it.

5. Please describe how your jurisdiction publishes information about enforcement initiatives, including disclosure of enforcement matters and violations and public disclosure of enforcement objectives.

It has always been the AMF's practice to publish the decisions of the Enforcement Committee on its website unless the Committee is of the view that the publication of the identity of the person would be disproportionate or whether such publication might jeopardise an ongoing investigation or the stability of the financial market. In such cases, it may decide to publish the decision anonymously. The Market abuse regulation confirmed this approach and has added as an option not to publish the decision.

The AMF informs the public about enforcement initiatives in several ways in addition to the publication of enforcement decisions. At least on an annual basis, the AMF organizes a full day of presentations and information for compliance officers of investment service providers and asset management companies. In addition, the Enforcement Committee holds an annual conference presenting the major themes and topics encountered during the year as well as for the following year. The AMF's annual report also contains a review of the inspections and investigations of the year which can highlight certain points.

The AMF is authorized to inform the public of the observations that it may have made to issuers. For example, it published on its website, the names of the companies which have published their financial statements late.
Finally, the AMF can publish the administrative injunctions that it has addressed to an investment service provider or an issuer.

6. Please provide information regarding your jurisdiction's track record of enforcement activity for the last [three] years and the use of civil or criminal enforcement authority against individuals and entities, including
    a. information about the number of actions taken;
    b. the types of violations subject to action, including in connection with requirements for which substituted compliance is sought (*e.g.*, capital and margin, business conduct, etc.); and
    c. the outcomes of such actions, including whether money was returned to harmed investors. In responding, please provide information about the types of penalties

assessed and length of time from initiation of an investigation to the date of charge or closure.

During the three year period 2016-2018, the AMF's Enforcement Committee pronounced 48 decisions. Each decision can cover more than one person (legal or physical) and more than one breach. Of those decisions, five were related to the breaches of MiFID which is the most important text as concerns investment service providers.

The rest of the sanction decisions concern violation of financial regulation (principally concerning offences related to market abuse and financial information of an issuer), breaches of organizational rules and operations of investment service providers, management company and financial investment advisors.

Concerning the outcome of such actions, the AMF's Enforcement Committee has not yet pronounced a decision which permits the return of money to harmed investors. Since 2016, however, the legislation allows the AMF's Enforcement Committee to provide that the financial penalties applicable to investment service providers may be subject to an increase, up to a limit of 10% of their amount, intended to finance assistance to victims.

In addition, it should be noted that since 2011, the AMF has also, alongside its sanctioning power, the possibility of concluding settlement agreements. These agreements may, in certain cases, make it possible to compensate customers or investors who have suffered damage as a result of the breaches of rules of investment service providers, management company or financial instruments management advisors.

The length of time from the initiation of an investigation to the charge or closure is approximately 3 years for decisions concerning breaches of organizational rules and operations of investment service providers and between 3 and 4 years for decisions concerning offences related to financial information or market abuse issues.

7. Please describe whether the enforcement authorities in your jurisdiction have readily accessible mechanisms to obtain documents and other forms of assistance from a foreign enforcement authority. In responding, please address:
    a. whether your jurisdiction has ratified international conventions, treaties and agreements relevant to cooperation in enforcement matters,
    b. whether the relevant authorities in your jurisdiction have signed the IOSCO MMoU or IOSCO EMMoU, and
    c. whether your jurisdiction has any legal requirements to preserve records obtained in the course of investigative matters such that those records would be available upon request from another enforcement authority.

The AMF was one of the early signatories of the IOSCO MMOU and is one of its major users in Europe according to the IOSCO statistics. It is also signatory to numerous bilateral MOUs and to the Administrative Arrangement recently finalized by IOSCO and ESMA with the Europe Data Protection authorities.
The exchange of information by the AMF with its counterparts within Europe or outside of Europe is done in the framework of the said MMOU or MOUs. Any information received

from a foreign counterpart cannot be transferred outside of the AMF without the prior consent of the sending authority.
With regard to the conservation of data collected by the AMF, the timeframe is set in the different EU texts.
As mentioned in the reply to question 4 above, the AMF is required to convey to the public prosecutor (*Procureur de la République*) any information gathered during an investigation which may be evidence of a crime. If the information that it wishes to communicate has been provided by another financial market authority through international cooperation, the AMF must obtain that authority's permission to transfer it.

