SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92716; S7-09-21]

August 20, 2021

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

AGENCY: Securities and Exchange Commission.

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

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is soliciting public comment on an application by the Spanish Comisión Nacional del Mercado de Valores ("CNMV") requesting that, pursuant to rule 3a71-6 under the Securities Exchange Act of 1934 ("Exchange Act"), the Commission determine that registered security-based swap dealers and registered major security-based swap participants (together, "SBS Entities") that are not U.S. persons and that are subject to certain regulation in the Kingdom of Spain ("Spain") may comply with certain requirements under the Exchange Act via compliance with corresponding requirements of Spain and the European Union ("EU"). The Commission also is soliciting comment on a proposed Order providing for conditional substituted compliance in connection with the application.

DATES: Submit comments on or before September 20, 2021.

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

Electronic comments:

- Use the Commission's Internet comment form (https://www.sec.gov/rules/submitcomments.htm); or

- Send an email to rule-comments@sec.gov. Please include File Number S7-09-21 on the subject line.

Paper comments:

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

All submissions should refer to File Number S7-09-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/proposed.shtml). Typically, comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

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

SUPPLEMENTARY INFORMATION: The Commission is soliciting public comment on an application by the CNMV requesting that the Commission determine that SBS Entities that are not U.S. persons and that are subject to certain regulation in Spain may satisfy certain

requirements under the Exchange Act by complying with comparable requirements in Spain, including relevant EU requirements. The Commission also is soliciting comment on a proposed Order, set forth in Attachment A, providing for conditional substituted compliance in connection with the CNMV application.

I. Background

On August 6, 2021, market participants began to count security-based swap positions toward the thresholds for registration with the Commission as an SBS Entity.[1] Exchange Act rule 3a71-6[2] conditionally provides that non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F[3] by complying with comparable regulatory requirements of a foreign jurisdiction.[4] Substituted compliance potentially is available in connection with

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

2 17 CFR 240.3a71-6.

3 15 U.S.C. 78o-10.

4 The Commission also has discussed the parameters of substituted compliance in connection with substituted compliance requests for other jurisdictions. See, e.g., Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726 (Nov. 13, 2020) ("German Substituted Compliance Notice and Proposed Order"); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) ("German Substituted Compliance Order"); Exchange Act Release No. 92647 (Aug. 12, 2021), 86 FR 46500 (Aug. 18, 2021) ("German Substituted Compliance Notice and Proposed Amended Order"); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) ("French Substituted Compliance Notice and Proposed Order"); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) ("French Substituted Compliance Re-Opening Release"); Exchange Act Release No. 92494 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) ("French Substituted Compliance Order"); Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) ("UK Substituted Compliance Notice and Proposed Order"); Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (August 6, 2021) ("UK Substituted Compliance Order"); Exchange Act Release No. 92632 (Aug. 10, 2021), 86 FR 45770 (Aug. 16, 2021) ("Swiss Substituted Compliance Notice and Proposed Order").

requirements regarding business conduct and supervision;[5] chief compliance officers;[6] trade acknowledgment and verification;[7] non-prudentially regulated capital and margin;[8] recordkeeping and reporting;[9] portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.[10]

Substituted compliance in part is predicated on the Commission determining the analogous foreign requirements are "comparable" to the applicable requirements under the Exchange Act, after accounting for factors such as the "scope and objectives" of the relevant foreign regulatory requirements and the effectiveness of the relevant foreign authority's or

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5 See Exchange Act rule 3a71-6(d)(1) (requirements regarding business conduct and supervision, including internal risk management, internal supervision, antitrust considerations, disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, "know your counterparty," suitability, fair and balanced communications, daily mark disclosure, disclosure of clearing rights, eligible contract participant verification, special entities, and political contributions).

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

7 See Exchange Act rule 3a71-6(d)(3).

8 See Exchange Act rule 3a71-6(d)(4)-(5).

9 See Exchange Act rule 3a71-6(d)(6) (requirements regarding record creation, record maintenance, reporting, notification, and securities counts).

10 See Exchange Act rule 3a71-6(d)(7). Substituted compliance is not available for antifraud prohibitions and information-related requirements under section 15F. See Exchange Act rule 3a71-6(d)(1) (specifying that substituted compliance is not available in connection with the antifraud provisions of Exchange Act section 15F(h)(4)(A) and Exchange Act rule 15Fh-4(a), 17 CFR 240.15Fh-4(a), and the information-related provisions of Exchange Act sections 15F(j)(3) and 15F(j)(4)(B)). Substituted compliance under rule 3a71-6 also does not extend to certain other provisions of the federal securities laws that apply to security-based swaps, such as: (1) additional antifraud prohibitions (see Exchange Act section 10(b), 15 U.S.C. 78j(b), Exchange Act rule 10b-5, 17 CFR 240.10b-5, and Securities Act of 1933 section 17(a), 15 U.S.C. 77q(a)); (2) requirements related to transactions with counterparties that are not eligible contract participants ("ECPs") (see Exchange Act section 6(l), 15 U.S.C. 78f(l); Securities Act of 1933 section 5(e), 15 U.S.C. 77e(e)); (3) segregation of customer assets (see Exchange Act section 3E, 15 U.S.C. 78c-5; Exchange Act rule 18a-4, 17 CFR 240.18a-4); (4) required clearing upon counterparty election (see Exchange Act section 3C(g)(5), 15 U.S.C. 78c-3(g)(5)); (5) regulatory reporting and public dissemination (see generally Regulation SBSR, 17 CFR 242.900 et seq.); (6) SBS Entity registration (see Exchange Act section 15F(a) and (b)); and (7) registration of offerings (see Securities Act of 1933 section 5, 15 U.S.C. 77e).

authorities' supervisory and enforcement frameworks.[11] Substituted compliance further requires that the Commission and the relevant foreign financial regulatory authorities have entered into an effective supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation and other matters related to substituted compliance.[12] A foreign financial regulatory authority may submit a substituted compliance application only if the authority provides "adequate assurances" that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission "to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission."[13]

Commission rule 0-13[14] addresses procedures for filing substituted compliance applications. The rule provides that the Commission will publish a notice when a completed

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

12 See Exchange Act rule 3a71-6(a)(2)(ii). The Commission, the CNMV and the Bank of Spain are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance. Because the CNMV, Bank of Spain and European Central Bank ("ECB") share responsibility for supervising compliance with certain provisions of EU and Spanish law, the Commission and the ECB have entered into a memorandum of understanding to address cooperation matters related to substituted compliance. These memoranda of understanding or other arrangements will need to be in place before the Commission may allow Covered Entities to use substituted compliance to satisfy obligations under the Exchange Act. The memorandum of understanding with the ECB can be found on its website at www.sec.gov under the "Substituted Compliance" tab, which is located on the "Security-Based Swap Markets" page in the Division of Trading and Markets section of the site. The Commission expects to publish any memorandum of understanding with the CNMV and the Bank of Spain at the same location on the Commission's website.

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

14 17 CFR 240.0-13.

application has been submitted and that any person may submit to the Commission "any information that relates to the Commission action requested in the application."[15]

II. The CNMV's Substituted Compliance Request

The CNMV has submitted a complete substituted compliance application to the Commission ("CNMV Application").[16] Pursuant to rule 0-13, the Commission is publishing notice of the CNMV Application together with a proposed Order to conditionally grant substituted compliance to an entity that (1) is a security-based swap dealer or major security-based swap participant registered with the Commission; (2) is not a "U.S. person," as that term is defined in rule 3a71-3(a)(4) under the Exchange Act;[17] (3) is an investment firm authorized by the CNMV or a credit institution authorized by the ECB to provide investment services or perform investment activities in Spain; and (4) is a significant institution supervised by the CNMV and the ECB (with the participation of the Bank of Spain) (each, a "Covered Entity").[18] In making its substituted compliance determination, the Commission will consider public comments on the CNMV Application and the proposed Order.

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

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

16 See Letter from Rodrigo Buenaventura, Chair, CNMV, dated August 20, 2021 ("CNMV Application"). The CNMV Application is available on the Commission's website at: https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap.

17 17 CFR 240.3a71-3(a)(4).

18 See para. (f)(1) of the proposed Order.

A. Relevant market participants and general conditions

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

B. Relevant section 15F requirements

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

- Risk control requirements—Requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression, and trading relationship documentation.[19]
- Internal supervision, chief compliance officer and antitrust requirements—Requirements related to diligent supervision, conflicts of interest, information gathering, chief compliance officers, and antitrust considerations.[20]
- Counterparty protection requirements—Requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, "know your counterparty," suitability of recommendations, fair and balanced communications, disclosure of daily marks, and disclosure of clearing rights.[21]

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19 See part IV, infra. The CNMV is not requesting substituted compliance in connection with capital and margin requirements applicable to non-prudentially regulated SBS Entities (Exchange Act section 15F(e) and Exchange Act rules 18a-1 through 18a-1d, 18a-2, and 18a-3, 17 CFR 240.18a-1 through 18a-1d, 240.18a-2, and 240.18a-3).

20 See part V, infra.

21 See part VI, infra. The CNMV is not requesting substituted compliance in connection with: eligible counterparty verification requirements (Exchange Act section 15F(h)(3)(A) and Exchange Act rule 15Fh-3(a)(1), 17 CFR 240.15Fh-3(a)(1)); "special entity" provisions (Exchange Act sections 15F(h)(4) and (5); Exchange Act rule 15Fh-3(a)(2) and (3); and

- Recordkeeping, reporting, and notification requirements—Requirements related to making and keeping current certain prescribed records, preservation of records, reporting, and notification.[22]

C. Comparability considerations and proposed Order

Because Spain is a member of the European Union, market participants in Spain are subject to Spanish requirements implemented pursuant to EU directives and to applicable EU regulations. Those include requirements related to: organization, compliance, and conduct;[23] risk mitigation;[24] prudential matters;[25] and certain other matters relevant to the application.[26] In the view of the Spanish Authorities, Spanish and EU requirements taken as a whole produce

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Exchange Act rules 15Fh-4(b) and 15Fh-5, 17 CFR 240.15Fh-4(b) and 240.15Fh-5); and political contribution provisions (Exchange Act rule 15Fh-6, 17 CFR 240.15Fh-6).

22 See part VII, infra.

23 See Markets in Financial Instruments Directive, Directive 2014/65/EU ("MiFID") (implemented in Spain by the Spanish Securities Market Act, Royal Legislative Decree 4/2015, of October 23 ("SSMA"), and Royal Decree 217/2008, of February 15 ("RD 217/2008")); see also Commission Delegated Regulation (EU) 2017/565 ("MiFID Org Reg"); Markets in Financial Instruments Regulation, Regulation (EU) 648/2012 ("MiFIR"); Commission Delegated Directive (EU) 2017/593 ("MiFID Delegated Directive") (implemented in Spain in relevant part by the SSMA and RD 217/2008).

24 See European Market Infrastructure Regulation, Regulation (EU) 648/2012 ("EMIR"); see also Regulation (EU) 149/2013 ("EMIR RTS"); Delegated Regulation (EU) 2016/2251 ("EMIR Margin RTS").

25 See Capital Requirements Directive, Directive 2013/36/EU ("CRD") (implemented in Spain by the Act on Regulation, Supervision, and Solvency of Credit Institutions, Law 10/2014, of June 26 ("LOSSEC"), Royal Decree 84/2015, of February 13 ("RD 84/2015"), and Circular 2/2016, of February 2, of the Bank of Spain ("BoS Circular 2/2016"), as well as in some portions of the SSMA and RD 217/2008); see also Capital Requirements Regulation, Regulation (EU) 575/2013 ("CRR"); Commission Implementing Regulation (EU) 680/2014 ("CRR Reporting ITS").

26 See Market Abuse Regulation, Regulation (EU) 596/2014 ("MAR"); Commission Delegated Regulation (EU) 2016/958 ("MAR Investment Recommendations Regulation"); Anti-Money Laundering Directive, Directive (EU) 2015/849 ("MLD") (implemented in Spain by the Spanish Anti-Money Laundering Act, Law 10/2010, of April 28 ("SMLA")).

regulatory outcomes that are comparable to those of the relevant requirements under the Exchange Act.[27]

In the Commission's preliminary view, requirements under the Exchange Act and requirements under Spanish and EU law maintain similar approaches with respect to achieving regulatory goals in several respects, but follow differing approaches or incorporate disparate elements in certain other respects. The Commission has considered those similarities and differences when analyzing comparability and developing preliminary views, while recognizing that differences in approach do not necessarily preclude substituted compliance in light of the Commission's holistic, outcomes-oriented framework for assessing comparability.[28]

Based on the Commission's analysis of the application and review of relevant Spanish and EU requirements, the proposed Order, located at Attachment A, would grant substituted compliance subject to specific conditions and limitations. When Covered Entities seek to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable Spanish requirements would lead to a violation of those

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27 In support, the CNMV Application incorporates and relies on a series of European Commission analyses that compare EU requirements with applicable requirements under the Exchange Act, in addition to analyses specific to Spanish law and practices, in the areas of: risk control (see CNMV Application Appendix B category 1); recordkeeping, reporting, and notification (see the CNMV Application Appendix B category 2), internal supervision, chief compliance officer, and antitrust (see CNMV Application Appendix B category 3); and counterparty protection (see CNMV Application Appendix B category 4).

28 In this context, the Commission recognizes that other regulatory regimes will have exclusions, exceptions and exemptions that may not align perfectly with the corresponding requirements under the Exchange Act. Where the Commission preliminarily has found that the Spanish regime produces comparable outcomes notwithstanding those particular differences, the Commission proposes to make a positive determination on substituted compliance. Where the Commission preliminarily has found that those exclusions, exemptions, and exceptions lead to outcomes that are not comparable, however, the Commission does not propose to provide for substituted compliance.

Exchange Act requirements and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

III. Scope of and Conditions to Substituted Compliance

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

Under the proposed Order, substituted compliance could be applied by "Covered Entities"—a term that would limit the scope of the substituted compliance determination to SBS Entities that are subject to applicable Spanish requirements and oversight. Consistent with the parameters of substituted compliance under Exchange Act rule 3a71-6, the proposed "Covered Entity" definition provides that the relevant entity must be a security-based swap dealer or major security-based swap participant registered with the Commission, and that the entity cannot be a U.S. person.[29] The proposed "Covered Entity" definition further would provide that the entity must be an investment firm or a credit institution authorized by the CNMV and the ECB to provide investment services or perform investment activities in the Kingdom of Spain and also must be a significant institution supervised by the CNMV and the ECB (with the participation of the Bank of Spain).[30] These prongs of the definition are intended to help ensure that Covered Entities are subject to relevant Spanish and EU requirements and oversight.

B. Conditions to substituted compliance

Substituted compliance under the proposed Order would be subject to a number of conditions and other prerequisites, to help ensure that the relevant Spanish requirements that form the basis for substituted compliance in practice will apply to the Covered Entity's security-

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29 See paras. (f)(1)(i) and (ii) of the proposed Order.

30 See paras. (f)(1)(iii) and (iv) of the proposed Order.

based swap business and activities, and to promote the Commission's oversight over entities that avail themselves of substituted compliance.

