May 3, 2021

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

Re: Reopening of Comment Period for Order Proposing Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic (S7-22-20)

Dear Ms. Countryman:

The Securities and Financial Markets Association ("**SIFMA**")[1] appreciates this opportunity to provide the Securities and Exchange Commission (the "**Commission**" or "**SEC**") with comments in response to the above-captioned release[2] (the "**Release**") re-opening the comment period for the Commission's 2020 proposed conditional substituted compliance order[3] (the "**French Order**") in connection with certain requirements applicable to non-U.S. security-based swap ("**SBS**") dealers ("**SBSDs**") and major security-based swap participants (collectively with SBSDs, "**SBS Entities**") subject to regulation in the French Republic (such SBS Entities, "**Covered Entities**").

We appreciate the Commission's efforts to respond to comments on the French Order as well as comments on its previous substituted compliance proposal for Germany. In particular, we appreciate the Commission's requests for further feedback to refine which foreign requirements operate as conditions to substituted compliance and clarify the ability of an SBS Entity to rely on substituted compliance for some but not all Exchange Act requirements in certain areas. In this letter (including Appendix A, where

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

2 Securities Exchange Act of 1934 ("**Exchange Act**") Release No. 34–90766 (Dec. 29, 2020), 85 Fed. Reg. 85720 (Dec. 29, 2020) (the "**Proposal**").

3 Exchange Act Release No. 34–91477 (Apr. 8, 2021), 86 Fed. Reg. 18341 (Apr. 8, 2021).

we provide comments on the French and European Union ("**EU**") laws cited as conditions to substituted compliance), we provide further comments regarding these matters, as well as comments requesting technical clarifications or modifications to the French Order. Considering that virtually all of the matters discussed in this letter are also relevant to the Commission's substituted compliance order for Germany,[4] we ask that to the extent the Commission makes any changes to the French Order in response to our comments, it make conforming changes to the final German order.[5]

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

The potential conditions to substituted compliance with capital requirements described in the Release also present fundamental issues. These conditions would create brand new, far-ranging capital and liquidity requirements touching the entire balance sheet of nonbank[6] Covered Entities—essentially resulting in substituted compliance in name only. Because of the breadth of these conditions and their incorporation of new concepts that still need to be defined more clearly, it simply will not be possible for nonbank Covered Entities (or similarly situated firms in the United Kingdom ("**UK**") or Germany) to implement these conditions before the October 6, 2021 compliance date for

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4 Exchange Act Release No. 34–90765 (Dec. 29, 2020), 85 Fed. Reg. 85686 (Dec. 29, 2020).

5 In particular, if the Commission deletes or modifies a reference to EU law in the French Order, it should make the same deletion or modification to the corresponding reference to EU law in the final German order. Once the French Order is finalized, SIFMA would be pleased to suggest changes to the German law references in the final German order to conform to any changes the Commission makes to the French law references in the French Order.

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

nonbank SBSD capital requirements. The likely impact of the conditions would therefore be to force the speedy and disruptive exit of these firms from the U.S. SBS market.

This result is neither necessary nor desirable. The affected firms do not, in general, have significant exposures to the types of illiquid assets (*e.g.*, loans or other uncollateralized receivables unrelated to their derivatives business, furniture and fixtures, or real estate) that the proposed conditions are designed to restrict. In addition, beyond the liquidity coverage ratio ("**LCR**") requirements cited by the Release, affected firms are subject to other requirements (such as net stable funding ratio ("**NSFR**") and internal liquidity assessment process requirements) that are also designed to promote liquidity, taking into account a longer time horizon and commensurately greater amount of liabilities than the LCR. These additional requirements should be sufficient to ensure comparability of outcomes with the Commission's capital rule.

For these reasons, it is essential that the Commission take more time to analyze the potential impact of the proposed conditions before imposing them. In this regard, it is striking that neither the Release nor the Commission's substituted compliance proposal for the UK[7] contains any cost-benefit analysis of these conditions whatsoever, even though the cost-benefit analysis of previous Commission rulemakings assumed a different result.[8] And the Commission is permitting only 25 days for the public to comment on what would effectively be an amendment to prior rulemakings for which it afforded a collective 265 days of public comment periods. Providing a 25-day comment period is remarkable given the magnitude of these conditions' anticipated impact on Covered Entities and the technical and operational complexities of the issues raised by them. The brevity of this comment period stands in sharp contrast to the deliberative, multiyear process by which the French and EU authorities have developed and applied their post-crisis regulatory standards, many of which were thoughtfully designed to address the same underlying policy objectives of the conditions. Nor is this an issue that can be solved solely by extending the comment period, given the impending registration and compliance deadlines for the Commission's SBS rules.