Section III – Supervisory and Enforcement Cooperation

1. Please describe your jurisdiction's ability to share, and the process for sharing, non-public information with (or obtain it for) authorities such as the SEC. In responding, please address any limitations for sharing (a) information from Regulated Entities and (b) internal work product. Please address whether any blocking statutes, privacy or secrecy laws, or other legal or regulatory requirements impede sharing information, including customer or employee information, by authorities or firms located in your jurisdiction.

The AMF can cooperate and exchange information with authorities such as the US SEC in accordance with French laws and more specifically the Articles L. 632-7 and L. 632.16 of the MFC detailed below.

To cooperate with its counterparts, the AMF may sign cooperation agreements to organise the relations with them.

The AMF signed the IOSCO MMoU as did the SEC. Moreover, the AMF and the SEC signed bilateral agreements in a number of areas such as in the context of the AIFMD, and for the supervision of LCH SA.

The existing French blocking statute does not prevent the AMF from cooperating with authorities such as the SEC.

The AMF as any person in Europe is subject to the provisions of regulation (EU) 2016/679 of the European Parliament and of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - GDPR). To ensure the continuity of the exchange of information between authorities, ESMA and IOSCO implemented the AA (Administrative Arrangement) which provides a framework for the exchange of personal data between authorities. The AA was signed both by the AMF and the SEC.

The process for sharing non public information is described in the cooperation agreements signed by the AMF and the SEC.

Informal translation of the articles mentioned above

Art. L. 632-7. - I. - As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign individuals or foreign legal entities, the Autorité de Contrôle Prudentiel and the Autorité des Marchés Financiers may enter into cooperation agreements with the equivalent authorities of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement which make provision, inter alia, for the exchange of information. As an exception to those same provisions, the Banque de France may enter into cooperation agreements with public authorities responsible for the supervision of payment systems and systems for the settlement and delivery of financial instruments which make provision, inter alia, for the exchange of information. The information communicated must be afforded guarantees of professional secrecy at least equal to those that the French authorities which are party to said agreements are subject to. Said exchange of information must be intended for the performance of said competent authorities' duties.

Art. L. 632-16. − The Autorité des Marchés Financiers may carry out monitoring, inspection and investigatory activities at the request of foreign authorities having similar powers. Where such activities are carried out on behalf of authorities of a country which is not a Member State of the European Community and not party to the European Economic Area Agreement, they shall be carried out subject to reciprocity. As an exception to the provisions of Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of a financial or technical nature to foreign individuals or foreign legal entities, the obligation of professional secrecy stipulated in paragraph II of Article L. 621-4 shall not hinder communication by the Autorité des Marchés Financiers of the information it holds, or which it gathers at their request, to foreign authorities which exercise similar powers and are bound by the same obligations of professional secrecy. Where said communication is made to authorities of a State which is not a Member State of the European Community and not party to the European Economic Area Agreement, it shall take place subject to reciprocity. In the performance of its duties, the Autorité des Marchés Financiers may also exchange confidential information relating to the obligations referred to in Articles L. 412-1, L.451-1-2 and L. 451-1-3 with entities to which said authorities have delegated the discharge of their obligations, provided that such entities are bound by the same obligations of professional secrecy. To this end, the Autorité des Marchés Financiers may enter into agreements which organise its relations with said delegated entities. The provisions of Article L. 632-5 and of paragraph III of Article L. 632-7 shall apply to the activities governed by this article. In addition to the agreements referred to in Article L. 632- 7, for implementation of the preceding paragraphs the Autorité des Marchés Financiers may enter into agreements which organise its relations with foreign authorities exercising powers similar to its own. The agreements referred to in Article L. 632-7 and in the preceding paragraph shall be approved by the Autorité des Marchés Financiers as provided for in Article L. 621-3.