1. "Subject to and complies with" relevant Spanish and EU requirements

Each relevant section of the proposed Order would be subject to the condition that the Covered Entity "is subject to and complies with" the Spanish and EU requirements that are needed to establish comparability. Accordingly, the proposed Order would not provide substituted compliance when a Covered Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant Spanish or EU requirements do not apply to the security-based swap activities of a third-country branch of a Spanish SBS Entity. In that event, the Covered Entity would not be "subject to" those requirements, and the Covered Entity could not rely on substituted compliance in connection with those activities.[31]

2. Additional general conditions to help ensure applicability of relevant Spanish and EU requirements

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

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[31] An SBS Entity's "voluntary" compliance with the relevant Spanish requirements would not suffice for these purposes. Substituted compliance reflects an alternative means by which an SBS Entity may comply with applicable requirements under the Exchange Act, and thus mandates that the SBS Entity be subject to the requirements needed to establish comparability and face consequences arising from any failure to comply with those requirements. Moreover, the comparability assessment takes into account the effectiveness of the supervisory compliance program administered and the enforcement authority exercised by the CNMV, the Bank of Spain and the ECB, which would not be expected to promote comparable outcomes when compliance merely is "voluntary."

- Activities as MiFID "investment services or activities"—The Covered Entity's security-based swap activities must constitute "investment services or activities" for purposes of applicable provisions under MiFID; Spanish requirements that implement MiFID; and/or other EU and/or Spanish requirements adopted pursuant to those provisions, and must fall within the scope of the firm's authorization from the CNMV and the ECB.[32]
- Counterparties as MiFID "clients"—The Covered Entity's counterparty (or potential counterparty) must be a "client" (or potential "client") for purposes of applicable provisions under MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions.[33]
- Security-based swaps as MiFID "financial instruments"—The relevant security-based swap must be a "financial instrument" for purposes of applicable provisions under MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions.[34]
- Covered Entity as CRD "institutions"—The Covered Entity must be an "institution" for purposes of applicable provisions under CRD; provisions of LOSSEC, RD 84/2015, BoS

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32 See para. (a)(1) of the proposed Order. Under this condition, a Covered Entity's relevant security-based swap activities must constitute investment services or activities only to the extent that the relevant part of the proposed Order would require the Covered Entity to be subject to and comply with provisions of MiFID, SSMA, RD 217/2008 or related EU and Spanish requirements. The security-based swap activities need not be "investment services or activities" when the relevant part of the proposed Order would not require compliance with one of those provisions (e.g., paragraph (d)(6) of the proposed Order addressing substituted compliance for daily mark disclosure requirements).

33 See para. (a)(2) of the proposed Order.

34 See para. (a)(3) of the proposed Order.

Circular 2/2016, SSMA, and/or RD 217/2008 that implement CRD; CRR; and/or other EU and Spanish requirements adopted pursuant to those provisions.[35]

- Counterparties as EMIR "counterparties"—If an applicable provision under EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity must comply with the applicable provision as if the counterparty were the specified type of counterparty.[36] In addition, the proposed Order would provide that a Covered Entity could not satisfy a condition requiring compliance with those EMIR-based provisions by complying with third country requirements that EU authorities may determine to be equivalent to EMIR.[37]
- Security-based swap status under EMIR— The relevant security-based swap must be, for purposes of applicable provisions under EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, either (i) an "OTC derivative" or "OTC derivative contract," as defined in EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of EMIR article 11, EMIR RTS articles 11 through 15, and EMIR Margin RTS article 2; or (ii)

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35 See para. (a)(4) of the proposed Order.

36 See para. (a)(5)(i) of the proposed Order. In this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority (including Member State authorities), it must treat the counterparty as if the counterparty were a financial counterparty.

37 See para. (a)(5)(ii) of the proposed Order.

cleared by a central counterparty that is authorized or recognized to clear derivatives contracts by a relevant authority in the EU.[38]

- Memoranda of Understanding—The Commission and the CNMV and the Bank of Spain must have an applicable memorandum of understanding or other arrangement addressing cooperation with respect to the Order at the time the Covered Entity makes use of substituted compliance.[39] The CNMV, Bank of Spain, and ECB share responsibility for supervising compliance with some of the provisions of EU and Spanish law addressed by the proposed Order.[40] To ensure the Commission's ability to receive information about these Covered Entities that may belong to the ECB, the proposed Order would require that, at the time such a Covered Entity makes use of substituted compliance with respect to those requirements, the Commission and the ECB also must have a memorandum of understanding and/or other arrangement addressing cooperation with respect to the Order as it pertains to this ECB-owned information.[41]

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38 See para. (a)(6) of the proposed Order.

39 See para. (a)(7) of the proposed Order.

40 For example, the proposed Order would make substituted compliance for Exchange Act internal risk management, internal supervision, chief compliance officer, and "know your counterparty" requirements available to Covered Entities that are subject to and comply with, among other requirements, certain provisions of CRD, provisions of Spanish law that implement CRD, and related EU requirements. The CNMV, Bank of Spain, and ECB share responsibility for supervising compliance with each of these requirements. See paras. (b)(1), (c)(3), (d)(3) of the proposed Order.

41 See para. (a)(8) of the proposed Order. In accordance with the terms of the proposed Order, this arrangement will need to be in place at the time a Covered Entity makes use of substituted compliance by complying with any EU or Spanish requirements for which the CNMV, Bank of Spain, and ECB share supervisory responsibility. The Commission and the ECB have entered into a memorandum of understanding to address substituted compliance cooperation, a copy of which is on the Commission's website at www.sec.gov under the "Substituted Compliance" tab, which is located on the "Security-Based Swap Markets" page in the Division of Trading and Markets section of the site.

- Notice of reliance on substituted compliance—A Covered Entity must notify the Commission of its intent to use substituted compliance.[42] In the notice, the Covered Entity would need to identify each specific substituted compliance determination for which the Covered Entity intends to apply substituted compliance.[43] If a Covered Entity elects not to apply substituted compliance with respect to a specific substituted compliance determination in the proposed Order, it must comply with the Exchange Act requirements subject to that determination. Further, except in the case of the counterparty protection requirements and linked recordkeeping requirements discussed below, the Commission has determined that the Exchange Act requirements subject to substituted compliance determinations in the proposed Order are entity-level

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42 See para. (a)(9) of the proposed Order.

43 If the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the substituted compliance determinations for Exchange Act risk control requirements in paragraph (b) of the proposed Order, it would indicate in the notice that it is relying on the determinations in paragraph (b). However, if the Covered Entity intends to rely on the internal risk management, trade acknowledgement and verification, and portfolio reconciliation and dispute resolution determinations, but not the portfolio compression and trading relationship documentation determinations, it would need to indicate in the notice that it is relying on paragraphs (b)(1) through (3) of the proposed Order. In this case, paragraphs (b)(4) and (b)(5) of the proposed Order (the portfolio compression and trading relationship documentation determinations, respectively) would be excluded from the notice and the Covered Entity would need to comply with Exchange Act portfolio compression and trading relationship documentation requirements. Further, as discussed below in part VII.B, the recordkeeping, reporting, notification, and securities count determinations in the proposed Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those requirements for which they want to rely on substituted compliance. For example, paragraph (e)(1)(i) of the proposed Order sets forth the Commission's preliminary substituted compliance determinations with respect to the requirements of Exchange Act rule 18a 5, 17 CFR 240.18a-5. These proposed determinations are set forth in paragraphs (e)(1)(i)(A) through (O). If a Covered Entity intends to rely on some but not all of the determinations, it would need to identify in the notice the specific determinations in this paragraph it intends to rely on (e.g., paragraphs (d)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a-5 requirement.

requirements. Therefore, if a Covered Entity elects to apply substituted compliance to these entity-level requirements, the Commission is proposing that it must do so at the entity level.[44] Finally, a Covered Entity must promptly update the notice if it intends to modify its reliance on the positive substituted compliance determinations in the proposed Order.[45]

- Notification related to changes in capital category – Covered Entities with a prudential regulator would need to apply substituted compliance with respect to the requirements of Exchange Act rule 18a-8(c) and the requirements of Exchange Act rule 18a-8(h) as applied to Exchange Act rule 18a-8(c). Exchange Act rule 18a-8(c) generally requires every security-based swap dealer with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact to the that same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a-8(h).[46] Exchange Act rule 18a-8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a-8 must be made. While Exchange Act rule 18a-8(c) is not linked to an Exchange Act capital requirement, it is linked to capital requirements in the U.S. promulgated by the prudential regulators. In its application, the CNMV cited various Spanish provisions as providing

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44 See part III.C, infra.

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

46 17 CFR 240.18a-8(c).

similar outcomes to the notifications requirements of Exchange Act Rule 18a-8.[47] This general condition would be designed to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by Spanish law. The intent is to align the notification requirement with the EU and Spanish capital requirements applicable to the Covered Entity.

3. European Union cross-border matters

The cross-border application of MiFID, MiFIR, MAR and EU and Member State requirements adopted pursuant to MiFID, MiFIR, or MAR raises special issues. For some provisions of MiFID and MiFIR (and other EU and Spanish requirements adopted pursuant to those provisions of MiFID and MiFIR), EU law allocates the responsibility for supervising and enforcing those requirements to authorities of the Member State in whose territory a Covered Entity provides certain services.[48] To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order requires a Covered Entity to be subject to or comply with one of those MiFID or MiFIR provisions (or other EU or Spanish requirements adopted pursuant to those provisions of MiFID or MiFIR), the CNMV must be the authority responsible for supervision and enforcement of those requirements in relation to the particular service for which substituted compliance is used.[49] Similarly, for some of the EU requirements under MAR (and other EU requirements adopted pursuant to MAR), EU law allocates the responsibility for supervising and enforcing

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47 See LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies.

48 See MiFID article 35(8).

49 See para. (a)(10)(i) of the proposed Order.

those requirements to authorities of potentially multiple Member States. To help ensure that the prerequisites to substituted compliance with respect to supervision and enforcement are satisfied in fact, when the proposed Order requires a Covered Entity to be subject to or comply with one of those MAR requirements (or other EU requirements adopted pursuant to MAR), the Covered Entity may use substituted compliance only if one of the authorities responsible for supervision and enforcement of those requirements is the CNMV.[50]

C. Substituted compliance for entity-level and transaction-level requirements

The proposed Order would permit a Covered Entity to use substituted compliance for one or more sets of entity-level Exchange Act requirements.[51] For example, a Covered Entity could use substituted compliance for internal risk management requirements but comply directly with Exchange Act trade acknowledgment and verification; portfolio reconciliation and dispute reporting; portfolio compression; trading relationship documentation; internal supervision; chief compliance officer; and recordkeeping, reporting, and notification requirements. For any one set of entity-level requirements for which a Covered Entity uses substituted compliance, however, a Covered Entity must choose either to apply substituted compliance pursuant to the proposed Order with respect to all security-based swap business subject to the relevant Spanish and EU

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50 See para. (a)(10)(ii) of the proposed Order.

51 The entity-level requirements for which the Commission is proposing to make a positive substituted compliance determination are: risk control requirements related to internal risk management, trade acknowledgement and verification, portfolio reconciliation and dispute resolution, portfolio compression, and trading relationship documentation; internal supervision and chief compliance officer requirements; and recordkeeping, reporting, notification, and securities count requirements (other than those linked to the counterparty protection rules). See Exchange Act Release No. 87005 (June 19, 2019) 84 FR 68550, 68596 (Dec. 16, 2019) ("Recordkeeping Adopting Release"); Exchange Act Release No. 78011 (June 8, 2016) 81 FR 39808, 39827 (June 17, 2016) ("Trade Acknowledgment and Verification Adopting Release"); Exchange Act Adopting Release No. 87782 (Dec. 18, 2019) 85 FR 6359, 6378 (Feb. 4, 2020) ("Risk Mitigation Adopting Release"); Business Conduct Adopting Release, 81 FR 30064.

requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity may not choose to apply substituted compliance for some of the business subject to the relevant Spanish or EU requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant Spanish and EU requirements. [52] Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant Spanish requirements, the Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.[53] For transaction-level Exchange Act requirements,[54] a Covered Entity may decide to apply substituted compliance for some of its security-based swap business and to comply directly with the Exchange Act (or comply with another applicable substituted compliance order) for other parts of its security-based swap business.

The Commission preliminarily believes that this scope of substituted compliance strikes the right balance between providing Covered Entities flexibility to tailor the application of

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52 For example, the proposed Order would require a Covered Entity applying substituted compliance for internal risk management requirements to comply with the comparable Spanish requirements with respect to all of its internal risk management systems.

53 In the context of the EMIR counterparties condition in paragraph (a)(5), a Covered Entity must choose: (1) to apply substituted compliance pursuant to the Order—including compliance with paragraph (a)(5) as applicable—for a particular set of entity-level requirements with respect to all of its business that would be subject to the relevant EMIR-based requirement if the counterparty were the relevant type of counterparty; or (2) to comply directly with the Exchange Act with respect to such business.

54 The transaction-level requirements for which the Commission is proposing to make a positive substituted compliance determination are: counterparty protection requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, "know your counterparty," suitability of recommendations, fair and balanced communications, and disclosure of daily marks; and the recordkeeping requirements related to those counterparty protection requirements. See Business Conduct Adopting Release, 81 FR 30065.

substituted compliance to their business needs and ensuring that substituted compliance is consistent with the Commission's classification of the relevant Exchange Act requirements as either entity-level or transaction-level requirements.

IV. Substituted Compliance for Risk Control Requirements

A. CNMV request and associated analytic considerations

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

- Internal risk management—Internal risk management system requirements pursuant to Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I).[55] Those provisions address the obligation of SBS Entities to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.[56]
- Trade acknowledgment and verification—Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-2.[57] Those provisions help avoid legal and operational risks by requiring definitive written

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55 The CNMV is not requesting substituted compliance in connection with Exchange Act rule 18a-1(f) or Exchange Act rule 18a-2(c), which include additional internal risk management system requirements for non-prudentially regulated SBS Entities subject to the Commission's capital and margin requirements.

56 See Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70250 (Nov. 23, 2012) (proposing capital and margin requirements for SBS Entities and discussing certain risk management requirements). The CNMV Application discusses Spanish and EU internal risk management requirements. See CNMV Application Appendix B category 1 at 2-20.

57 17 CFR 240.15Fi-2.

records of transactions and for procedures to avoid disagreements regarding the meaning of transaction terms.[58]

- Portfolio reconciliation and dispute reporting—Portfolio reconciliation and dispute reporting requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-3.[59] Those provisions require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps and promptly notify the Commission and applicable prudential regulators regarding certain valuation disputes.[60]
- Portfolio compression—Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-4.[61] Those provisions require that SBS Entities have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.[62]
- Trading relationship documentation—Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi-5.[63] Those provisions require that SBS Entities have procedures to execute written security-based

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58 See Trade Acknowledgment and Verification Adopting Release, 81 FR 39808, 39809, 39820. The CNMV Application discusses Spanish and EU trade acknowledgment and verification requirements. See CNMV Application Appendix B category 1 at 21-34.

59 17 CFR 240.15Fi-3.