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

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[7] Exchange Act Release No. 34–91476 (Apr. 8, 2021), 86 Fed. Reg. 18378 (Apr. 8, 2021) (the "**UK Proposal**").

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

I. General Conditions

A. EMIR-Related Conditions

The Release requests comments regarding whether the Commission should modify the portions of the French Order related to trade acknowledgment and verification and trading relationship documentation so as not to include the conditions related to the Markets in Financial Instruments Directive ("**MiFID**") and instead to rely solely on the European Market Infrastructure Regulation ("**EMIR**") conditions. In connection with this change, the Release additionally requests comment on whether the Commission should incorporate two additional general conditions in respect of EMIR-related conditions, namely: (1) that the Covered Entity treat each counterparty that is not a "financial counterparty" ("**FC**") or "non-financial counterparty" ("**NFC**") within the meaning of EMIR as if it were an FC or NFC consistent with the counterparty's business; and (2) that each relevant SBS be either an "OTC derivative contract" or "OTC derivative" for purposes of EMIR or cleared by a central counterparty ("**CCP**") authorized or recognized to clear derivatives contracts in the EU.

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

Second, we would propose that the Commission expand the product-related EMIR condition to include transactions cleared by third-country CCPs that are not authorized or recognized by the EU ("**Third-country CCPs**"). Unlike U.S. law, French and EU law permit, in certain cases, a Covered Entity and its counterparty to agree to submit to a Third-country CCP SBS that are not subject to EMIR's mandatory clearing requirement. In such an instance, a Covered Entity is required to maintain substantially greater capital in relation to the SBS than would apply to either an SBS cleared at a recognized or authorized CCP or a non-cleared SBS. This is because a Third-country CCP does not constitute a "qualifying central counterparty" under the EU Capital Requirements Regulation ("**CRR**"). Covered Entities therefore do not generally agree to clear SBS at Third-country CCPs unless the counterparty specifically requests or local law requires it.

It would be impractical to require a Covered Entity to satisfy rule 18a-3 and other Exchange Act requirements that are principally targeted to non-cleared SBS in relation to these transactions. In addition, any greater risk associated with these transactions is

addressed through the higher capital requirements applicable under the CRR. Therefore, the Commission should adjust the second of its proposed conditions so that it includes SBS cleared by *any* CCP.

If the Commission nonetheless maintains its proposed limitations, the Commission should clarify that a Covered Entity does not lose its ability to rely on substituted compliance in relation to transactions that satisfy the product-related condition simply because the Covered Entity submits an SBS to a Third-country CCP. Rather, such a Covered Entity should be able to rely on substituted compliance for the SBS that satisfy the condition and comply with the linked Exchange Act requirement (or other relevant local rules if the Commission has made a substituted compliance determination with respect to those local rules) for SBS cleared at Third-country CCPs. In addition, the Commission should clarify the condition to (a) define the term "central counterparty" or "CCP" with reference to the relevant EMIR definition, in Article 2(1) of EMIR and (b) revise the reference to a CCP that has been authorized or recognized to clear derivatives contracts "in" the EU instead to refer to authorization or recognition by a relevant authority in the EU, so as to recognize that certain CCPs not domiciled in the EU have nonetheless been recognized by EU authorities.

B. Scope of Substituted Compliance

A number of statements in the Release as well as the original Proposal suggest that, in order to be eligible for substituted compliance with respect to an entity-level Exchange Act requirement, a Covered Entity must be subject to the applicable French or EU laws on an entity-wide basis. For example, the Proposal states that the French Order "would not provide substituted compliance when [a Covered Entity] is excused from compliance with relevant foreign provisions, such as, for example, if relevant French or EU requirements do not apply to the [SBS] activities of a third-country branch of a French SBS Entity."[9]

We are concerned that, taken together, these principles would significantly undercut the availability of substituted compliance. In several instances, the French and EU laws that the French Order would link to entity-level Exchange Act requirements include some French and EU laws that do not apply on an entity-wide basis. As a result, if a Covered Entity conducted SBS activities through a branch located outside France or the EU, it could be precluded from relying on substituted compliance for many of the Exchange Act's entity-level requirements.