2. Under your jurisdiction’s relevant laws, regulations, and policies, would the SEC, (a) have prompt access to the books and records of a Regulated Entity located in your jurisdiction, and (b) be able to conduct onsite inspections or examinations of a Regulated Entity located

in your jurisdiction? Please describe any applicable limitations or conditions on such access.
According to Article L. 632-17 of the MFC, credit institutions and investment firms, under the supervision of the AMF, may under the conditions specified in a cooperation agreement mentioned in Article L. 632-7 of the MFC, subject to reciprocity, communicate to equivalent authorities the information needed to perform their respective duties. This includes the information covered by professional secrecy under the condition that these equivalent authorities are bound by the same obligations of professional secrecy within a legal framework offering similar guarantees to those applicable in France. This article, which allows, under certain conditions, French entities to cooperate directly with equivalent authorities does not derogate from the provisions of the French blocking statute. Therefore, the direct exchange of information shall be made strictly in accordance with the terms of the cooperation agreement and exclusively for supervisory purposes. Moreover, we draw your attention on Article 1 of the blocking statute which prohibits the communication of information, no matter in what form, which communication is likely to infringe the sovereignty, the safety, the essential economic interests or the public order of France. The communication by French entities of any information directly to the SEC containing personal data shall respect the provisions of GDPR. The conduct of onsite inspections or investigations is possible and organised according to the modalities detailed in the cooperation agreement.

Annex

Extracts from France's answers to questions 29 to 31 of FSAP 2019 questionnaire

Supervisory approach
29. Please describe your general approach to and the methods you use in the supervision of **each type of market intermediary** (e.g., if you use a risk-based approach, please provide the relevant details on how and which risks have an impact on the nature and frequency of your supervisory activities). If possible, please share copies of the relevant internal procedures relating to monitoring and supervising market intermediaries and their activities.

ACPR: • There are robust requirements for investment services providers, which include capital, fit-and-proper, and organizational requirements. Investment services providers are subject to minimum capital requirements and must report their financial situation on a periodic basis, including annual audited financial statements, semi-annual results and supervisory reporting included in Regulation (EU) n°575/2013 (« CRR ») on a quarterly basis . They are must have in place internal controls and risk management processes. The ACPR conducts onsite inspections on investment services providers.

• Capital adequacy requirements

Investment services providers including credit institutions and investment firms are subject to minimum capital requirements.

Capital: ensure that the firm meets the minimum capital requirement (Art. L532-2-2 and Order of 4 December 2017); The minimum capital requirement for investment firms (see Order of 4 December 2017) depends on the investment services provided:

- €125 000 for investment advice, reception and transmission of orders, executing orders and portfolio management for third parties (€50 000 when such services are to be provided without custody of client assets) ;

- €730 000 for trading for own account, underwriting, placing and operating an MTF or an OTF.

Substantially higher requirements apply to individual and general clearing members firms carrying out securities custody activities. These firms are subject to a minimum capital requirement of €3.8 million. Components of capital and own funds and the method for their calculation are defined in Regulation (EU) n°575/2013 (« CRR »).

• Own funds requirements

Investment firms are subject to the own funds requirements laid out in the CRR Regulation, depending on the investment services provided:

- at least one quarter of the fixed overheads of the preceding year for investment firms providing investment advice, reception and transmission of orders, executing orders, portfolio management for third parties, placing of financial instruments without a firm commitment basis, operating an MTF or an

OTF (delegated Regulation (EU) n°2015/488 of 4 September 2014 as regards own funds requirements for firms based on fixed overheads);

- own funds requirements laid down in article 92 of CRR Regulation for credit institutions and investment firms dealing for own account or underwriting and/or placing financial instruments on a firm commitment basis.

• Large exposures

Part 4 of CRR Regulation is applicable to credit institutions and investment firms dealing for own account or underwriting and/or placing financial instruments on a firm commitment basis. The maximum exposure allowed for one counterparty is limited to 25 percent of own funds (weightings can be applied to the counterparty depending on their level of risk).