60 See Risk Mitigation Adopting Release, 85 FR 6359, 6360-61. The CNMV Application discusses Spanish and EU portfolio reconciliation and dispute resolution requirements. See CNMV Application Appendix B category 1 at 35-44.

61 17 CFR 240.15Fi-4.

62 See Risk Mitigation Adopting Release, 85 FR 6361. The CNMV Application discusses Spanish and EU portfolio compression requirements. See CNMV Application Appendix B category 1 at 44-46.

63 17 CFR 240.15Fi-5.

swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.[64]

Taken as a whole, these risk control requirements help to promote market stability by mandating that SBS Entities follow practices that are appropriate to manage the market, credit, counterparty, operational, and legal risks associated with their security-based swap businesses. The Commission's comparability assessment accordingly focuses on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to providing that Covered Entities follow risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses.

B. Preliminary views and proposed Order

1. General considerations

In the Commission's preliminary view based on the CNMV Application and the Commission's review of applicable provisions, relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with the above risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses. Substituted compliance accordingly would be conditioned on Covered Entities being subject to the Spanish and EU provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with these risk control requirements under the Exchange Act.[65]

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64 See Risk Mitigation Adopting Release, 85 FR 6361. The CNMV Application discusses Spanish and EU trading relationship documentation requirements. See CNMV Application Appendix B category 1 at 46-51.

65 See para. (b)(1) of the proposed Order.

While the Commission recognizes these and certain other differences between Spanish and EU requirements and the applicable risk control requirements under the Exchange Act, in the Commission's preliminary view those differences on balance would not preclude substituted compliance for these requirements, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

2. Additional conditions and scope issues

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

a. Trading relationship documentation—disclosure regarding legal and bankruptcy status

Under the proposed Order, substituted compliance in connection with trading relationship documentation requirements would not extend to disclosures regarding legal and bankruptcy status that are required by Exchange Act rule 15Fi-5(b)(5) when the counterparty is a U.S. person.[66] Documentation requirements under applicable Spanish and EU law do not address the disclosure of information related to insolvency procedures under U.S. law. However, the absence of such disclosure would not appear to preclude a comparable regulatory outcome when

[66] Those disclosures address information regarding the status of the SBS Entity or its counterparty as an insured depository institution or financial counterparty, and regarding the possibility that in certain circumstances the SBS Entity or its counterparty may be subject to the insolvency regime set forth under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act, which may affect rights to terminate, liquidate, or net security-based swaps. See Risk Mitigation Adopting Release, 85 FR 6374 (discussing potential application of alternatives to the liquidation schemes established under the Securities Investor Protection Act of 1970 or the U.S. Bankruptcy Code). The absence of such disclosure would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, as the insolvency-related consequences that are the subject of the disclosure would not be applicable to non-U.S. counterparties in most cases. See also EMIR Margin RTS (in part addressing procedures providing for or specifying the terms of agreements entered into by counterparties, including applicable governing law for non-cleared derivatives, and further providing that counterparties entering into a netting or collateral exchange agreement must perform an independent legal review regarding enforceability).

the counterparty is not a U.S. person, because the insolvency-related consequences that are the subject of the disclosure would not be applicable to non-U.S. counterparties in most cases.[67]

b. Portfolio reconciliation and dispute reporting—EU law-required dispute reports to the Commission

Under the proposed Order, substituted compliance further would be conditioned on the Covered Entity providing the Commission with reports regarding disputes between counterparties, on the same basis as the Covered Entity provides those reports to competent authorities pursuant to EU law.[68] This condition promotes comparability with the Exchange Act requirements to report significant valuation disputes to the Commission,[69] while leveraging EU reporting provisions to avoid the need for Covered Entities to create additional de novo reporting frameworks.[70]

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

68 See para. (b)(3)(ii) of the proposed Order.

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

70 The principal difference between the two sets of requirements concerns the timing of notices. Under Exchange Act rule 15Fi-3, SBS Entities must promptly report to the Commission valuation disputes in excess of $20 million that have been outstanding for three or five business days (depending on the counterparty type). Under EMIR RTS article 15(2), firms must report at least monthly, to competent authorities, disputes between counterparties in excess of €15 million and outstanding for at least 15 business days. The Commission is mindful that the EU provision does not provide for notice as quickly as rule 15Fi-3(c), but in the Commission's preliminary view, on balance this difference would not be inconsistent with the conclusion that the two sets of risk control requirements—taken as a whole—produce comparable regulatory outcomes.

V. Substituted Compliance for Internal Supervision, Chief Compliance Officers and Antitrust Requirements

A. CNMV request and associated analytic considerations

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

- Internal supervision—Diligent supervision is required pursuant to Exchange Act rule 15Fh-3(h) and Exchange Act section 15F(j)(5) requires conflict of interest systems and procedures. These provisions generally require that SBS Entities establish, maintain, and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest. Exchange Act section 15F(j)(4)(A) additionally requires systems and procedures to obtain necessary information to perform functions required under section 15F.[71]
- Chief compliance officers—Chief compliance officer requirements are set out in Exchange Act section 15F(k) and Exchange Act rule 15Fk-1.[72] These provisions in general require that SBS Entities designate individuals with the responsibility and authority to establish, administer, and review compliance policies and procedures; to resolve conflicts of interest; and to prepare and certify an annual compliance report to the Commission.[73]

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71 The CNMV Application addresses Spanish and EU requirements that address Covered Entities' obligations related to internal supervision. See CNMV Application Appendix B category 3 at 1-59.

72 17 CFR 240.15Fk-1.

73 The CNMV Application discusses Spanish and EU chief compliance officer requirements. See CNMV Application Appendix B category 3 at 60-89.

- Antitrust requirements—Additional requirements related to antitrust prohibitions specified by Exchange Act section 15F(j)(6).[74]

Taken as a whole, these internal supervision, chief compliance officer, and additional Exchange Act section 15F(j) requirements help to promote SBS Entities' use of structures, processes, and responsible personnel reasonably designed to promote compliance with applicable law; to identify and cure instances of non-compliance; and to manage conflicts of interest. The comparability assessment accordingly may focus on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to providing that Covered Entities have structures and processes reasonably designed to promote compliance with applicable law; identify and cure instances of non-compliance; and to manage conflicts of interest, in part through the designation of an individual with responsibility and authority over compliance matters.

B. Preliminary views and proposed Order

1. General considerations

Based on the CNMV Application and the Commission's review of applicable provisions, in the Commission's preliminary view the relevant Spanish and EU requirements would produce regulatory outcomes that are comparable to those associated with the above-described internal supervision, chief compliance officer, conflict of interest, and information-related requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance

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74 Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade or imposing any material anticompetitive burden on trading or clearing. The CNMV Application addresses EU antitrust requirements. See CNMV Application Appendix B category 3 at 26.

and manage conflicts of interest.[75] As elsewhere, this part of the proposed Order conditions substituted compliance on Covered Entities being subject to and complying with specified Spanish and EU requirements that are necessary to establish comparability.[76]

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

2. Additional conditions and scope issues

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

a. Internal supervision—application of Spanish and EU supervisory and compliance requirements to residual U.S. requirements and Order conditions

Under the proposed Order, substituted compliance for internal supervision requirements would be conditioned on Covered Entities complying with applicable Spanish and EU internal supervision requirements as if those provisions also require the Covered Entity to comply with

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75 This portion of the proposed Order accordingly would extend generally to the internal supervision provisions of Exchange Act rule 15Fh-3(h), the requirement in Exchange Act section 15F(j)(4)(A) to have systems and procedures to obtain necessary information to perform functions required under Exchange Act section 15F; and the conflict of interest provisions of Exchange Act section 15F(j)(5). See para. (c)(1) of the proposed Order. This portion of the proposed Order does not extend to the portions of rule 15Fh-3(h) that mandate supervisory policies and procedures in connection with: the internal risk management provisions of Exchange Act section 15F(j)(2) (which are addressed by paragraph (b)(1) of the proposed Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not proposing to provide substituted compliance). See para. (c)(1)(iii) of the proposed Order.

76 See paras. (c)(1)(i), (c)(2)(i), and (c)(3) of the proposed Order.

applicable requirements under the Exchange Act and the other applicable conditions of the proposed Order.[77]

Even with substituted compliance, Covered Entities still would be subject directly to a number of requirements under the Exchange Act and to the conditions of the proposed Order. In some cases, particular requirements under the Exchange Act are outside the ambit of substituted compliance.[78] In other cases, certain requirements under the Exchange Act may not have comparable Spanish and EU requirements or may be outside the scope of the CNMV Application,[79] or the Covered Entity may decide not to use substituted compliance for certain requirements under the Exchange Act. While the Spanish and EU regulatory framework in general reasonably appears to promote Covered Entities' compliance with applicable Spanish and EU laws, those requirements do not appear to promote Covered Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance, or to promote Covered Entities' compliance with the applicable conditions to the proposed Order. This condition would address this issue, while still allowing Covered Entities to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and proposed Order conditions, rather than having to establish separate special-purpose supervision and compliance frameworks.

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77 See paras. (c)(1)(ii) and (c)(4) of the proposed Order.

78 As noted, substituted compliance does not extend to antifraud prohibitions or to certain other requirements under the Exchange Act (e.g., requirements related to transactions with counterparties that are not ECPs and segregation requirements). See note 10, supra.

79 For example, the CNMV is not requesting substituted compliance in connection with eligible counterparty verification requirements, "special entity" provisions, and political contribution provisions. See note 21, supra.

b. Chief compliance officers—compliance reports

Under the proposed Order, substituted compliance in connection with the compliance report requirements under Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) also would be subject to the conditions that the compliance reports required pursuant to MiFID Org Reg article 22(2)(c) must: (1) be provided to the Commission at least annually and in the English language;[80] (2) include a certification signed by the chief compliance officer or senior officer of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;[81] (3) address the Covered Entity's compliance with applicable requirements under the Exchange Act and other applicable conditions of the proposed Order;[82] (4) be provided to the Commission no later than 15 days following the earlier of the submission of the report to the Covered Entity's management body or the time the report is required to be submitted to the management body;[83] and (5)

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80 See para. (c)(2)(ii)(A) of the proposed Order.

81 See para. (c)(2)(ii)(B) of the proposed Order.

82 See para. (d)(2)(ii)(C) of the proposed Order. MiFID Org Reg article 22(2)(c) particularly requires that a Covered Entity's compliance function "report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken[.]" Under the proposed condition, those reports, as submitted to the Commission and the Covered Entity's management body, also would address the Covered Entity's compliance with applicable Exchange Act requirements and other applicable conditions of the proposed Order (in addition to addressing the Covered Entity's compliance with applicable Spanish and EU provisions). The Commission believes that this condition is necessary to promote comparable regulatory outcomes, particularly in light of the granular approach to substituted compliance, to ensure that the compliance report covers applicable Exchange Act requirements and proposed Order conditions if the Covered Entity uses substituted compliance for chief compliance officer requirements, whether or not the Covered Entity relies on substituted compliance for internal supervision.

83 See para. (c)(2)(ii)(D) of the proposed Order. The Commission believes that it is appropriate for the Commission to receive compliance reports shortly after their submission to the management body. Providing these reports to the Commission near the times that the Covered Entity submits them to the management body also will better align with the Spanish and EU regulatory framework, which permits a Covered Entity to prepare and submit to the management body

together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) would be required to cover.[84] Although certain Spanish and EU requirements address a Covered Entity's use of internal compliance reports, those provisions do not require it to submit compliance reports to the Commission. Under this condition, a Covered Entity could leverage the compliance reports that it otherwise must produce, by extending those reports to address compliance with the conditions of the proposed Order.[85]

The Commission recognizes that Covered Entities preparing multiple Spanish compliance reports each year may find it difficult to submit to those reports to the Commission throughout the year, each with a chief compliance officer or senior officer certification and a section addressing the Covered Entity's compliance with U.S. requirements. However, on balance the Commission believes that these elements are necessary to achieve a regulatory outcome comparable to the Exchange Act.

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multiple compliance reports throughout the year. The Commission views 15 days as providing a reasonable time to translate reports, if needed, and convey them to the Commission. This deadline is intended to promote timely notice of compliance matters in a manner comparable to Exchange Act requirements, while also accounting for the annual deadline required under MiFID Org Reg article 22(2)(c) as well as the possibility that the Covered Entity may submit reports ahead of this annual deadline.

84 See para. (c)(2)(ii)(E) of the proposed Order. This requirement prevents a Covered Entity from notifying the Commission just prior to the due date of its annual Exchange Act compliance report that it will use substituted compliance for chief compliance officer requirements and then providing the Commission a Spanish compliance report that covers only a part of the year that would have been covered in the Exchange Act report.

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

c. No substituted compliance in connection with antitrust requirements

Under the proposed Order, substituted compliance would not extend to Exchange Act section 15F(j)(6) (and related internal supervision requirements of Exchange Act rule 15Fh-3(h)(2)(iii)(I)). Allowing an alternative means of compliance would not lead to outcomes comparable to that statutory prohibition.[86]

VI. Substituted Compliance for Counterparty Protection Requirements

A. CNMV request and associated analytic considerations

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

- Disclosure of material risks and characteristics and material incentives or conflicts of interest—Exchange Act rule 15Fh-3(b) requires that SBS Entities disclose to certain counterparties to a security-based swap certain information about the material risks and characteristics of the security-based swap, as well as material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. These provisions address the need for security-based swap market participants to have information that is sufficient to make informed decisions regarding potential transactions involving particular counterparties and particular financial instruments.[87]

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86 See also German Substituted Compliance Order, 85 FR 85691-92; French Substituted Compliance Order, 86 FR 41642-43. The Commission is not taking any position regarding the applicability of the section 15F(j)(6) antitrust prohibitions in the cross-border context. Non-U.S. SBS Entities should assess the applicability of those prohibitions to their security-based swap businesses.

87 See Business Conduct Adopting Release, 81 FR 29983-86. The CNMV Application discusses Spanish and EU requirements that address disclosure of material risks and characteristics and material incentives or conflicts of interest. See CNMV Application Appendix B category 4 at 16-33.

- "Know your counterparty"—Exchange Act rule 15Fh-3(e) requires that SBS Entities establish, maintain, and enforce written policies and procedures to obtain and retain certain information regarding a counterparty that is necessary for conducting business with that counterparty. This provision accounts for the need that SBS Entities obtain essential counterparty information necessary to promote effective compliance and risk management.[88]
- Suitability—Exchange Act rule 15Fh-3(f) requires a security-based swap dealer that recommends to certain counterparties a security-based swap or trading strategy involving a security-based swap, to undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation and to have a reasonable basis to believe that the recommendation is suitable for the counterparty.[89] This provision accounts for the need to guard against security-based swap dealers making unsuitable recommendations.[90]
- Fair and balanced communications—Exchange Act rule 15Fh-3(g) requires that SBS Entities communicate with counterparties in a fair and balanced manner based on

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88 See Business Conduct Adopting Release, 81 FR 29993-94. The CNMV Application discusses Spanish and EU "know your counterparty" requirements. See CNMV Application Appendix B category 4 at 41-48.