In order that these territorial scope limitations under French and EU law not completely undermine the availability of substituted compliance, the Commission should eliminate, wherever feasible, references to territorially limited French and EU laws as conditions to substituted compliance. We have made suggestions along these lines in Appendix A. If the Commission accepts these suggestions, it would substantially

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[9] Id. at 18480.

mitigate this issue (*e.g.*, for the most part, affecting certain Exchange Act recordkeeping requirements).[10]

However, given that the issue cannot be eliminated entirely, we request that the Commission confirm that, in those instances where a relevant French or EU law only applies to the extent a Covered Entity conducts SBS activities through a branch located in France or the EU, a Covered Entity may (a) rely on substituted compliance with the relevant French or EU law for its relevant SBS activities conducted through a branch located in France or the EU and (b) comply with the linked Exchange Act requirement (or other relevant local rules if the Commission has made a substituted compliance determination with respect to those local rules) for SBS activities conducted through branches located in other jurisdictions. If this position were not permitted, a Covered Entity conducting any SBS activities from a branch outside of France or the EU, even to a *de minimis* extent, could never rely on substituted compliance under the French Order for some of the entity-level Exchange Act requirements. Given the global nature of the SBS markets, any other position could make the availability of substituted compliance for these entity-level requirements illusory for many firms.

II. Risk Control Requirements

As noted above, the Release requests comments regarding whether the Commission should modify the portions of the French Order related to trade acknowledgment and verification and trading relationship documentation so as not to include MiFID-related conditions and instead to rely solely on EMIR-related conditions.

We generally support these proposed modifications to the French Order, subject to our comments in Appendix A. In particular, we agree with the Commission that the cited provisions of EMIR are comparable to the Exchange Act trade acknowledgment and verification and trading relationship documentation requirements, when viewed in light of relevant guidance from the European Securities and Markets Authority and the proposed additional condition requiring a Covered Entity to treat its SBS counterparties as FCs or NFCs for purposes of EMIR and the related Regulatory Technical Standards ("**RTS**").

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

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

because those MiFID requirements are not necessarily applicable on an entity-wide basis like the EMIR requirements are.

A. Counterparties as MiFID Clients

Paragraph (a)(2) of the proposed French Order would require, for each further condition requiring compliance with MiFID, provisions of France's Code monétaire et financier ("**MFC**") that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the Covered Entities' relevant counterparties (or prospective counterparties) must be "clients" (or potential "clients") as defined in in MiFID art. 4(1)(9) and as used in the relevant provision of MFC.

We request that the Commission confirm that this condition would not preclude a Covered Entity, as a practical matter, from discharging its obligations under these provisions via an agent acting on its counterparty's behalf, such as an investment manager acting for a fund.

Clarifying paragraph (a)(2) in this manner should not present any issues for the Commission. The key Exchange Act requirements linked to the French and EU rules mentioned in paragraph (a)(2) are disclosure, suitability and fair and balanced communications requirements.[11] In practice, even a U.S. SBS Entity trading with an agent acting on behalf of an SBS counterparty will look to the agent when satisfying these requirements: the SBS Entity will provide its disclosures to the agent; may satisfy its suitability obligations by reasonably determining that the agent is capable of independently evaluating investment risks and receiving certain representations from the agent;[12] and will communicate with the agent, not the counterparty. Accordingly, treating the counterparty's agent as the SBS Entity's "client" will be consistent with the manner in which the linked Exchange Act requirements apply and the manner in which even U.S. SBS Entities will likely satisfy these requirements.

III. Capital

The Release requests comment on whether the French Order should be modified so as to contain four conditions to substituted compliance with respect to the Commission's capital requirements. Specifically, the Release requests comment on whether the French Order should require a nonbank Covered Entity to:

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[11] The proposed French Order also links the French and EU rules mentioned in paragraph (a)(2) to Exchange Act requirements in several other areas. In many of these instances, however, the specific French and EU rules cited by the proposed French Order do not pertain to "clients" and so paragraph (a)(2) does not in reality implicate those Exchange Act requirements; examples include internal risk management, capital and margin requirements.