• Liquidity

As set out in part 6 of CRR Regulation, credit institutions and investment firms dealing for own account or placing financial instruments on a firm commitment basis must have policies and procedures for measuring and managing their liquidity risk on an ongoing and forward-looking basis. Such policies and procedures must be reviewed regularly and contingency plans to deal with any liquidity crisis must be in place. Investment services providers that are credit institutions are subject to the liquidity coverage ratio laid down in delegated Regulation (EU) n°2015/61 of 10 October 2014, calculated by comparing high-quality liquid assets with its net cash flow over a 30-day stress period.

• Risks

In accordance with Title IV of Order of 3 November 2014 relating to internal control of credit institutions and investment firms, investment services providers must set up risk analysis and risk measurement systems that are suited to the nature and the volume of their transactions in order to assess the different types of risk to which all transactions undertaken expose them, particularly credit risk, market risk, overall interest rate risk, intermediation risk, settlement risk, liquidity risk and operational risk. Investment services providers must also have sound, effective and comprehensive systems and procedures to assess and maintain, on an ongoing basis, the amounts, types and distribution of internal capital that they deem to be appropriate in terms of the nature and level of risks to which they are or might be exposed. These systems and procedures must be subject to regular internal reviews to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities.

• Consolidated supervision

According to article 258 of Order of 3 November 2014, any investment services provider supervised on a consolidated basis must prepare at least once a year a report on the measurement and monitoring of its exposures.

• Internal control

Investment services providers are subject to internal control requirements by the ACPR, which mainly stem from Order of 3 November 2014. Pursuant to article 2 of this Order, investment services providers (other than portfolio management companies) must set up an internal control system, including:

i) a system of controls of operations and internal procedures;

ii) the organization of accounting and information processing systems;

iii) risk and result measurement systems;

iv) risk monitoring and risk control systems;

v) a documentation and information system;

vi) a system for monitoring flows of cash and securities.

Investment services providers must set up an adequate internal control system by adapting the system to the nature and volume of their activities, their size, and the various types of risk to which they are exposed.

Investment services providers must appoint an officer responsible for ensuring the coherence and effectiveness of the periodic controls. The staff responsible for periodic controls must perform their assignments independently of all the entities and services to which their controls relate.

The resources allocated to periodic controls must be sufficient to enable a full audit review of all operations over as few years as possible. A schedule of audit tasks must be drawn up at least once a year on the basis of the annual internal control objectives set by the executive and the decision-making body. Investment services providers must define procedures to enable the officer in charge of the periodic controls to inform directly and on his own initiative the audit Committee of any non-implementation of the corrective measures decided on. Investment services providers must ensure that the control system is well integrated into the organization, methods and procedures for each activity and that the periodic controls apply to the entire organization, including its branches, and to all undertakings under its exclusive or joint control.

Investment services providers must designate a person responsible for the controls of compliance. Such person cannot be an executive, nor participate in the commercial operations of the investment services provider. They must also designate a person in charge of risk management. The executive body and the decision-making body are responsible for making sure that the investment services provider complies with its obligations under this Order. They are obliged to regularly assess and control the effectiveness of policies, systems and procedures set up to comply with this Regulation and take the appropriate measures to remedy possible failings.

• Segregation of functions

Pursuant to the Order of 3 November 2014, the organization of investment services providers, and in particular their permanent control function, must be designed to ensure that units responsible for initiating transactions operate independently of those responsible for validating them, in particular at the accounting level, for settling them and for implementing the missions of the risk function. Such independence may be secured by ensuring that the units report to different management bodies at a sufficiently senior level, or by setting up an organization in which duties are clearly segregated, or by implementing procedures (which may be computerized) specifically designed for this purpose, in which case the institution must be able to demonstrate that they are appropriate and sufficient. The remuneration of employees in units responsible for validating transactions must be determined independently of that of the business areas whose transactions they validate or verify and must be

adequate to attract qualified and experienced staff; in addition, it must take account of the achievement of the objectives associated with the function.