89 See Business Conduct Adopting Release, 81 FR 29994-30000.

90 See Business Conduct Adopting Release, 81 FR 29994-30000. The CNMV Application discusses Spanish and EU suitability requirements. See CNMV Application Appendix B category 4 at 49-60.

principles of fair dealing and good faith. These provisions promote complete and honest communications as part of SBS Entities' security-based swap businesses.[91]

- Daily mark disclosure—Exchange Act rule 15Fh-3(c) requires that SBS Entities provide daily mark information to certain counterparties. These provisions address the need for market participants to have effective access to daily mark information necessary to manage their security-based swap positions.[92]
- Clearing rights disclosure—Exchange Act rule 15Fh-3(d) requires that SBS Entities provide certain counterparties with information regarding clearing rights under the Exchange Act.[93]

Taken as a whole, the counterparty protection requirements under section 15F of the Exchange Act help to "bring professional standards of conduct to, and increase transparency in, the security-based swap market and to require [SBS Entities] to treat parties to these transactions fairly."[94] The comparability assessment accordingly may focus on whether the analogous

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91 See Business Conduct Adopting Release, 81 FR 30000-02. The CNMV Application discusses Spanish and EU fair and balanced communications requirements. See CNMV Application Appendix B category 4 at 1-15.

92 See Business Conduct Adopting Release, 81 FR 29986-91. The CNMV Application discusses Spanish and EU daily mark disclosure requirements. See CNMV Application Appendix B category 4 at 34-40.

93 See Business Conduct Adopting Release, 81 FR 29991-93. Exchange Act section 3C(g)(5) provides certain rights for counterparties to select the clearing agency at which a security-based swap is cleared. For all security-based swaps that an SBS Entity enters into with certain counterparties, the counterparty has the sole right to select the clearing agency at which the security-based swap is cleared. For security-based swaps that are not subject to mandatory clearing (pursuant to Exchange Act sections 3C(a) and (b)) and that an SBS Entity enters into with certain counterparties, the counterparty also may elect to require clearing of the security-based swap. Substituted compliance is not available in connection with these provisions. The CNMV Application discusses Spanish and EU clearing rights. See CNMV Application Appendix B category 4 at 61-69.

94 See Business Conduct Adopting Release, 81 FR 30065. For non-U.S. SBS Entities, the counterparty protection requirements under Exchange Act section 15F(h) apply only to the SBS Entity's transactions with U.S. counterparties (apart from certain transactions conducted through a

foreign requirements—taken as a whole—produce similar outcomes with regard to promoting professional standards of conduct, increasing transparency, and requiring Covered Entities to treat parties fairly.

B. Preliminary views and proposed Order

1. General considerations

Based on the CNMV Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant Spanish and EU requirements produce regulatory outcomes that are comparable to counterparty protection requirements under Exchange Act section 15F(h) related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, "know your counterparty," suitability, fair and balanced communications, and daily mark disclosure, by subjecting Covered Entities to obligations that promote standards of professional conduct, transparency, and the fair treatment of parties. The proposed Order accordingly would provide conditional substituted compliance in connection with those requirements.[95] The proposed Order preliminarily does not provide substituted compliance in connection with requirements related to clearing rights disclosure, however, for reasons addressed below.

In taking this proposed approach, the Commission recognizes that there are certain differences between relevant Spanish and EU requirements, on the one hand, and the relevant disclosure, "know your counterparty," suitability, and communications requirements under the

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foreign branch of the U.S. counterparty), or to transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office. See Exchange Act rule 3a71-3(c), 17 CFR 240.3a71-3(c) (exception from business conduct requirements for a security-based swap dealer's "foreign business"); see also Exchange Act rule 3a71-3(a)(3), (8) and (9) (definitions of "transaction conducted through a foreign branch," "U.S. business" and "foreign business").

95 See para. (d) of the proposed Order.

Exchange Act, on the other hand. On balance, however, in the Commission's preliminary view, those differences, when coupled with the conditions in the proposed Order, are not so material as to be inconsistent with substituted compliance within the requisite outcomes-oriented framework. As elsewhere, the counterparty protection provisions of the proposed Order in part condition substituted compliance on Covered Entities being subject to, and complying with, specified Spanish and EU requirements that are necessary to establish comparability.[96] Substituted compliance in connection with these counterparty protection requirements also would be subject to specific conditions and limitations necessary to promote consistency in regulatory outcomes.

2. Additional conditions and scope issues

a. Suitability—limitation to per se professional clients

Under the proposed Order, substituted compliance in connection with the suitability provisions of Exchange Act rule 15Fh-3(f) in part would be conditioned on the requirement that the counterparty be a per se "professional client" as defined in MiFID and not be a "special entity" as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh-2(d).[97] Accordingly, the proposed Order would not provide substituted compliance for Exchange Act suitability requirements for a recommendation made to a counterparty that is a "retail client" or

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96 See paras. (d)(1) through (3), (d)(4)(i), and (d)(5) of the proposed Order (requirement to be subject to and comply with relevant Spanish and EU requirements in connection with substituted compliance for Exchange Act disclosure of material risks and characteristics, disclosures of material incentives or conflicts of interest, "know your counterparty," suitability, and fair and balanced communications requirements); para. (d)(6) of the proposed Order (requirement to be required under Spanish and EU requirements to reconcile, and in fact reconcile, the portfolio containing the security-based swap for which substituted compliance is applied, on each business day in connection with substituted compliance for daily mark disclosure requirements).

97 17 CFR 240.15Fh-2(d). See para. (d)(4)(ii) of the proposed Order.

an elective "professional client," as such terms are defined in MiFID,[98] or for a "special entity" as defined in the Exchange Act. In the Commission's preliminary view, absent such a condition the MiFID suitability requirements would not be expected to produce a counterparty protection outcome that is comparable with the outcome produced by the suitability requirements under the Exchange Act.[99]

b. Daily mark disclosure—limitation to security-based swaps in portfolios required to be reconciled and in fact reconciled each business day

The proposed Order would provide substituted compliance in connection with daily mark disclosure requirements pursuant to Exchange Act rule 15Fh-3(c) to the extent that the Covered Entity participates in daily portfolio reconciliation exercises that include the relevant security-based swap pursuant to Spanish and EU requirements.[100] Spanish and EU portfolio

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98 Annex II of MiFID describes which clients are "professional clients." Section I of Annex II describes the types of clients considered to be professional clients unless the client elects non-professional treatment; these clients are per se professional clients. Section II of Annex II describes the types of clients who may be treated as professional clients on request; these clients are elective professional clients. See MiFID Annex II. A retail client is a client who is not a professional client. See MiFID article 4(1)(11).

99 The Commission recognizes that Exchange Act rules permit security-based swap dealers, when making a recommendation to an "institutional counterparty," to satisfy some elements of the suitability requirement if the security-based swap dealer reasonably determines that the counterparty or its agent is capable of independently evaluating relevant investment risks, the counterparty or its agent represents in writing that it is exercising independent judgment in evaluating recommendations, and the security-based swap dealer discloses to the counterparty that it is acting as counterparty and is not undertaking to assess the suitability of the recommendation for the counterparty. See Exchange Act rule 15Fh-3(f)(2). However, the institutional counterparties to whom this alternative applies are only a subset of the "professional clients" to whom more narrowly tailored suitability requirements apply under MiFID. The institutional counterparty alternative under the Exchange Act would remain available, in accordance with its terms, for recommendations that are not eligible for, or for which a Covered Entity does not rely on, substituted compliance.

100 See para. (d)(6) of the proposed Order. This approach would provide substituted compliance for daily mark requirements based on comparability of outcomes without the need to distinguish between U.S. person counterparties and other counterparties, and would avoid reliance on Spanish and EU trade reporting or mark-to-market (or mark-to-model) requirements. The Spanish and EU mark-to-market (or mark-to-model) requirements direct certain types of

reconciliation requirements for uncleared OTC derivative contracts include a requirement to exchange valuations of those contracts directly between counterparties. The required frequency of portfolio reconciliations varies depending on the types of counterparties and the size of the portfolio of OTC derivatives between them, with daily reconciliation required only for the largest portfolios. For security-based swaps to which the EU's daily portfolio reconciliation requirements apply (i.e., security-based swaps of a financial counterparty or non-financial counterparty subject to the clearing obligation in EMIR, if the counterparties have 500 or more OTC derivatives contracts outstanding with each other[101]), the Commission preliminarily views these requirements as comparable to Exchange Act requirements. For all other security-based swaps in portfolios that are not required to be reconciled on each business day, the Commission preliminarily views the EU's portfolio reconciliation requirements as not comparable to Exchange Act requirements and is proposing not to make a positive substituted compliance determination.

c. No substituted compliance in connection with clearing rights disclosure requirements

The proposed Order would not provide substituted compliance in connection with clearing rights disclosure requirements pursuant to Exchange Act rule 15Fh-3(d). The CNMV Application cites certain provisions related to clearing rights in the EU that are unrelated to, and

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derivatives counterparties to mark-to-market (or mark-to-model) uncleared transactions each day but do not require disclosure of those marks to counterparties. Moreover, though Spanish and EU trade reporting requirements direct certain derivatives counterparties to report to a EU trade repository updated daily valuations for each OTC derivative contract, in practice U.S. counterparties may encounter challenges when attempting to access daily marks reported to multiple EU trade repositories with which they may not otherwise have business relationships. In addition, the information may be less current, given the time necessary for reporting and for the trade repository to make the information available.

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

do not require disclosure of, the clearing rights provided by Exchange Act section 3C(g)(5).[102] Moreover, unlike the rule 15Fh-3(d) disclosure requirements, the section 3C(g)(5) clearing rights themselves are not eligible for substituted compliance. Accordingly, in the Commission's preliminary view, substituted compliance based on EU clearing provisions would not lead to comparable disclosure of a counterparty's Exchange Act clearing rights and is not proposing to make a positive substituted compliance determination for clearing rights disclosure requirements.

VII. Substituted Compliance for Recordkeeping, Reporting, and Notification Requirements

A. CNMV request and associated analytic considerations

The CNMV Application in part requests substituted compliance for requirements applicable to SBS Entities with a prudential regulator under the Exchange Act relating to:

- Record Making—Exchange Act rule 18a-5 requires prescribed records to be made and kept current.[103]
- Record Preservation—Exchange Act rule 18a-6 requires preservation of records.[104]
- Reporting—Exchange Act rule 18a-7 requires certain reports.[105]

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102 See note 93, supra.

103 17 CFR 240.18a-5. The CNMV Application discusses Spanish and EU recordmaking requirements. See CNMV Application Appendix B category 2 at 3-27, 55-57.

104 17 CFR 240.18a-6. The CNMV Application discusses Spanish and EU record preservation requirements. See CNMV Application Appendix B category 2 at 28-54, 57-58.

105 17 CFR 240.18a-7. The CNMV Application discusses Spanish and EU requirements that address firms' obligations to make certain reports. See CNMV Application Appendix B category 2 at 59-62.

- Notification—Exchange Act rule 18a-8 requires notification to the Commission when certain financial or operational problems occur.[106]
- Daily Trading Records—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.[107]

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

B. Preliminary views and proposed Order

1. General considerations

Based on the CNMV Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant EU and Spanish requirements, subject to the conditions and limitations of the proposed Order, would produce regulatory outcomes that are

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106 17 CFR 240.18a-8. The CNMV Application discusses Spanish and EU requirements that address firms' obligations to make certain notifications. See CNMV Application Appendix B category 2 at 62-64.

107 The CNMV Application discusses Spanish and EU requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. See CNMV Application Appendix B category 2 at 2-3.

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

In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between the EU and Spanish requirements and the Exchange Act requirements. In the Commission's preliminary view, on balance, those differences generally would not be inconsistent with substituted compliance for these requirements. Requirement-by-requirement similarity is not needed for substituted compliance.

However, the Commission is structuring its preliminary substituted compliance determinations in the proposed Order to provide Covered Entities with greater flexibility to select which distinct requirements within the broader rule for which they would apply substituted compliance. This would not preclude a Covered Entity from applying substituted compliance for the entire rule (subject to conditions and limitations). However, it would permit the Covered Entity to apply substituted compliance with respect to certain requirements of a given rule and to comply directly with the remaining requirements. This granular approach to making substituted compliance determinations with respect to discrete requirements within Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8 (collectively, the "recordkeeping, reporting, and notification rules") is intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping and reporting requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping, reporting, or notification rule (rather than apply

substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.[108]

As applied to Exchange Act rules 18a-5 and 18a-6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities with a prudential regulator to make, keep current, and/or preserve. The objective of these rules – taken as a whole – is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities with a prudential regulator (e.g., business conduct requirements) as well as to promote the prudent operation of these firms.[109] The Commission preliminarily believes the comparable EU and Spanish recordkeeping rules achieve these outcomes with respect to compliance with substantive EU and Spanish requirements for which preliminary positive substituted compliance determinations are being made in this proposed Order (e.g., the preliminary positive substituted compliance determinations with respect to the majority of the Exchange Act business conduct requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (e.g., paragraph (b)(1) of Exchange Act rule 18a-5 addressing trade blotters) can be viewed in isolation as a distinct recordkeeping rule. Therefore, it may be appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a-5 and 18a-6.

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108 See French Substituted Compliance Order, 86 FR at 41649; UK Substituted Compliance Order, 86 FR at 43360.