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

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

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

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

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

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

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

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

Our understanding in this regard is based on the analysis contained in our comment letter concerning the Commission's substituted compliance proposal for the UK. Although that analysis is limited to UK nonbank firms that expect to register as SBSDs, we understand that SIFMA member firms that expect to register as nonbank Covered Entities engage in substantially the same activities as, and have substantially similar balance sheets to, their UK counterparts.

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

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

Specifically, the French and EU authorities have adopted a five-prong approach to liquidity. First, a nonbank Covered Entity is required to hold an amount of sufficiently liquid assets to meet its expected payment obligations under gravely stressed conditions for thirty days and maintain a prudent funding profile. This requirement is based on the Basel Committee on Banking Supervision's ("**BCBS**") LCR and requires that a firm at all times maintain cash, central bank exposures, government-backed assets and other "high quality liquid assets" ("**HQLA**") equal to 100% of its total expected net cash outflows for the next thirty days under a stressed scenario. As the BCBS has explained, the purpose of the LCR, like the Commission's net liquid assets test, "is to improve [a firm's] ability to absorb shocks arising from financial and economic stress."[13] However, the LCR's approach to achieving this goal is somewhat different from the Commission's, in that the LCR seeks to measure what net outflows a firm may actually experience in a stress scenario and ensure that the firm has sufficient liquid assets to cover those outflows.

Second, beginning on June 28, 2021, each nonbank Covered Entity will be subject to a stable funding requirement that will require it to hold a diversity of stable funding instruments sufficient to meet long-term obligations under both normal and stressed conditions.[14] This requirement is based on the BCBS's NSFR, which the BCBS has explained is designed to work in tandem with the LCR "to reduce funding risk over a longer time horizon."[15]

The approach of the NSFR is quite similar to that of the Commission's net liquid assets test, in that it aims to ensure that less liquid, longer-term assets are funded with more stable, longer-term debt instruments and capital. More specifically, the NSFR requires that a firm at all times maintain an amount of available stable funding ("**ASF**")

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

[14] CRR, Articles 428a to 428az introduced by CRR II, Article 1(116).

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

equal to its amount of required stable funding ("**RSF**").[16] To calculate its ASF, a firm must multiply the carrying value of each of its capital instruments and liabilities by a specified percentage. That percentage depends principally on remaining maturity, with capital instruments and liabilities having a remaining maturity of more than one year ascribed a factor of 100%, most liabilities having a remaining maturity of six months to one year ascribed a factor of 50% and most other liabilities ascribed a factor of 0%. However, as the Commission notes, certain deposit liabilities may be a somewhat more stable funding source than other short-term debt. The NSFR recognizes this by ascribing to certain deposits higher percentages than would otherwise be required based on their remaining maturity alone. Similarly, the NSFR recognizes that funding provided by non-financial corporates may likewise be more stable, and so similarly ascribes to such funding a factor of 50% even if the remaining maturity of the relevant instrument is less than a year. Nonbank Covered Entities, however, will generally be unable to take advantage of these more favorable percentages since they cannot accept deposits and do not obtain significant funding from non-financial corporate customers.

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

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

The third and fourth prongs of the French and EU authorities' approach to liquidity—the Internal Liquidity Adequacy Assessment Process ("**ILAAP**") and the Liquidity Supervisory Review and Evaluation Process ("**LSREP**")—are designed to ensure that each nonbank Covered Entity monitors, measures and manages those liquidity

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[16] Id. at 2.

risks that are not captured or fully captured by the minimum (Pillar 1) requirements under the LCR and NSFR ("**Pillar 2 risks**"). Pillar 2 risks include, among other things, the liquidity risks arising from initial margin on derivatives contracts as well as the risk that a firm has insufficient liquidity from HQLA and other liquidity inflows to cover liquidity outflows on a daily basis.

Under the ILAAP requirement, each nonbank Covered Entity is required to maintain liquidity resources that are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due. In particular, each nonbank Covered Entity is required to maintain robust strategies, policies, processes and systems for the identification of liquidity risk over an appropriate set of time horizons, including 365 days.[17] In connection with these requirements, each firm must conduct regular liquidity stress tests and liquidity contingency plans that take into account stress scenarios. A Covered Entity's stress tests must include a granular modelling of cash flows in order to assess whether the firm has sufficient cash from monetization of HQLA and other inflows to cover outflows on a daily basis, under a stress scenario and during longer lasting and more severe stress events.