Investment services providers must introduce procedures that make it possible to monitor and evaluate the effective implementation of actions designed to remedy any malfunction in relation to the applicable obligations and standards regarding compliance risk.

In accordance with the Order of 3 November 2014, investment services providers must apply compensation policies and implement procedures designed to forestall risks and conflicts of interest, in compliance with the relevant provisions regarding the consideration of risk in compensation policy in the same Regulation and consistent with the professional standards that transpose the principles and measures laid down by the Financial Stability Board.

The remuneration of employees in a risk function must be determined independently of that of the business areas whose transactions they verify and must be adequate to attract qualified and experienced staff; in addition it must take account of the achievement of the objectives associated with the function.

• Protection of clients' assets

Article L533-10-I-8 of the COMOFI requires investment firms, when holding financial instruments belonging to clients, to safeguard clients' ownership rights, and to prevent the use of a client's instruments on own account except with the client's express consent. Investment firms must apply the segregation rules laid down in the Order of 6 September 2017 on client funds.

• Anti-money laundering

With respect to anti-money laundering, Art. L 561-5 and 561-6 of the COMOFI require investment services providers to collect information on the purpose and nature of the business relationship before commencing it, as well as any other relevant information on the client, and to conduct enhanced ongoing monitoring of the business relationship according to the risks of money-laundering and terrorist financing. Where relevant, investment services providers are also required to identify beneficial owners by means adapted to the situation, and to verify their identity with the help of any appropriate supporting evidence, consistently with risks of money-laundering and terrorist financing. Investment services providers must be able to justify upon request the extent of the measures they take (Art. L 561-5 and R 561-7 of the COMOFI). The ACPR issued guidelines regarding beneficial owners (definition, identification and verification, suspicious transaction reporting, record-keeping and internal control requirements). Investment services providers are expected to adapt the contents of their customer due diligence measures, including identification and verification measures, to the level and nature of money-laundering risks.

AMF:

Asset management companies

The AMF has mechanisms to detect general failure of compliance of other regulatory requirements:

• The AMF requires the regulated entities to provide specific information on a regular basis. This information includes among other things disclosure of accounts, revenues, profits, assets under management etc. Any suspicious item can therefore be detected and analyzed.

• The AMF also requires the regulated entity to notify the regulator for any significant changes compared with the agreement file that was provided when the entity was regulated; For instance, it includes changes in key personnel, changes in the compliance officer etc. Any changes that are not properly documented and/or explained will be detected and investigated.

• The AMF has a database based on a risk assessment of regulated entities and can prioritize which entities show the highest risk. The AMF scoring system is used for the portfolio management entities. This system enables to rank the risk of a portfolio management company based on the result of past controls, profitability, funds annual turn-over rates etc. The scoring also uses the information contained in the annual controls reports written by the compliance officers at the request of the AMF. The reports details how the regulated entities have put systems in place in order to comply with the regulation. The answers given are used to feed the scoring system.

• The AMF asks the regulated entities to provide answers on regulatory questions. That way, the AMF can detect if an entity has adequate measures in place to comply with a particular regulatory requirements or inconsistency, by comparing compliance reports from one year to another.

This statistic approach is completed by a risk driven approach. Those risks are identified via multiple sources:

- Exchanges with ManCo during the authorization process and during on-going supervisions. During those exchanges analysts may detect anomalies.

- SMART VL tool. This tool is based on daily NAV reporting of CIS and performs automated alerts based on statistic tools (e.g. worst performance over the quarter in its category…). These alerts are scored by analysts (both quantitative and qualitative score) and a formal meeting is organized to review on a case by case the most critical alerts.

- Analysis of complaints by investors or third parties.

All these risks contribute to our case-by-case analysis which can lead, where relevant, to an on-going supervision (e.g. exchange of letters…) or an on-site inspection.