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

As discussed in more detail below, the Commission's preliminary view is that substituted compliance is appropriate for most of the requirements applicable to SBS Entities with a prudential regulator within the recordkeeping, reporting, and notification rules. However, certain of the discrete requirements in these rules are fully or partially linked to substantive Exchange Act requirements for which substituted compliance is not available or for which a positive substituted compliance determination would not be made under the proposed Order. In these cases, a preliminary positive substituted compliance determination is not be made for the requirement that is fully linked to the substantive requirement or to the part of the requirement that is linked to the substantive requirement. In particular, a preliminary positive substituted compliance determination is not being made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a preliminary positive substituted compliance determination is not being made: (1) Exchange Act rule 15Fh-4 ("Rule 15Fh-4 Exclusion"); (2) Exchange Act rule 15Fh-5 ("Rule 15Fh-5 Exclusion"); (3) Exchange Act rule 15Fh-6 ("Rule 15Fh-6 Exclusion"); (4) Exchange Act rule 18a-4 ("Rule 18a-4 Exclusion"); (5) Regulation SBSR ("Regulation SBSR Exclusion"); (6) Form SBSE and its variations ("Form SBSE Exclusion"); (7) Exchange Act rule 15Fh-1 Exclusion ("Rule 15Fh-1 Exclusion"), and (8) Exchange Act rule 15Fh-2 ("Rule 15Fh-2 Exclusion"). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.[110]

In addition, certain of the requirements in the recordkeeping, reporting, and notification rules are expressly linked to substantive Exchange Act requirements where a preliminary

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110 See French Substituted Compliance Order, French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the linked requirement in the recordkeeping, reporting, or notification rule is conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement. This is the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement. The recordkeeping, reporting, and notification requirements that are linked to a substantive Exchange Act requirement are designed and tailored to assist the Commission in monitoring and examining an SBS Entity's compliance with the substantive Exchange Act requirement. EU and Spanish recordkeeping, reporting, and notification requirements are designed to perform a similar role with respect to the substantive EU and Spanish requirements to which they are linked. Consequently, this condition is designed to ensure that the records, reports, and notifications of a Covered Entity align with the substantive Exchange Act or EU or Spanish requirement to which they are linked. For these reasons, under the proposed Order, substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3, except paragraphs (a) and (d) for which substituted compliance was not requested ("Rule 15Fh-3 Condition"); (2) Exchange Act rule 15Fi-2 ("Rule 15Fi-2 Condition"); (3) Exchange Act rule 15Fi-3 ("Rule 15Fi-3 Condition"); (4) Exchange Act rule 15Fi-4 ("Rule 15Fi-4 Condition"); (5) Exchange Act rule 15Fi-5 ("Rule 15Fi-5 Condition"); and (6) Exchange Act rule 15Fk-1 ("Rule 15Fk-1 Condition"). This

proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.[111]

2. Exchange Act Rule 18a-5

Exchange Act rule 18a-5 requires SBS Entities to make and keep current various types of records. The requirements for SBS Entities without a prudential regulator are set forth in paragraph (a) of the rule.[112] The requirements for SBS Entities with a prudential regulator are set forth in paragraph (b) of the rule.[113] The Commission is making a preliminary positive substituted compliance determination for many of the requirements of paragraph (b) of Exchange Act rule 18a-5 in the granular manner discussed above.[114]

However, certain of the requirements in these paragraphs are linked to substantive Exchange Act requirements for which substituted compliance is not available or a preliminary positive substituted compliance determination would not be made under the proposed Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a-5 or the portion of the requirement in Exchange Act rule 18a-5 that is linked to the substantive Exchange Act requirement.[115]

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111 See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

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

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

114 See para. (e)(1) of the proposed Order.

115 A positive preliminary substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-5 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rules 18a-5(b)(9) and (10) are fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (2) Exchange Act rule 18a-5(b)(12)is fully linked to Exchange Act rule 15Fh-6 and, therefore, would be subject to the Rule 15Fh-6 Exclusion; (3) the portions of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-4 would be subject to the Rule 15Fh-4 Exclusion; (4) the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion; (5)

In addition, certain of the requirements in Exchange Act rule 18a-5 are fully or partially linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.[116]

In addition, the proposed Order would allow a Covered Entity to apply substituted compliance on a transaction-by-transaction basis for the Commission's recordkeeping requirements that are linked with the counterparty protection requirements in Exchange Act rule 15Fh-3.[117] This approach is intended to be consistent with the Commission preliminarily allowing Covered Entities to apply substituted compliance on a transaction-by-transaction basis for the Commission's counterparty protection requirements.

Under the proposed Order, substituted compliance in connection with the record making requirements of Exchange Act rule 18a-5 would be subject to the condition that the Covered Entity: (1) preserves all of the data elements necessary to create the records required by

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the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-1 would be subject to the 15Fh-1 Exclusion; and (6) the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-2 would be subject to the 15Fh-2 Exclusion.

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

117 See para. (e)(1)(ii)(B) of the proposed Order.

Exchange Act rules 18a-5(b)(1), (2), (3), and (7); and (2) upon request furnishes promptly to representatives of the Commission the records required by those rules ("SEC Format Condition").[118] This proposed condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a-5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a-5 would need to comply with the comparable EU and Spanish requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of Exchange Act rule 18a-5 at the request of Commission staff. The objective is to require – on a very limited basis – the production of a record that consolidates the information required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7) in a single record and, as applicable, in a blotter or ledger format. This will assist the Commission staff in reviewing the information on the record.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-5 by listing in each row: (1) the paragraph of the proposed Order that sets forth the preliminary determination; (2) the paragraph(s) of Exchange Act rule 18a-5 to which the preliminary determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.[119]

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118 See para. (e)(1)(ii)(A) of the proposed Order.

119 The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-5; namely that the Covered Entity: (1) must be subject to and comply with specified requirements of foreign law; and (2) as discussed below, must promptly furnish to a

Exchange Act rule 18a-5 (record making)			
Order Paragraph	**Rule Paragraph**	**Rule Description**	**Additional Conditions and Partial Exclusions**
(e)(1)(i)(A)	(b)(1)	Trade blotters	SEC Format Condition
(e)(1)(i)(B)	(b)(2)	Account ledgers	SEC Format Condition
(e)(1)(i)(C)	(b)(3)	Stock record	SEC Format Condition
(e)(1)(i)(D)	(b)(4)	Memoranda of brokerage orders	N/A
(e)(1)(i)(E)	(b)(5)	Memoranda of proprietary orders	N/A
(e)(1)(i)(F)	(b)(6) (b)(11)	Confirmations, trade verification	Rule 15Fi-2 Condition
(e)(1)(i)(G)	(b)(7)	Accountholder information	SEC Format Condition
(e)(1)(i)(H)	(b)(8)	Associated person's employment application	N/A
(e)(1)(i)(I)	(b)(13)	Compliance with business conduct requirements	(1) Rule 15Fh-3 Condition (2) Rule 15Fk-1 Condition (3) Rule 15Fh-1 Exclusion (4) Rule 15Fh-2 Exclusion (5) Rule 15Fh-4 Exclusion (6) Rule 15Fh-5 Exclusion
(e)(1)(i)(J)	(b)(14)(i) (b)(14)(ii)	Portfolio reconciliation	Rule 15Fi-3 Condition
(e)(1)(i)(K)	(b)(14)(iii)	Portfolio compression	Rule 15Fi-4 Condition

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

Exchange Act rule 18a-5 (record making)			
Order Paragraph	**Rule Paragraph**	**Rule Description**	**Exclusion**
(e)(1)(ii)(C)	(b)(9)	Possession or control records	Rule 18a-4 Exclusion

representative of the Commission upon request an English translation of a record. See para. (e)(7) of the proposed Order (setting forth the English translation requirement).

Exchange Act rule 18a-5 (record making)			
Order Paragraph	**Rule Paragraph**	**Rule Description**	**Exclusion**
(e)(1)(ii)(C)	(b)(10)	Reserve computations	Rule 18a-4 Exclusion
(e)(1)(ii)(C)	(b)(12)	Political contribution records	Rule 15Fh-6 Exclusion

3. Exchange Act Rule 18a-6

Exchange Act rule 18a-6 requires an SBS Entity to preserve certain types of records if it makes or receives them (in addition to the records the SBS Entity is required to make and keep current pursuant to Exchange Act rule 18a-5).[120] Exchange Act rule 18a-6 also prescribes the time period that these additional records and the records required to be made and kept current pursuant to Exchange Act rule 18a-5 must be preserved and the manner in which they must be preserved.

Paragraphs (a) through (d) of Exchange Act rule 18a-6 identify the records that an SBS Entity must retain if it makes or receives them and prescribes the retention periods for these records as well as for the records that must be made and kept current pursuant to Exchange Act rule 18a-5. Certain of these paragraphs prescribe requirements separately for SBS Entities without a prudential regulator and SBS Entities with a prudential regulator.[121] The proposed Order would make substituted compliance available for the requirements of these paragraphs applicable to SBS Entities with a prudential regulator. As discussed below, the Commission is making a preliminary positive substituted compliance determination for many of the requirements of these paragraphs applicable to SBS Entities with a prudential regulator.

120 See 17 CFR 240.18a-6.

121 Paras. (a)(1), (b)(1), (d)(2)(i), and (d)(3)(i) of Exchange Act rule 18a-6 apply to SBS Entities without a prudential regulator. Paras. (a)(2), (b)(2), (d)(2)(ii), and (d)(3)(ii) of Exchange Act rule 18a-6 apply to SBS Entities with a prudential regulator. Paras. (c), (d)(1), (d)(4), and (d)(5) of Exchange Act rule 18a-6 apply to SBS Entities irrespective of whether they have a prudential regulator.

However, certain of these requirements are fully or partially linked to substantive Exchange Act requirements for which a preliminary positive substituted compliance determination would not be made under the proposed Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a-6.[122]

In addition, certain of the requirements in Exchange Act rule 18a-6 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.[123]

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122 A positive substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-6 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rule 18a-6(b)(2)(vi) is fully linked to Regulation SBSR and, therefore, would be subject to the Regulation SBSR Exclusion; (2) Exchange Act rule 18a-6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh-4 and, therefore, would be subject to the Rule 15Fh-4 Exclusion; (3) Exchange Act rule 18a-6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh-5 and, therefore, would be subject to the Rule 15Fh-5 Exclusion; (4) Exchange Act rule 18a-6(b)(2)(v) is fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (5) the portion of Exchange Act rule 18a-6(c) relating to Form SBSE and its variations would be subject to the Form SBSE Exclusion; (6) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-1 would be subject to the 15Fh-1 Exclusion; (7) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-2 would be subject to the 15Fh-2 Exclusion; (8) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-4 would be subject to the 15Fh-4 Exclusion; (9) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion; and (10) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-6 would be subject to the 15Fh-6 Exclusion.

123 Substituted compliance with the following requirements of Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a-6(b)(2)(vii) is linked to Exchange Act rule 15Fh-3 and, therefore, would be subject to the Rule 15Fh-3 Condition; (2) Exchange Act rule 18a-6(b)(2)(vii) is linked to Exchange Act rule 15Fk-1 and, therefore, would be subject to the Rule 15Fk-1 Condition; (3) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-3 and, therefore, would be subject to the Rule 15Fi-3 Condition; (4) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-4 and, therefore, would be

Paragraph (e) of Exchange Act rule 18a-6 sets forth the requirements for preserving records electronically. Paragraph (f) sets forth requirements for when records are prepared or maintained by a third party. The Order would make substituted compliance available for the requirements of paragraphs (e) and (f) of Exchange Act rule 18a-6 with respect to Covered Entities with a prudential regulator.[124]

Paragraph (g) of Exchange Act rule 18a-6 requires an SBS Entity to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the SBS Entity that are subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act that are requested by a representative of the Commission. The proposed Order would not make substituted compliance available for the requirements of paragraph (g) of Exchange Act rule 18a-6 because there is no comparable requirement in the EU or Spain to produce these records to a representative of the Commission.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-6 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-6 to which the determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any

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subject to the Rule 15Fi-4 Condition; and (5) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-5 and, therefore, would be subject to the Rule 15Fi-5 Condition.

124 See paras. (e)(2)(i)(L) and (M) of the proposed Order.

partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.[125]

Exchange Act rule 18a-6 (record preservation)			
Order Paragraph	**Rule Paragraph**	**Rule Description**	**Conditions and Partial Exclusions**
(e)(2)(i)(A)	(a)(2)	6 year record preservation	N/A
(e)(2)(i)(B)	(b)(2)(i)	3 year record preservation	N/A
(e)(2)(i)(C)	(b)(2)(ii)	Communications	N/A
(e)(2)(i)(D)	(b)(2)(iii)	Account documents	N/A
(e)(2)(i)(E)	(b)(2)(iv)	Written agreements	N/A
(e)(2)(i)(F)	(b)(2)(vii)	Business conduct standard records	(1) Rule 15Fh-3 Condition (2) Rule 15Fk-1 Condition (3) Rule 15Fh-1 Exclusion (4) Rule 15Fh-2 Exclusion (5) Rule 15Fh-4 Exclusion (6) Rule 15Fh-5 Exclusion (7) Rule 15Fh-6 Exclusion
(e)(2)(i)(G)	(c)	Corporate documents	Form SBSE Exclusion
(e)(2)(i)(H)	(d)(1)	Associated person's employment application	N/A
(e)(2)(i)(I)	(d)(2)(ii)	Regulatory authority reports	N/A
(e)(2)(i)(J)	(d)(3)(ii)	Compliance, supervisory, and procedures manuals	N/A
(e)(2)(i)(K)	(d)(4) (d)(5)	Portfolio reconciliation	(1) Rule 15Fi-3 Condition (2) Rule 15Fi-4 Condition (3) Rule 15Fi-5 Condition
(e)(2)(i)(L)	(e)	Electronic storage system	N/A
(e)(2)(i)(M)	(f)	Third-party recordkeeper	N/A

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-6 for which a positive substituted compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-6 to which the determination applies; (3) a brief description

125 The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-6; namely that the Covered Entity: (1) must be subject to and complies with the requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a record. See para. (e)(7) of the proposed Order (setting forth the English translation requirement).

of the records required by those paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

Exchange Act rule 18a-6 (preservation)			
Order Paragraph	**Rule Paragraph**	**Rule Description**	**Exclusion**
(e)(2)(ii)	(b)(2)(v)	Information supporting financial reports	Rule 18a-4 Exclusion
(e)(2)(ii)	(b)(2)(vi)	Regulation SBSR information	Regulation SBSR Exclusion
(e)(2)(ii)	(b)(2)(viii)	Special entity documents	(1) Rule 15Fh-4 Exclusion (2) Rule 15Fh-5 Exclusion

4. Exchange Act Rule 18a-7

Exchange Act rule 18a-7 requires SBS Entities, on a monthly basis (if not prudentially regulated) or on a quarterly basis (if prudentially regulated), to file an unaudited financial and operational report on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The Commission will use the FOCUS Reports filed by the SBS Entities to both monitor the financial and operational condition of individual SBS Entities and to perform comparisons across SBS Entities. The FOCUS Report Part IIC elicits less information than the FOCUS Report Part II because the Commission does not have responsibility for overseeing the capital and margin requirements applicable to these entities.

The FOCUS Report Parts II and IIC are standardized forms that elicit specific information through numbered line items. This facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. Further, the Commission has designated the Financial Industry Regulatory Authority, Inc. ("FINRA") to receive the FOCUS Reports from SBS Entities.[126] Broker-dealers registered with the Commission currently file their

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

FOCUS Reports with FINRA through the eFOCUS system it administers. Using FINRA's eFOCUS system will enable broker-dealers, security-based swap dealers, and major security-based swap participants to file FOCUS Reports on the same platform using the same preexisting templates, software, and procedures.

Paragraph (a)(2) of Exchange Act rule 18a-7 requires SBS Entities with a prudential regulator to file the FOCUS Report Part IIC on a quarterly basis. The proposed Order would provide substituted compliance for this requirement subject to the condition that the Covered Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule ("Manner and Format Condition") and present the financial information in accordance with generally accepted accounting principles ("GAAP") that the firm uses to prepare general purpose publicly available or available to be issued financial statements in Spain ("Spanish GAAP Condition").[127] The Commission believes that it would be appropriate to condition substituted compliance with respect to Exchange Act rule 18a-7 on the Covered Entity filing unaudited financial and operational information in a manner and format that facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission.[128] For example, the Commission could by order or rule require Covered Entities with a prudential regulator to

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127 Under the proposed Order, Covered Entities with a prudential regulator would need to present the information reported in the FOCUS Report in accordance with GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home jurisdiction instead of U.S. GAAP if other GAAP, such as International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), is used by the Covered Entity in preparing publicly available or available to be issued general purpose financial statements in Spain.

128 The Manner and Format condition is included in the French and UK Substituted Compliance Orders. See French Substituted Compliance Order, 86 FR at 41651; UK Substituted Compliance Order, 83 FR at 43361-62.

file the financial and operational information with FINRA using the FOCUS Report Part IIC but permit the information input into the form to be the same information the SBS Entity reports to the CNMV.