With respect to LSREP, the French Autorité des Marchés Financiers and the Autorité de Contrôle Prudential et de Résolution (the "**French Authorities**") regularly review a Covered Entity's exposure, measurement and management of liquidity in order to ensure that the firm has sufficient liquidity to satisfy its obligations as they become due. On the basis of these reviews, the French Authorities will determine whether a Covered Entity must modify its arrangements, strategies, processes or mechanisms or the overall amount of liquidity the firm maintains so as to ensure that liquidity risks are soundly managed and adequately covered.

Lastly, each nonbank Covered Entity is required to abide by Pillar 3 liquidity disclosure requirements. In particular, each firm is required to disclose on a regular basis key liquidity metrics, including its LCR, the fair value and carrying value of its encumbered and unencumbered HQLA and (beginning in June 2021) its NSFR. These disclosures are publicly available and would allow the Commission to monitor each nonbank Covered Entity's liquidity positions based on multiple metrics.

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

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[17] Capital Requirements Directive (2013/36/EU) ("**CRD IV**"), Article 86, implemented into French law by Article L. 511-41-1 B and L. 511-41-1 C for credit institutions and Article L. 533-2-2 and L. 533-2-3 for investment firms, as well as Articles 148 to 186 of the Arrêté of 3 November 2014 on internal control and Article 7 of the Arrêté of 3 November 2014 relating to the process of prudential supervision and risk assessment of banking service providers and investment firms.

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

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

As the Commission has recognized, the goal of substituted compliance is to "address the effect of conflicting or duplicative regulations on competition and market efficiency and to facilitate a well-functioning global security-based swap market."[18] Substituted compliance also serves to further the principles of international comity by allowing conflicting laws in different nations to work together in harmony.[19]

Consistent with these goals, the Commission has stated that it would "take a holistic approach in making substituted compliance determinations—that is, [the Commission] would ultimately focus on regulatory outcomes as a whole with respect to the requirements within the same category rather than a rule-by-rule comparison."[20] In this respect, the Commission has noted "that other regulatory systems are informed by the business and market practices present in the foreign jurisdictions where those systems apply, and that such practices may differ in certain respects from practices" in the United States.[21] Accordingly, the Commission "may need to take into account such practices and characteristics in understanding the design and application of another regulatory system and whether and how it may achieve regulatory outcomes comparable to the regulatory outcomes of the relevant provisions of the Exchange Act."[22]

In contrast to these principles and goals, the proposed conditions would directly duplicate, and generally contradict, the liquidity requirements established by the French and EU authorities. The Release suggests that this would be appropriate because the French and EU authorities' requirements are not sufficient to address liquidity risks associated with nonbank Covered Entities, due to the nonbank status of such entities.[23] The Commission does not provide much elaboration as to why it thinks the French Authorities erred in applying these liquidity requirements to nonbank entities, except to

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

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

[20] Cross-Border Proposal, at 31085.

[21] Id. at 31086.

[22] Id.

[23] Release, at 18344.

note, in its substituted compliance proposal for the UK, that banks have access to central bank liquidity and can accept deposits.[24]

However, nonbank Covered Entities have a number of similarities to banks that their U.S. counterparts do not. In particular, beginning on June 26, 2021, nonbank Covered Entities will, unlike their U.S. counterparts, be eligible for the same liquidity support from the European Central Bank that is available to EU banks, on the same terms that such support is available to EU banks.[25] In addition, nonbank Covered Entities are subject to a resolution regime that is similar to that applicable to U.S. and EU banks. This regime emphasizes continuity of critical services during an orderly wind-down and has mechanisms available to provide liquidity to the failed institution in order to allow it to meet its obligations during the course of the wind-down. This is an important distinction from the insolvency regime applicable to U.S. nonbank SBSDs under the Bankruptcy Code, which focuses on liquidation and a rapid distribution of assets to customers, without a mechanism for liquidity support.