Financial advisors

The AMF continues its action to strengthen the financial investment advisors (CIF) monitoring system. In the first half of 2018, the AMF finalized the implementation for the CIFs of a similar MIF II regime. In this context, the CIF associations must set up and send back to the AMF their procedure for joining the new CIFs, their membership withdrawal procedure and their code of conduct, the latter to be approved by the College of the AMF. Each CIF in addition to communicating with its association is an activity program that does not have a standard format and was created by the AMF in early 2018. The CIF associations have 5 years to control activity programs of their members.

In addition, the introduction of an annual information form that each CIF must send back to the AMF, allows her to have a better knowledge of these professionals. This form has been completed in 2018 to allow the identification of financial instruments most regularly recommended by the CIF. Lastly, the AMF's control department completed the checklist on CIF's professional associations as part of the missions with diligence to their members.

With regard to control practices, the AMF has developed and implemented a specific methodology that makes it possible to control a theme selected from the professional obligations specific to CIF status and applied to a large number entities. This control policy, in parallel with that of controlling the CIF on the basis of risk identification, consists of a search permit for coverage in terms of controls and knowledge of covered entities.

Between 2016 and 2017, the AMF conducted 140 so-called "mass" controls on CIFs spread over ten French cities, with the support of external firms or regional branches of the Banque de France. With regard to more "traditional" controls, the usual and general theme of the customer relationship has been dealt with, focusing on a particular risk zone, the marketing of atypical products (14 traditional controls launched from alerts). Several controls also included an AML / CFT component.

Other investment service providers

A reflection was initiated by the AMF in 2014 on the control policy of investment service providers (ISPs). The staff of the division in charge of the monitoring of market intermediaries has been significantly strengthened in recent years, with a 50% increase in the number of employees in four years, in particular to cope with the numerous regulatory initiatives taken in post-crisis Europe. This increase in headcount has also helped to reinforce the supervision of the main establishments ("Tier 1") and branches (of foreign PSI in France, and of French PSI abroad). As a corollary, the control proposals have focused more on "Tier 1" institutions and have more often resulted in repressive measures.

Supervisory approach

30. Please describe your approach to and priorities for the off-site and on-site inspections of **each type of market intermediary**.
    a. Please include in your description information for the past three years on periodic, thematic and for cause inspections conducted and the criteria used to select firms for such inspections. Please mention the themes covered.
    b. Please ensure that the information covers any inspections related to cross-border activities or that have been conducted in cooperation with foreign authorities.

AMF: The AMF is continuing its efforts to strengthen its supervision of financial investment advisors ("FIA"). In the first half of 2018, the AMF finalized the implementation for the FIA of a regime similar to that resulting from the MiFID 2 directive. In this context, the FIA associations must in particular update and send back to the AMF their membership procedure for new FIA their membership withdrawal procedure and their code of conduct, the latter to be approved by the AMF Board. In addition, each FIA is now required to provide its association with a program of activities, a standardized format of which has been developed by the AMF at the beginning of 2018. The FIA associations have 5 years to control all the activity programs of their members.

The setting up of an annual information form that each FIA must send back to the AMF has allowed it to have a better knowledge of these professionals. This form was completed in 2018 to identify the financial

instruments most regularly advised by the FIAs. The AMF's inspection department has reinforced the content of the checklist on which FIA's professional associations rely in the context of their missions to their members.

With regard to control practices, the AMF has developed and implemented a specific methodology that makes it possible to control a theme selected from the professional obligations specific to FIA status and applied to a large number of FIAs. This control policy, conducted in parallel with that of controlling FIAs on a risk-based approach, has made it possible to increase coverage in terms of controls but also of knowledge of these FIAs.

Between 2016 and 2017, the AMF conducted 140 "mass" controls on FIAs spread over ten French cities, with the support of external firms or regional branches of the Banque de France. With regard to more "traditional" controls, the usual and general theme of the customer relationship has been dealt with, focusing on a particular risk zone, the marketing of atypical products (14 traditional controls launched from alerts). Several controls also included an AML / CFT component.

In 2017, the AMF opened 47 controls against 36 in 2016. 12 controls were conducted on investment services providers (ISP) (excluding asset management companies (AMC), 24 on AMC and 11 on FIAs (excluding mass controls). They focused on actors of very different sizes and on very varied topics.