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-7 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-7 to which the determination applies; (3) a brief description of the report required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.[129]

Exchange Act rule 18a-7 (reporting)				
Order Paragraph	**Rule Paragraph**		**Rule Description**	**Conditions**
(e)(3)(i)	(a)(2)		File FOCUS Reports	(1) Manner and Format Condition (2) Spanish GAAP Condition

5. Exchange Act Rule 18a-8

Exchange Act rule 18a-8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.[130] The proposed Order would provide substituted compliance for the requirements of Exchange Act rule 18a-8 applicable to SBS Entities with a prudential regulator (subject to conditions and limitations). In particular, the requirements of: (1) paragraph (c) of Exchange Act Rule 18a-8 that an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator must

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129 The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-7; namely that the Covered Entity: (1) must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a report. See para. (e)(7) of the proposed Order (setting forth the English translation requirement).

130 See 17 CFR 240.18a-8.

transmit a copy of the notice to the Commission; (2) paragraph (d) of the rule that an SBS Entity provide notification to the Commission if it fails to make and keep current books and records under Exchange Act rule 18a-5 and to transmit a subsequent report on steps being taken to correct the situation; and (3) paragraph (h) of the rule setting forth how to make the notifications required by Exchange Act 18a-8.

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

In addition, the Order does not provide substituted compliance for paragraph (g) of Exchange Act rule 18a-8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to make a required deposit into its special reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a-4. Substituted compliance is not available for Exchange Act rule 18a-4.

In addition, the proposed Order would not provide substituted compliance for paragraph (g) of Exchange Act rule 18a-8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to make a required deposit into its special reserve account for the exclusive

benefit of security-based swap customers under Exchange Act rule 18a-4. Substituted compliance is not available for Exchange Act rule 18a-4.

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-8 by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.[131]

Exchange Act rule 18a-8 (notification)				
Order Paragraph	**Rule Paragraph**		**Rule Description**	**Conditions**
(e)(4)(i)(B)	(c)		Prudential regulator capital category adjustment notices	(1) SEC Filing Condition (2) Contact Information Condition
(e)(4)(i)(C)	(d)		Books and records notices	(1) SEC Filing Condition (2) Contact Information Condition

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-8 for which a positive substituted compliance determination would not be made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) the paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) the exclusion from substituted compliance.

131 The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-8; namely that the Covered Entity: (1) must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a notification. See para. (e)(7) of the proposed Order (setting forth the English translation requirement).

Exchange Act rule 18a-8 (notification)				
Order Paragraph	**Rule Paragraph**		**Rule Description**	**Exclusion**
(e)(4)(ii)(C)	(g)		Reserve account notices	Rule 18a-4 Exclusion

6. Exchange Act Section 15F(g)

Exchange Act Section 15F(g) requires SBS Entities, including SBS Entities with a prudential regulator, to maintain daily trading records.[132] The Commission preliminarily believes EU and Spanish laws produce a comparable result in terms of its daily trading recordkeeping requirements.[133] Accordingly, the Commission preliminarily is making a positive substituted compliance determination for the self-executing requirements in this paragraph.[134]

7. Examination and production of records

The proposed Order would not extend to, and Covered Entities would remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.[135]

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132 See 15 USC 78o-10(g).

133 See SSMA Article 194(1); and RD 217/2008 Article 32(1).

134 See para. (e)(5) to the proposed Order.

135 See Exchange Act section 15F(f); Exchange Act rule 18a-6(g). French and UK Substituted Compliance Orders do not extend substituted compliance to these requirements. See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

Consequently, every Covered Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, would be required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act. Covered Entities would be able to make, keep, and preserve records, subject to the proposed conditions described above, in a manner prescribed by applicable EU and Spanish requirements. As an element of its substituted compliance application, the CNMV has provided the Commission with adequate assurances that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission. Consistent with those assurances and the requirements that apply to all Covered Entities under the Exchange Act, Covered Entities operating under the proposed Order would need to keep books and records open to inspection by any representative of the Commission and to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the firm that these entities are required to preserve under Exchange Act rule 18a-6 (which would include records for which a positive substituted compliance determination is being made with respect to Exchange Act rule 18a-6 under the Order), or any other records of the firm that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

8. English translations

The proposed Order provides that to the extent documents are not prepared in the English language, Covered Entities would need to furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is

required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F or the proposed Order.[136] This condition would be designed to addresses difficulties that Commission examinations staff would have examining Covered Entities that furnish documents in a foreign language. The English translations would need to be provided promptly. This condition is included in the French and UK Substituted Compliance Orders.[137]

VIII. Additional Considerations Regarding Supervisory and Enforcement Effectiveness in Spain

A. General considerations

As noted above, Exchange Act rule 3a71-6 provides that the Commission's assessment of the comparability of the requirements of the foreign financial regulatory system must account for "the effectiveness of the supervisory program administered, and the enforcement authority exercised" by the foreign financial regulatory authority. This prerequisite accounts for the understanding that substituted compliance determinations should reflect the reality of the foreign regulatory framework, in that rules that appear high-quality on paper nonetheless should not form the basis for substituted compliance if—in practice—market participants are permitted to fall short of their regulatory obligations. This prerequisite, however, also recognizes that differences among the supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.[138]

In connection with these considerations, the CNMV Application includes information regarding the Spanish supervisory and enforcement framework applicable to derivatives markets and market participants. This includes information regarding the supervisory and enforcement

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136 See para. (e)(7) to the proposed Order.

137 See French Order, 86 FR at 41651; UK Order, 86 FR at 43361.

138 See generally Business Conduct Adopting Release, 81 FR 30079.

authority afforded to authorities in Spain to promote compliance with applicable requirements, applicable supervisory and enforcement tools and capabilities, consequences of non-compliance, and the application of supervisory and enforcement practices in the cross-border context. After review of this information, the Commission preliminarily believes that the framework is reasonably designed to promote compliance with the laws where substituted compliance has been requested.

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

B. Supervisory framework in Spain

Supervision of Covered Entities located in Spain is conducted by the CNMV and the ECB. The Bank of Spain informed the staff that it does not have supervisory authority over significant credit institutions in the areas where substituted compliance has been requested, although, as explained below, it does play a role in the supervision of anti-money laundering laws. In addition, the CNMV and the Bank of Spain cooperate closely and have frequent communications regarding the supervision of firms to accomplish their respective missions. The ECB, through joint supervisory teams ("JSTs"), supervises firms for compliance with the CRD and CRR, including all capital requirements. The CNMV and the ECB have the ability to request records needed for supervision from firms through the supervisory process. In addition, the CNMV and the ECB set annual priorities and conduct thematic reviews, which are used to enhance supervision in specific regulatory areas. The results of these thematic reviews are made public to provide transparency to the industry.

The CNMV uses a risk-based approach to supervision to determine which firms will receive the most supervisory attention. Under the CNMV's risk framework, the largest banks

providing investment services are included in the top tier. The CNMV is in daily contact with the largest firms through phone calls and emails and also conducts meetings with senior management. The CNMV uses a number of tools to supervise Covered Entities. For the largest firms, the CNMV conducts periodic monitoring of the confidential reports submitted by the firms to the CNMV regarding the conduct of business rules. This information is analyzed against existing information at the CNMV and, if red flags are spotted, different actions can be taken. For example, the information in the reports may be used to determine whether the firm should undergo an onsite inspection or a limited review. If red flags are spotted at several firms, a thematic review may be launched to obtain more information from these entities.

The CNMV creates an annual supervision plan based on the information available on each one of the entities under the CNMV's supervision (e.g., systemic and financial risk, complaints received, previous supervisory experience with the firm, etc.) and the time that has passed since the last visit. This plan is based on an analysis of the potential risks in the sector and is shared with the Bank of Spain but is not otherwise made public. The CNMV uses a risk-based process to determine when it will conduct an onsite examination looking at factors such as systemic risks, types of services provided, types of products distributed, complaints, and the time since the last on-site inspection. The CNMV plans its onsite examinations as part of the annual supervision plan but can also decide to conduct a limited review of certain areas if issues or concerns arise during the year. At the end of the onsite portion of the examination, a report is issued and a formal Letter of Findings ("LoF") is communicated to the firm. The LoF is addressed to the Compliance Officer who must inform the firm's Board of Directors. A copy of the LoF is also sent to the Bank of Spain.

Firms are required to give a formal response to the LoF containing their observations, a commitment that the firm will change its procedures and resolve any deficiencies observed, and confirmation that the entity's Board of Directors has been informed of the CNMV LoF and of the response given. Within six months, the firm must provide a compliance report describing how the firm has corrected deficiencies observed during the inspection. The CNMV verifies that changes have been made through desk reviews or in a subsequent onsite visit. If follow-up measures are deemed necessary, the CNMV will launch a supervisory activity to assess the new procedures in place at the firm. If appropriate changes have not been made or the conduct is severe, the CNMV may refer the matter to CNMV's enforcement program.

The coordination of compliance with the anti-money laundering laws is done by the Commission for the Prevention of Money Laundering and Monetary Offenses ("COPBLAC"), through cooperation arrangements with the Bank of Spain and the CNMV. The Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences ("SEPBLAC") works with the Bank of Spain and the CNMV to supervise Covered Entities for compliance with the anti-money laundering laws. The Bank of Spain and CNMV follow a risk-based approach to perform supervisory activities, with their main supervisory task to determine the AML/CFT risk profile of the firm. The Bank of Spain and CNMV also conduct onsite inspections based on an annual supervisory plan, which is approved by COPBLAC. After an inspection, the Bank of Spain and CNMV share a summary of conclusions and, where appropriate, recommendations, with the firm. The firm addresses the recommendations through a remediation plan that is monitored by the Bank of Spain or CNMV. The inspection report is shared with COPBLAC, who ultimately decides on what binding supervisory measures or sanctions to impose.

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

C. Enforcement authority in Spain

CNMV is empowered to investigate and sanction very serious, serious, and minor infringements of law. The most common source of information regarding infringements is the supervisory activity of the Supervision Department and the Secondary Markets Department. In addition, CNMV may initiate investigations based on whistleblower complaints. According to CNMV, when a breach is committed by a credit institution, a report from the Bank of Spain is a prerequisite for imposing sanctions for serious or very serious infringements. The Bank of Spain has informed the staff that it does not have enforcement authority over significant credit

institutions in the areas where substituted compliance has been requested. As described below, enforcement of the CRD and CRR for violations detected by the joint supervisory teams is conducted by the ECB. In addition, violations related to anti-money laundering are investigated and sanctioned by SEPBLAC, which has sole enforcement decision-making power with regard to the Spanish Money Laundering Act.

CNMV has an array of investigative capacities that enable it to detect and enforce against breaches of relevant laws. It is empowered to perform its enforcement functions with respect to both legal and natural persons, including those persons holding directorships or executive positions in Covered Firms. Among the investigative tools available to CNMV are: the power to inspect on premises of a Covered Firm, the power to compel documents, information, and statements, and the power to obtain electronic communications for third parties with the subject's consent, or pursuant to judicial authorization. Upon receiving and considering a supervisory report containing sound evidence of a possible infringement, CNMV's enforcement unit prepares a legal assessment regarding the findings contained the report, and provides the assessment and the report to CNMV's Executive Committee. The Executive Committee then determines whether to initiate a sanctioning procedure. At the conclusion of such procedures, a wide range of possible sanctions may be imposed including, among others: public reprimand, pecuniary sanctions up to 30M€, suspension or restriction of the type or volume of transactions the sanctioned party may carry out in the securities markets, disqualification from holding a directorship or executive post a financial institution for up to ten years, or disgorgement of profits made or losses avoided as a result of the infringement. CNMV is not empowered to enter into settlement agreements, but may impose a penalty discounted by 40% where the sanctioned party undertakes early payment, recognizes liabilities and waives the right to appeal within the

administrative bodies. In the event the procedure continues, a 20% discount may be granted upon early payment (and waiver of the right to appeal the decision before the administrative body) at any time prior to the adoption of final decision. CNMV publicizes all serious and very serious infringements without undue delay provided publication is proportionate and would not jeopardize financial stability.

Misconduct detected by the JSTs is addressed primarily by the ECB. Under the SSM Regulations, the ECB is empowered to address issues of noncompliance with applicable European Union law by directly imposing enforcement measures on supervised entities or requiring the CNMV to use its national enforcement powers. It also may choose to impose administrative penalties or request that the CNMV open sanctioning proceedings. In particular, the ECB may impose administrative pecuniary penalties, and may impose fines and periodic penalty payments per day of infringement. Where appropriate, the ECB may exercise its enforcement authority in parallel with supervisory measures.

Where infringements of the SMLA occur, the SEPBLAC is empowered to conduct necessary inspections to verify compliance with the obligations relating to the functions assigned to it. In this regard, the obliged persons and their employees, directors and agents are required to cooperate to the fullest extent possible with the staff of the SEPBLAC, providing unrestricted access to as much information or documentation as is required, including books, accounts, records, software, magnetic files, internal reports, minutes, official statements and any other related matters subject to inspection. However, the SEPBLAC is not competent to accede to obtain third party records (such as internet service providers or telephone records). Various sanctions are available to the SEPBLAC when infringements are determined to have occurred. Among the sanctions that the SEPBLAC may impose are: public reprimand, a fine of no less

than 150,000€ imposed against the Covered Entity, plus additional fines against those individuals in administrative or management positions who were responsible for the Covered Entity's violation, and withdrawal of administrative authorization for the Covered Entity.

IX. Request for Comment

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

A. General aspects of the comparability assessments and proposed Order

The Commission requests comment regarding the preliminary views and proposed Order in connection with each of the general "regulatory outcome" categories addressed above. Commenters particularly are invited to address, among other issues, whether the relevant Spanish and EU provisions generally are sufficient to produce regulatory outcomes that are comparable to the outcomes associated with requirements under the Exchange Act, and whether the conditions and limitations of the proposed Order would adequately address potential gaps in the relevant regulatory outcomes or would otherwise result in any implementation or other practical issues. Further, the Commission requests comment regarding whether the proposed conditions and limitations guard against comparability gaps arising from the cross-border application of Spanish and EU requirements (including when SBS Entities conduct security-based swap business through branches located in the United States or in third countries). Should the Commission require Covered Entities to be subject to and comply with additional or alternative limitations and/or conditions to achieve a comparable regulatory outcome, or are any of the proposed limitations or conditions unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to the proposed conditions and limitations, commenters also are invited to address any differences between Spanish regulatory requirements and frameworks and the

German, French, or UK requirements and frameworks that formed the basis for the Commission's conditional grant of substituted compliance for Germany, France, and the UK and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[139] Would the responses to any of the questions that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?[140]

B. Risk control requirements

The Commission further requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal risk management, trade acknowledgement and verification, portfolio reconciliation and dispute reporting, portfolio reconciliation, and trading relationship documentation. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do Spanish and EU laws taken as a whole produce regulatory outcomes that are comparable to Exchange Act requirements? In this regard, commenters are invited to address the Spanish and EU laws that a Covered Entity would have to be subject to and comply with in connection with each substituted compliance determination for a particular set of risk control requirements. With respect to each substituted compliance

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139 See German Substituted Compliance Order, 85 FR 85688-89; French Substituted Compliance Order, 86 FR 41616-22; UK Substituted Compliance Order, 86 FR 43321-31; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46501-03.