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

Accordingly, conditions of the sort contained in the Release are not necessary to bridge some gap between the regulatory objectives of the French and EU authorities' liquidity requirements and those of the Commission's net liquid assets test. The French and EU authorities' requirements are carefully and thoughtfully designed to promote the same goal as the proposed conditions, to ensure nonbank entities can withstand shocks and continue discharging obligations to customers. Indeed, the NSFR uses the same general framework as a net liquid assets test in terms of requiring that a firm have sufficient long-term, stable funding to support the liquidity of its assets.

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

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[24] UK Proposal, at 18386 n. 85.

[25] See Investment Firms Directive (2019/2034/EU), Recital 7. National central banks may also allow investment firms to make use of intraday credit under TARGET2. See TARGET Guideline (EU/2012/27), Annex III, L 30/67, available at https://www.ecb.europa.eu/ecb/legal/pdf/l_03020130130en00010093.pdf.

firms to deal with overlapping, duplicative and contradictory requirements that disrupt the efficient functioning of markets that substituted compliance is designed to preserve.

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

The Commission notes that implementing its proposed conditions would require nonbank Covered Entities "to supplement their existing capital calculations and practices, as well as to incur additional time and cost burdens to implement the potential conditions and integrate them into existing business operations."[26] The Release suggests, however, that the use of concepts from the Basel capital standard may somewhat mitigate these costs.

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

Then, with respect to "allowable" assets, the first condition would require a nonbank Covered Entity to apply "applicable haircuts under the Basel capital standard." But Basel capital standards do not apply "haircuts" to assets. Instead, the BCBS framework provides that a firm must maintain "common equity tier one capital," "tier one capital," and "total capital" equal to certain percentages of the firm's risk-weighted assets.[27] Market and credit risk, in turn, are incorporated into the risk-weighted assets calculation, *i.e.*, the denominator of the equation, rather than the numerator. These risk-weights generally range from 0% (for certain sovereign exposures) to well above 100% for higher-risk exposures. These risk-weights are not equivalent to haircuts: a 100% risk-weight, for instance, does not require a firm to hold capital equal to 100% of the exposure. Rather, a firm must hold 8% of total capital, 6% tier 1 capital, and 4.5% common equity tier one (plus any applicable buffers) against such an exposure. At a minimum, the Commission would therefore need to clarify what it means by "haircuts" and how these should be applied to each different type of asset.

Third, the first condition requires an assessment of a nonbank Covered Entity's "current liabilities coming due in the next 365 days." The potential impact of this limb of the condition may not be consistent with the Commission's expectations, depending on

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[26] Release at 18346.

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

the treatment of various transactions under applicable international accounting standards. For example, under these accounting standards, short-term liabilities may be significantly greater than under U.S. Generally Accepted Accounting Principles due to the different treatment of derivatives payables and receivables. Also, the treatment of customer payables (*e.g.*, in connection with short sales where the Covered Entity has posted collateral to borrow securities to cover the short) and intercompany lending arrangements will need to be considered.

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

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

Even assuming firms can surmount these operational challenges in time, some may also need to make material changes to their funding structures and business activities. For example, the Commission would treat initial margin posted to a third-party custodian as a non-allowable asset unless funded on a non-recourse basis by an affiliate. Heretofore, French firms have not needed to put in place these initial margin funding arrangements. Doing so now would require a reassessment of group-wide liquidity planning and resolution planning strategies. Other regulators, including not only the French and EU authorities but also potentially the Federal Reserve Board, may need to approve these changes. As another example, some firms may rely on short-term loans from affiliates as a material funding source; restructuring or replacing these funding arrangements can be a material undertaking. None of these changes can take place quickly or without extensive planning and analysis.

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

capital standard and Basel capital standards for many years, well before it even finalized its SBSD capital rules.

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

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

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

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

(2) Replace the second condition, whereby it would require quarterly records detailing the calculations underlying the first condition, with a requirement for a nonbank Covered Entity to provide the same reports concerning liquidity metrics that the Covered Entity provides to the French Authorities, which the Commission could use to assess such Covered Entities' liquidity;

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

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

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

IV. Recordkeeping, Reporting, Notification, and Securities Count

A. Granular Substituted Compliance

The Release requests comment on whether the Commission should eliminate the conditions of the French Order requiring a Covered Entity to be subject to and comply with EU or French requirements that either do not apply to the Covered Entity on an entity-wide basis or are not supervised by the Covered Entity's home regulator and replace them with an option to comply directly with U.S. law instead of EU or French law with respect to such requirements.