For the ISPs, the controls covered the themes of commercialization of financial instruments (including controls launched from alerts), on former FIAs recently approved as ISP, on Financial Research and on asset management mandates, on reporting requirements for EMIR transactions and best execution.

For AMC, controls included asset management in money market and bond instruments, private equity, levy of fees, ETFs, asset management in structured products and securitization.

Particular attention was paid to key recurring themes in terms of investor protection : procedure and management of conflicts of interest in areas such as fund management or marketing products, internal control systems and traceability of internal controls, compliance with activity programs and AMC capital requirements, quality of the information contained in the marketing materials provided to investors, compliance with the rules set out in the regulatory and contractual documents for the products, conformity and relevance of the valuation systems. In the continuity of previous years, several controls included a component relating to AML / CFT.

For FIAs, controls were opened on the respect of their professional obligations (operation of the commercial networks and FIA providing financial advice to institutional investors), as well as controls based on alerts relating to the commercialization of financial instruments.

Regarding the control program of ISP and AMC, the AMF has decided to initiate a practice of short missions called "SPOT controls" which consist in controlling concomitantly several institutions on the same topic precisely identified upstream. The objective pursued by this practice, provided for by the AMF's new strategic plan, is to hold market players accountable, to inform them at the beginning of the year of the priority monitoring and control themes determined according to the risks identified by the AMF, and to increase the coverage of the ISP and AMC controlled, this with steady human resources perimeter and lightening of the formalism of the controls according to the circumstances. At the end of these thematic reviews, the good and bad practices identified are the subject of a public communication for educational purposes. The AMF has programmed the launch of 7 short mission campaigns in 2018 covering 35 entities

(at 31/08/2018, 6 campaigns have been launched since 01/01/2018), in addition to the 20 classic control missions anticipated over the period in the ISP and AMC scope.

Regarding the topics related to the ISP population (excluding AMC), short missions have already been initiated in 2018 on the knowledge and experience of clients in terms of investment (1 campaign) and on the portfolio management service for third parties (2 campaigns). At the same time, 10 standard control missions are planned for the year 2018 on topics such as SCPI / EMTN marketing, risk control in mandate management or the implementation of the EMIR regulation. As of 31/08/2018, 7 classic control missions have been launched since 01/01/2018.

With regard to the topics relating to the AMC population, short missions have already been initiated in 2018 on the investment of AMC's own funds, valuation mechanisms within AMC and SRI management. The latest campaign in 2018 will focus on efficient portfolio management operations. At the same time, 10 standard control missions are planned for the year 2018 on topics such as money market funds and temporary securities sales, on the valuation of complex products, on additional costs not included in the fund's prospectus and on the SRI. As of 31/08/2018, 9 classic control missions have been launched since 01/01/2018.

The AMF inspection guide (available in English and French on the AMF website) sets out the procedures for carrying out inspections in accordance with applicable legal and regulatory provisions. In addition, it describes the principles of good conduct for inspectors and the behaviour expected of persons who are summoned during an inspection. An information sheet is also provided to market intermediaries at the launch of short thematic inspections (SPOT inspections, SPOT standing for "Operational and Thematic Supervision of Practices") to determine the specific process for such type of inspections.

The Investigation Department is not directly in charge of enforcing market intermediaries' compliance. But, during the course of investigations on market abuse, investigators collect data on suspicious transactions, their audit track, the characteristics of the orders… On this occasion, they can detect anomalies on which they investigate further. They can qualify breaches of legal requirements. In this case, market intermediaries of any type can be prosecuted.

An Investigation guide, available on the AMF's website, specifies the rights and obligations of investigators and persons asked to cooperate with an investigation and sets out the rules of conduct applicable to investigators and the behavior expected of persons asked to cooperate.

The Investigation department has no information on approaches and methods of criminal authorities.