140 See German Substituted Compliance Notice and Proposed Order, 85 FR 72740-43; French Substituted Compliance Notice and Proposed Order, 85 FR 85736-39; French Substituted Compliance Re-Opening Release, 86 FR 18341-49; UK Substituted Compliance Notice and Proposed Order, 86 FR 18406-11; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46523-27.

determination, the Commission seeks comment on the following matters: (1) will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the determination result in a comparable regulatory outcome; (2) are there additional or alternative Spanish and/or EU laws that Covered Entities should be required to be subject to and comply with to achieve a comparable regulatory outcome; and (3) are any of the Spanish and/or EU laws listed in the determination unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to trading relationship documentation requirements, the Commission invites commenters to address the proposed exclusion of certain legal and bankruptcy status disclosures from the proposed substituted compliance for trading relationship documentation requirements when the counterparty is a U.S. person. Do any additional or alternative Spanish and/or EU requirements require Covered Entities to make the legal and bankruptcy disclosures described in Exchange Act rule 15Fi-5(b)(5)?

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

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and UK requirements and frameworks

that formed the basis for the Commission's conditional grants of substituted compliance for certain risk control requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[141] Would the responses to any of the questions that the Commission asked in connection with the German, French and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?[142]

C. Internal supervision, chief compliance officer and antitrust requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal supervision and chief compliance officer requirements. Commenters particularly are invited to address the basis for substituted compliance in connection with internal supervision and chief compliance officer requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do Spanish and EU laws taken as a whole produce regulatory outcomes that are comparable to Exchange Act requirements? In this regard, commenters are invited to address the Spanish and EU laws that a Covered Entity would have to be subject to and comply with in connection with the substituted compliance determinations for internal supervision and chief compliance officer requirements. With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the determination result in a comparable regulatory outcome; (2) are there additional or

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141 See German Substituted Compliance Order, 85 FR 85689-91; French Substituted Compliance Order, 86 FR 41622-29; UK Substituted Compliance Order, 86 FR at 43331-37; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503-04.

142 See note 140, supra.

alternative Spanish and/or EU laws that Covered Entities should be required to be subject to and comply with to achieve a comparable regulatory outcome; and (3) are any of the Spanish and/or EU laws listed in the determination unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to internal supervision requirements, the Commission invites commenters to address the proposed condition that would require a Covered Entity to comply with applicable Spanish and EU internal supervision requirements as if those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions of the proposed Order. Should the Commission require additional or alternative conditions relating to internal supervision of the Covered Entity's compliance with the Exchange Act and the applicable conditions of the proposed Order? Explain why or why not.

With respect to chief compliance officer requirements, the Commission also invites commenters to address the proposed conditions requiring the Covered Entity to provide the Commission with each of its MiFID Org Reg compliance reports. The Commission seeks comment on the following matters: (1) would an additional or alternative certification and/or scope of each compliance report produce a more comparable outcome; (2) are the proposed certification and/or scope requirements unnecessary to achieve a comparable regulatory outcome; (3) would an alternative deadline for the Covered Entity to provide these reports to the Commission produce a more comparable regulatory outcome? Explain why or why not.

Commenters further are invited to address the Commission's preliminary determination not to grant substituted compliance for Exchange Act antitrust requirements. The Commission seeks comment on the following matters: (1) will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the CNMV Application result in a

comparable regulatory outcome; and (2) are there additional or alternative Spanish and/or EU laws that Covered Entities could be required to be subject to and comply with to achieve a comparable regulatory outcome? Explain why or why not.

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for certain internal supervision and chief compliance officer requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[143] Explain why or why not. Would the responses to any of the questions about internal supervision, chief compliance officer, and antitrust requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?[144] Explain why or why not.

D. Counterparty protection requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with certain counterparty protection requirements under the Exchange Act. Commenters particularly are invited to address the basis for substituted compliance in connection with counterparty protection requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Do Spanish and EU laws taken as a whole produce regulatory outcomes that are comparable to Exchange Act

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143 See German Substituted Compliance Order, 85 FR 85691-92; French Substituted Compliance Order, 86 FR 41639-43; UK Substituted Compliance Order, 86 FR 43347-53; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46503-04, 46511.

144 See note 140, supra.

requirements? In this regard, commenters are invited to address the Spanish and EU laws that a Covered Entity would have to be subject to and comply with in connection with each substituted compliance determination for a particular set of counterparty protection requirements. With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the determination result in a comparable regulatory outcome; (2) are there additional or alternative Spanish and/or EU laws that Covered Entities should be required to be subject to and comply with to achieve a comparable regulatory outcome; and (3) are any of the Spanish and/or EU laws listed in the determination unnecessary to achieve a comparable regulatory outcome? Explain why or why not.

With respect to suitability requirements, the Commission also invites commenters to address the proposed limitation of substituted compliance to recommendations to counterparties that are per se professional clients as defined in MiFID and that are not special entities for purposes of the Exchange Act. Would Spanish and EU suitability requirements for elective professional clients, retail clients and/or special entities produce regulatory outcomes comparable to Exchange Act suitability requirements? Explain why or why not.

With respect to daily mark disclosure requirements, the Commission also invites commenters to address the proposed limitation of substituted compliance to security-based swaps in portfolios that the Covered Entity is required to reconcile, and in fact does reconcile, on each business day. Are there additional or alternative Spanish and/or EU laws that apply to a broader range of security-based swaps? Explain why or why not.

Commenters further are invited to address the Commission's preliminary determination not to grant substituted compliance for Exchange Act clearing rights disclosure requirements.

The Commission seeks comment on the following matters: (1) will the Covered Entity's status being subject to, and its compliance with, the Spanish and EU laws listed in the CNMV Application result in a comparable regulatory outcome; and (2) are there additional or alternative Spanish and/or EU laws that Covered Entities could be required to be subject to and comply with to achieve a comparable regulatory outcome? Explain why or why not.

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for certain of those counterparty protection requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[145] Explain why or why not. Would the responses to any of the questions about counterparty protection requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?[146] Explain why or why not.

E. Recordkeeping, reporting, and notification

The Commission requests comment regarding the proposed grants of substituted compliance in connection with requirements under the Exchange Act related to recordkeeping, reporting, and notification, as well as the requirement of Exchange Act section 15F(g). Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted

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145 See German Substituted Compliance Order, 85 FR 85692-95; French Substituted Compliance Order, 86 FR 41643-48; UK Substituted Compliance Order, 86 FR 43353-59; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46511-12.

146 See note 140, supra.

compliance for those requirements. Do EU and Spanish law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8? In this regard, commenters are invited to address the EU and Spanish laws cited for each substituted compliance determination with respect to the distinct requirements within the recordkeeping, reporting, and notification rules (i.e., the rules for which a more granular approach to substituted compliance is being taken). With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) will the EU and Spanish laws cited for the determination result in a comparable regulatory outcome; (2) are there additional or alternative EU or Spanish laws that should be cited to achieve a comparable regulatory outcome; and (3) are any of the EU or Spanish laws cited for the determination unnecessary to achieve a comparable regulatory outcome?

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

Is it appropriate to structure the Commission's substituted compliance determinations in the proposed Order to provide Covered Entities with greater flexibility to select which distinct requirements within the broader recordkeeping, reporting, and notification rules for which they want to apply substituted compliance? Explain why or why not. For example, would it be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them? If so, explain why. If not, explain why not. Is it appropriate to permit Covered Entities to take a more granular approach to the requirements within the recordkeeping rules? For example, would this approach make it more difficult for the Commission to get a comprehensive understanding of the Covered Entity's security-based swap activities and financial condition? Explain why or why not. Would it be overly complex for the Covered Entity to administer a firm-wide recordkeeping system under this approach? Explain why or why not.

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

18a-4; (5) Regulation SBSR; (6) Form SBSE and its variations; (7) Exchange Act rule 15Fh-1; and (8) Exchange Act rule 15Fh-2? If not, explain why.

Certain of the requirements in the Commission's recordkeeping rules are linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, should a positive substituted compliance determination for the linked requirement in the recordkeeping rule be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement? If not, explain why. Should this be the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement? If not, explain why. In particular, should substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3; (2) Exchange Act rule 15Fi-2; (3) Exchange Act rule 15Fi-3; (4) Exchange Act rule 15Fi-4; (5) Exchange Act rule 15Fi-5; and (6) Exchange Act rule 15Fk-1? If not, explain why.

Commenters also are invited to address the preliminary positive substituted compliance determination with respect to Exchange Act rule 18a-7, which would be conditioned on the Covered Entity filing financial and operational information with the Commission in the manner and format specified by the Commission by order or rule. Should the Commission require Covered Entities to file the financial and operational information using the FOCUS Report Part IIC? Are there line items on the FOCUS Report Part IIC that elicit information that is not included in the reports Covered Entities with a prudential regulator file with the CNMV or other EU or Spanish authorities? If so, do Covered Entities with a prudential regulator record that information in their required books and records? Please identify any information that is elicited

in the FOCUS Report Part IIC that is not: (1) included in the financial reports filed by Covered Entities with the CNMV; or (2) recorded in the books and records required of Covered Entities. Would the answer to these questions change if references to FFIEC Form 031 were not included in the FOCUS Report Part IIC? If so, how? As a preliminary matter, as a condition of substituted compliance should Covered Entities file a limited amount of financial and operational information on the FOCUS Report Part IIC for a period of two years to further evaluate the burden of requiring all applicable line items to be filled out? If so, which line items should be required? To the extent that Covered Entities otherwise report or record information that is responsive to the FOCUS Report Part IIC, how could the information on this report be integrated into a database of filings the Commission or its designee will maintain for filers of the FOCUS Report Parts IIC (e.g., the eFOCUS system) to achieve the objective of being able to perform cross-form analysis of information entered into the uniquely numbered line items on the forms?

Commenters further are invited to address any differences between Spanish regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for recordkeeping, reporting, and notification requirements in those countries and/or for the Commission's proposal to amend its conditional grant of substituted compliance for Germany.[147] Would the responses to any of the questions about those requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Spanish regulatory requirements and frameworks?

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147 See German Substituted Compliance Order, 85 FR 85695-97; French Substituted Compliance Order, 86 FR 41648-57; UK Substituted Compliance Order, 86 FR 43359-69; German Substituted Compliance Notice and Proposed Amended Order, 86 FR 46512-22.

F. Supervisory and enforcement issues

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

- The relevant Spanish authorities for the supervision and enforcement of the areas of law where substituted compliance has been requested and the supervision and enforcement role played by each authority;
- Spanish supervisory and enforcement authority, supervisory inspection practices, and the use of alternative supervisory and/or enforcement tools and practices;
- Spanish supervisory and enforcement effectiveness with respect to derivatives such as security-based swaps; and
- Spanish supervision and enforcement in the cross-border context (e.g., any differences between the oversight of firms' businesses within Spain and the oversight of activities and branches outside of Spain, including within the United States).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,[148]

Jill M. Peterson,

Assistant Secretary.

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148 17 CFR 200.30-3(a)(89).

ATTACHMENT A

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

(a) General conditions.

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

(1) Activities as MiFID "investment services or activities." For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute "investment services" or "investment activities," as defined in MiFID article 4(1)(2) and in SSMA article 140, and fall within the scope of the Covered Entity's authorization from the CNMV and the ECB to provide investment services and/or perform investment activities in the Kingdom of Spain.

(2) Counterparties as MiFID "clients." For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a "client" (or potential "client"),

as defined in MiFID article 4(1)(9) and in the First Additional Provision of Royal Decree Law 14/2018, of 28 September.

(3) Security-based swaps as MiFID "financial instruments." For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID; provisions of SSMA and/or RD 217/2008 that implement MiFID; and/or other EU and Spanish requirements adopted pursuant to those provisions, the relevant security-based swap is a "financial instrument," as defined in MiFID article 4(1)(15) and in the Annex to SSMA.

(4) Covered Entity as CRD/CRR "institution." For each condition in paragraph (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of CRD; provisions of LOSSEC, RD 84/2015, BoS Circular 2/2016, SSMA, and/or RD 217/2008 that implement CRD; CRR; and/or other EU and Spanish requirements adopted pursuant to those provisions, the Covered Entity is an "institution," as defined in CRD article 3(1)(3) and CRR article 4(1)(3), and either a credit institution, as defined in LOSSEC article 1 (in the case of a provision of LOSSEC, RD 84/2015, and/or BoS Circular 2/2016), or an investment firm, as defined in SSMA article 138 (in the case of a provision of SSMA and/or RD 217/2008 that implements CRD).

(5) Counterparties as EMIR "counterparties." For each condition in paragraphs (b) through (e) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of EMIR, EMIR RTS, EMIR Margin RTS, and/or other EU requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered

Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it must treat the counterparty as if the counterparty were a financial counterparty; and

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

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

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

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

(7) Memorandum of Understanding with the Spanish Authorities. The Commission and the CNMV and the Bank of Spain have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(8) Memorandum of Understanding Regarding ECB-Owned Information. The Commission and the ECB have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

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

(10) European Union Cross-Border Matters.

(i) If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or MiFIR or any other EU or Spanish requirement adopted pursuant to MiFID or MiFIR listed in paragraphs (b) through (e) of this Order is allocated to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, the CNMV must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service.

(ii) If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (e) of this Order is

allocated to one or more authorities of a Member State of the European Union, one of such authorities must be the CNMV.

(11) Notification Requirements Related to Changes in Capital. A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a-8(c) and the requirements of Exchange Act rule 18a-8(h) as applied to Exchange Act rule 18a-8(c).

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

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

(1) Internal risk management. The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I), provided that

(i) The Covered Entity is subject to and complies with the requirements of:

(A) MiFID articles 16 and 23; SSMA articles 193, 194, 208bis, 220bis, 221, 222, 223, and 224; and RD 217/2008 articles 30, 30bis, 30ter, 30quáter, 30quinqies, 30sexies, 32, 41, 42, 43, 44, 45, 46, 47, 48, 61, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, and 79; and, if the Covered Entity is a credit institution, also BoS Circular 2/2016 article 43 and RD 84/2015 article 22;

(B) MiFID Org Reg articles 21 through 37, 72 through 76 and Annex IV;

(C) CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2), 91(7) through (9), 92, 94, and 95; SSMA articles 182(1) and (2) and 183(1) and (2); and RD 217/2008 article 35; and, if the Covered Entity is a credit institution, also LOSSEC articles 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, and 38; RD 84/2015 articles 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54; and BoS Circular 2/2016 articles 26, 27, 28, 29, 30, 31, 32, 33(4), 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, and 60; and, if the Covered Entity is an investment firm, also SSMA articles 183(3), 184, 184bis, 185, 185bis, 186, 188, 189(1) through

(3) and (5), 189bis, 189ter, and 192bis; and RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 31, 31bis, 36, 38, 39(1) and (2), 40, 88, 90, 91, 92, 93, 94, 95, 96, 97(1)-(3), and 98;

(D) CRR articles 286 through 288 and 293; and

(E) EMIR Margin RTS article 2;

(ii) If the Covered Entity is an investment firm, the Covered Entity is not exempt from certain provisions of RD 217/2008 pursuant to RD 217/2008 article 87(2) and/or (3) and/or exempt from SSMA article 189 pursuant to SSMA article 189(6) and/or (7); and

(iii) If the Covered Entity is an investment firm, the Covered Entity establishes, maintains, and implements policies and procedures for management of residual risk associated with the use of recognized credit risk mitigation techniques described in RD 217/2008 article 103(1)(c).

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

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

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

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

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

(5) Trading relationship documentation. The requirements of Exchange Act rule 15Fi-5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(a), EMIR RTS article 12, and EMIR Margin RTS article 2.

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

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

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

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

(ii) The Covered Entity complies with paragraph (c)(4) of this Order; and

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

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

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (c)(3) of this Order and complies with the other conditions in that paragraph;

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

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

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk-1(e)(2)) of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the Covered Entity's compliance with:

(i) Applicable requirements under the Exchange Act; and

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

(D) Be provided to the Commission no later than 15 days following the earlier of:

(i) The submission of the report to the Covered Entity's management body; or

(ii) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) would be required to cover.

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

(A) MiFID articles 16 and 23; SSMA articles 193, 194, 208bis, 220bis, 221, 222, 223, and 224; and RD 217/2008 articles 30, 30bis, 30ter, 30quáter, 30quinqies, 30sexies, 32, 41, 42, 43, 44, 45, 46, 47, 48, 61, 66, 67, 68, 69, 70, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76, 76bis, and 79; and, if the Covered Entity is a credit institution, also BoS Circular 2/2016 article 43 and RD 84/2015 article 22;

(B) MiFID Org Reg articles 21 through 37, 72 through 76 and Annex IV;

(C) CRD articles 74, 76, 79 through 87, 88(1), 91(1) and (2), 91(7) through (9), 92, 94, and 95; SSMA articles 182(1) and (2) and 183(1) and (2); and RD 217/2008 article 35; and, if the Covered Entity is a credit institution, also LOSSEC articles 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, and 38; RD 84/2015 articles 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, and 54; and BoS Circular 2/2016 articles 26, 27, 28, 29, 30, 31, 32, 33(4), 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 48, 49, 50, 51, 52, and 60; and, if the Covered Entity is an investment firm, also SSMA articles 183(3), 184, 184bis, 185, 185bis, 186, 188, 189(1) through (3) and (5), 189bis, 189ter, and 192bis; and RD 217/2008 articles 14(1)(f), 20, 20bis, 21, 22, 24, 30, 31, 31bis, 36, 38, 39(1) and (2), 40, 88, 90, 91, 92, 93, 94, 95, 96, 97(1)-(3), and 98;

(D) CRR articles 286 through 288 and 293; and

(E) EMIR Margin RTS article 2.

(ii) Paragraphs (c)(1) and (c)(2) also are conditioned on the Covered Entity's compliance with the following conditions:

(A) If the Covered Entity is an investment firm, the Covered Entity is not exempt from certain provisions of RD 217/2008 pursuant to RD 217/2008 article 87(2) and/or (3) and/or exempt from SSMA article 189 pursuant to SSMA article 189(6) and/or (7); and

(B) If the Covered Entity is an investment firm, the Covered Entity establishes, maintains, and implements policies and procedures for management of residual risk associated with the use of recognized credit risk mitigation techniques described in RD 217/2008 article 103(1)(c).

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

(i) Applicable requirements under the Exchange Act; and

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

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

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

(1) Disclosure of information regarding material risks and characteristics. The requirements of Exchange Act rule 15Fh-3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of MiFID article 24(4); SSMA articles 209(1) and (3) and 210(1); RD 217/2008 articles 65 and 77(1); and MiFID Org Reg articles 48-50.

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

(i) MiFID article 23(2) and (3); RD 217/2008 article 61(2) and (3); and MiFID Org Reg articles 33-35;

(ii) MiFID article 24(9); MiFID Delegated Directive article 11(5); and SSMA articles 220ter, 220quáter, and 220quinquies; RD 217/2008 articles 62, 63, and 64; or

(iii) MAR article 20(1) and MAR Investment Recommendations Regulation articles 5 and 6.

(3) "Know your counterparty." The requirements of Exchange Act rule 15Fh-3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of MiFID article 16(2); SSMA article 193(2)(a); RD 217/2008 article 30; MiFID Org Reg articles 21, 22, 25, and 26 and applicable parts of Annex I; CRD articles 74(1) and 85(1); SSMA articles 182(1) and 193(3)(b); RD 217/2008 article 35; MLD articles 11 and 13; SMLA articles 3(1)-(2), 4, 5, 6, 7(1) through (4), 7(7), 7(8), and 8; MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities; and SMLA article 26 as applied to policies and procedures regarding recordkeeping of customer due diligence activities; and, if the Covered Entity is a credit institution, also LOSSEC article 29(1); RD 84/2015 articles 43 and 52(1); BoS Circular 2/2016 article 28; and, if the Covered Entity is an investment firm, also SSMA article 189bis and RD 217/2008 article 96(1).

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

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of MiFID articles 24(2) and (3) and 25(1) and (2); SSMA articles 208ter(1) and (2), 209(2), 212, 213, and 220sexies; RD 217/2008 articles 66, 71, 72, 72bis, 72ter, 73, 74, 74bis, 74ter, 75, 75bis, 76bis, and 80; CNMV Technical Guide 4/2017; and MiFID Org Reg articles 21(1)(b) and (d), 54, and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a "professional client" mentioned in MiFID Annex II section I and in SSMA article 205 and RD

217/2008 article 58 and is not a "special entity" as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh-2(d).

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

(i) Either MiFID articles 24(1) and (3) and SSMA articles 208 and 209(2) or MiFID article 30(1) and SSMA article 207(4); and

(ii) MiFID articles 24(4) and (5); SSMA articles 209(1) and (3) and 210(1); RD 217/2008 article 77; MiFID Org Reg articles 46-48; MAR articles 12(1)(c), 15 and 20(1); and MAR Investment Recommendations Regulation articles 3 and 4.

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

(e) Substituted compliance in connection with recordkeeping, reporting, and notification requirements.

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

(1)(i) Make and keep current certain records. The requirements of the following provisions of Exchange Act rule 18a-5, provided that the Covered Entity complies with the relevant conditions in this paragraph (e)(1)(i) and with the applicable conditions in paragraph (e)(1)(ii):

(A) The requirements of Exchange Act rule 18a-5(b)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; MiFIR article 25(1);

(B) The requirements of Exchange Act rule 18a-5(b)(2), provided that the Covered Entity is subject to and complies with the requirements of MiFID Delegated Directive article 2; MiFID Org Reg articles 72, 74 and 75; EMIR article 39(4); RD 217/2008 article 41;

(C) The requirements of Exchange Act rule 18a-5(b)(3), provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID articles 16(6), 25(5), and 25(6); MiFID Org Reg articles 59, 74, 75 and Annex IV; MiFIR article 25(1); EMIR articles 9(2) and 11(1)(a); SSMA articles 194(1), 218, and 211; and RD 217/2008 articles 3, 32(1), and 82;

(D) The requirements of Exchange Act rule 18a-5(b)(4), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 59; EMIR articles 9(2) and 11(1)(a); MiFID articles 16(6), 25(5), and 25(6); SSMA articles 194(1), 218, and 211; and RD 217/2008 articles 3, 32(1), and 82;

(E) The requirements of Exchange Act rule 18a-5(b)(5), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 74, 75, and Annex IV; and MiFIR article 25(1);

(F) The requirements of Exchange Act rules 18a-5(b)(6) and (b)(11), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); CRD article 73; MiFID articles 16(6), 25(5), 25(6); MiFID Delegated Directive article 2; MiFID Org Reg articles 59, 74, 75, and Annex IV; MiFIR article 25(1);

EMIR articles 9(2), 11(1)(a), and 39(4); SSMA articles 194(1), 218, 211, 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 3, 32(1), 41, and 82; and

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

(G) The requirements of Exchange Act rule 18a-5(b)(7), provided that the Covered Entity is subject to and complies with the requirements of MiFIR article 25(1); MLD4 articles 11 and 13; MiFID article 25(2); SMLA articles 3 through 7; and SSMA article 213;

(H) The requirements of Exchange Act rule 18a-5(b)(8), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(d), 35; CRD articles 88, 91(1), 91(8); MiFID articles 9(1) and 16(3); SSMA articles 193(2)(b) and 208bis; LOSSEC articles 24(1) and 29(2); and BoS Circular 2/2016 Rule 32(1);

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

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 73, and Annex I; MiFID articles 16(6) and 25(2); MLD articles 11 and 13; EMIR article 39(5); SSMA articles 194(1) and 213; RD 217/2008 article 32(1); and SMLA articles 3 through 7, in each case with respect to the relevant security-based swap or activity;

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

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

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

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

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

(K) The requirements of Exchange Act rule 18a-5(b)(14)(iii), provided that:

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

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

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

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

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

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

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

(A) The requirements of Exchange Act rule 18a-6(a)(2), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; SSMA articles 194(1), 234, 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 32(1) and 41;

(B) The requirements of Exchange Act rule 18a-6(b)(2)(i), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72, 74, 75, and Annex IV; CRR article 103; MiFIR article 25(1); EMIR article 9(2); MiFID articles 16(6) and 69(2); CRD article 73; MiFID Delegated Directive article 2; SSMA articles 194(1), 234, 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 32(1) and 41;

(C) The requirements of Exchange Act rule 18a-6(b)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of CRR article 103; MiFID Org Reg articles 72, 73, 74, 75, 76, Annex I and Annex IV; MiFIR article 25(1); EMIR article 9(2); CRD article 73; MiFID articles 16(6), 16(7); MiFID Delegated Directive article 2; SSMA articles 194(1) through (3), 276bis, 276ter, 276quáter, and 276quinquies; and RD 217/2008 articles 32(1) through (8) and 41;

(D) The requirements of Exchange Act rule 18a-6(b)(2)(iii), provided that the Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg

articles 72(1) and 73; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(E) The requirements of Exchange Act rule 18a-6(b)(2)(iv), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 72(1) and 73; MiFIR article 25(1); EMIR article 9(2); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

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

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MLD articles 11 and 13; MiFID Org Reg article 72(1); MiFID article 16(6); SMLA articles 3 through 7; SSMA articles 194(1); and RD 217/2008 article 32(1), in each case with respect to the relevant security-based swap or activity;

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

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

(G) The requirements of Exchange Act rule 18a-6(c), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f) and 72(1); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1); and

(*2*) This Order does not extend to the requirements of Exchange act rule 18a-6(c) relating to Forms SBSE, SBSE-A, SBSE-C, SBSE-W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(H) The requirements of Exchange Act rule 18a-6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 35 and 72(1); CRD articles 88, 91(1), 91(8); MiFID article 9(1), 16(3), 16(6); LOSSEC articles 24(1) and 29(1)-(2); SSMA articles 193(2)(b), 194(1), and 208bis; RD 217/2008 articles 30, 31, and 32(1); and BoS Circular 2/2016 Rule 32(1);

(I) The requirements of Exchange Act rule 18a-6(d)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 72(1) and 72(3); MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

(J) The requirements of Exchange Act rule 18a-6(d)(3)(ii), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(1)(f), 72, 73, and Annex I; MiFID article 16(6); SSMA articles 194(1); and RD 217/2008 article 32(1);

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

(*1*) The Covered Entity is subject to and complies with the requirements of EMIR article 9(2); MiFID Org Reg articles 24, 25(2), 72(1) and 73; MiFID articles 16(2), 16(6), and 25(5); SSMA articles 193(2)(a), 194(1), and 218; and RD 217/2008 articles 30(2), 32(1), and 82; and

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

(L) The requirements of Exchange Act rule 18a-6(e), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg articles 21(2), 58, 72(1) and 72(3); MiFID articles 16(5), 16(6); SSMA articles 193(3) and 194(1); and RD 217/2008 article 32(1); and

(M) The requirements of Exchange Act rule 18a-6(f), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 31(1); MiFID article 16(5); and SSMA article 193(3).

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

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

(B) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

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

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

(A) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 394, 430 and Part Six: Title II and Title III; CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII and XIII, as applicable; and

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Spain.

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

(A) The requirements of Exchange Act rule 18a-8(c) and the requirements of Exchange Act rule 18a-8(h) as applied to the requirements of Exchange Act rule 18a-8(c), provided that the Covered Entity is subject to and complies with the requirements of LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies;

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

(*1*) The Covered Entity is subject to and complies with the requirements of LOSSEC articles 116, 119, 121, and 122; and SSMA articles 276bis, 276ter, 276quáter, and 276quinquies; and

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

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

(A) The Covered Entity:

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

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

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

(5) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of SSMA Article 194(1); and RD 217/2008 Article 32(1).

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

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

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

(f) Definitions.

(1) "Covered Entity" means an entity that:

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

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

(iii) Is an investment firm or a credit institution authorized by the CNMV and the ECB to provide investment services and/or perform investment activities in the Kingdom of Spain; and

(iv) Is a significant institution supervised by the CNMV and the ECB (with the participation of the BoS).

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

(3) "MiFID Org Reg" means Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(4) "MiFID Delegated Directive" means Commission Delegated Directive (EU) 2017/593, as amended from time to time.

(5) "MiFIR" means Regulation (EU) 600/2014, as amended from time to time.

(6) "EMIR" means the "European Market Infrastructure Regulation," Regulation (EU) 648/2012, as amended from time to time.

(7) "EMIR RTS" means Commission Delegated Regulation (EU) 149/2013, as amended from time to time.

(8) “EMIR Margin RTS” means Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(9) “CRD” means Directive 2013/36/EU, as amended from time to time.

(10) “CRR” means Regulation (EU) 575/2013, as amended from time to time.

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

(12) “MLD” means Directive (EU) 2015/849, as amended from time to time.

(13) “MAR” means the “Market Abuse Regulation,” Regulation (EU) 596/2014, as amended from time to time.

(14) “MAR Investment Recommendations Regulation” means Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(15) “CNMV” means the Spanish Comisión Nacional del Mercado de Valores.

(16) “BoS” means the Spanish Banco de España.

(17) “ECB” means the European Central Bank.

(18) “Accounting Directive” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, as amended from time to time.

(19) “BRRD” means Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended from time to time.

(20) “SSMA” means the Spanish Securities Market Act, Royal Legislative Decree 4/2015, of October 23, as amended from time to time.

(21) “RD 217/2008” means Royal Decree 217/2008, of February 15, as amended from time to time.

(22) “LOSSEC” means the Act on Regulation, Supervision, and Solvency of Credit Institutions, Law 10/2014, of June 26, as amended from time to time.

(23) “RD 84/2015” means Royal Decree 84/2015, of February 13, as amended from time to time.

(24) “BoS Circular 2/2016” means Circular 2/2016, of February 2, of the Bank of Spain, as amended from time to time.

(25) “SMLA” means the Spanish Anti-Money Laundering Act, Law 10/2010, of April 28, as amended from time to time.

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