ACPR: Review of capital and prudential requirements

The ACPR monitors capital and prudential requirements through the risk assessment system (RAS) called Organization et Renforcement de l'Action Préventive (ORAP2), which is a key tool for the identification of the nature, importance and scope of the risks to which individual investment services providers are exposed. The outcome of this analysis is used to prioritize supervisory work. ORAP summary reports are provided to senior management in ACPR and to the College as it reviews the supervisory findings and potential interventions.

In addition, there is a department dedicated to macro prudential analysis, which produces a monthly publication that is provided to all directors, and which therefore feed into the analysis of individual firms.

Trends, developments, and risks for the French financial system at large are monitored, summarized in a bi-annual report, and input to offsite analysis carried out for individual firms.

The results of such analysis are used to determine the intensity of both ongoing (offsite) monitoring as well as onsite inspections.

The risk assessment methodology is based on the analysis of 10 individual indicators:

1) Business model risk and profitability

2) Internal governance and risk management

3) Credit and counterparty risk

4) Market risk

5) Interest rate risk in the banking book

6) Operational risk

7) Capital adequacy

8) Liquidity risk

9) Anti-money laundering framework

10) Segregation of funds

For most indicators, both the materiality of the risk and the adequacy of the internal control system for that risk are separately assessed. Each major risk category is rated (with a combined score of 1 to 4 where both the materiality of the risk and the adequacy of the internal control system for that risk are assessed). Both financial ratios and rating of the quality of risk management and control systems feed into the analysis. Following the rating of these individual criteria, a global rating (ranging to 1, best, to 4, worst), encompassing all 10 individual scores, is assigned to the institution. Both the individual ratings and the global rating are supported by written qualitative (and, for the larger groups, quantitative) analysis, which also underlines the specific areas that may require closer monitoring.

Higher risk firms are subject to more intense monitoring, including additional ad-hoc reporting obligations that can be imposed by the ACPR pursuant to Art. L 612-24 of COMOFI.

Based on the general priorities identified by the Supervisory Board and the proposal made by the offsite supervisors, the general secretary of the ACPR approves each year an inspection program selecting which entities will be subject to onsite inspection. When making its proposal, the offsite supervisory team typically gives more priority to the large and high risk institutions and takes into consideration the risk rating assigned to each investment services provider, and also the date of its last inspection and/or its date of authorization. Based on their request the onsite supervisory team indicates whether the detailed program is feasible or not.

In addition to the full inspections the offsite supervisors monitor developments and may require actions from the investment services providers. They may also visit the investment services provider to look into specific issues.

• Onsite inspections

Below a summary of the number of onsite inspections conducted by the ACPR in the last 3 years:

Onsite inspections conducted by the ACPR	2016	2017	2018
Investment firms	2	2	4

Supervisory approach
31. Please provide information on the way you utilize SupTech in supervising market intermediaries.

ACPR: Through collaboration with Banque de France and especially its innovation center ("Le LAB"), ACPR has started in July 2018 developing a strategy that aims at:

- identifying the most promising use cases of Suptech so as to enhance the performance of its functions;

- following that exploratory phase, launching innovative projects for ACPR.

This Suptech strategy is taken in charge by the Fintech-Innovation unit of the ACPR. The supervision of market intermediaries will be included in that strategy.

AMF : So far, there is no utilization of SupTech, in the sense that it is traditionally understood, that has been made by the AMF in order to supervise market intermediaries.

However, the AMF have developed some analytical tools to help us fulfill our missions of regulators such as for example "ICY".

In order to better supervise market intermediaries the AMF has launched a new monitoring system based on big data technologies called "ICY". The AMF's new ICY platform has been developed internally with the backing of the IT company called Neurones. This solution, based on Big Data technologies, is used by the AMF to quickly screen data representing large and varied trading volumes. Hence, the AMF has significantly greater capacity to archive data and perform multivariate analysis, while also adding innovative new functions.

This collaboration thus reinforces the AMF ability to examine transactions in real time, make it quicker to react, and improve the detection of market abuses through the use of artificial intelligence tools such as machine learning.

Finally, the use of IT analytical tools and Suptech by the AMF may evolve over the next few years.