We appreciate the Commission's recognition of this issue and potential solution. In particular, we think it is appropriate for the Commission to structure its substituted compliance determinations with respect to its recordkeeping, reporting notification and securities count rules to provide Covered Entities with flexibility to select which distinct requirements within these rules for which they want to apply substituted compliance. This flexibility is helpful for three reasons. First, as the Commission observes, it will permit Covered Entities to leverage existing recordkeeping and reporting systems designed to comply with the broker-dealer recordkeeping and reporting requirements on which the requirements applicable to Covered Entities are based (*e.g.*, where a Covered Entity can utilize systems of an affiliated broker-dealer). Second, in some instances a Covered Entity may not be able to comply with the French Order's general conditions with respect to a French recordkeeping requirement linked to a specific Exchange Act recordkeeping requirement; in these instances, the flexibility contemplated by the Release would permit the Covered Entity to still rely on substituted compliance for other Exchange Act recordkeeping requirements not affected by this issue. Third, this flexible approach would also appropriately address the need for the Commission to distinguish between EU and French laws that are conditions to substituted compliance for nonbank Covered Entities versus bank Covered Entities.

This flexibility should not hinder in any respect the Commission's ability to obtain a comprehensive understanding of a Covered Entity's SBS activities and financial condition. From the Commission's perspective, the main implication of this flexibility is that Covered Entities may, for certain types of records, comply directly with Exchange Act requirements—an outcome that should clearly be acceptable to the Commission. And for other types of records, for which a Covered Entity relies on substituted compliance, the relevant French and EU requirements will, together with any relevant conditions, reach a comparable outcome to the linked Exchange Act requirements. Further, each distinct Exchange Act record creation requirement in rule 18a-5 and record preservation requirement in most of the provisions of rule 18a-6 corresponds to a distinct

type of record, and so the approach a Covered Entity takes for one requirement should not affect how the Commission supervises for compliance with another (*e.g.*, whether or not a Covered Entity relies on substituted compliance for records of firm ledgers should not affect records of counterparty account documents).

In Appendix A, we provide additional details regarding how the Commission should implement this more granular approach for France.

B. Rule 10b-10 Exclusion

The Commission further requests comment regarding whether the Commission should not make a positive substituted compliance determination for a recordkeeping, reporting or notification requirement linked to a substantive Exchange Act requirement for which the Commission is not making a positive substituted compliance determination. Although we understand the logic underlying this approach, we are concerned and confused that the Commission identifies Exchange Act rule 10b-10 among the substantive Exchange Act requirements for which a linked recordkeeping requirement would accordingly be excluded from substituted compliance. In this regard, the Commission's parallel UK proposal would exclude the confirmation recordkeeping requirements in Exchange Act rules 18a-5(a)(6) and (b)(6) pertaining to securities other than SBS on the basis of a linkage to Exchange Act rule 10b-10. However, Covered Entities relying on substituted compliance with respect to Exchange rule 18a-5 will not be subject to Exchange Act rule 10b-10. Rule 10b-10 solely applies to a broker-dealer, but by its terms rule 18a-5 solely applies to an SBSD that is not also a broker-dealer. Accordingly the Commission should not adopt any such rule 10b-10 exclusion from substituted compliance for rule 18a-5.

C. Notifications

Proposed paragraph (f)(4)(ii)(A) of the French Order would condition substituted compliance with respect to the Commission's notification requirements contained in rule 18a-8 on the Covered Entity sending to the Commission a copy of any notification required under the provisions of French and EU law contained in paragraph (f)(3)(i) of the order. However, these provisions of French and EU law require notifications of a far wider array of matters than those described in rule 18a-8. It would be disproportionate and unnecessary for the Commission to require a Covered Entity to submit all such notifications to the Commission. The Commission should therefore clarify that a Covered Entity need only submit notifications required under the specified provisions of French and EU law if those notices concern the types of matters described in the applicable provisions of rule 18a-8, such as capital or books and records deficiencies.

V. Internal Supervision and Compliance

The Release requests comment on whether the Commission should revise paragraph (d)(3) of the French Order to impose two additional conditions: compliance with CRR articles 268-88 and compliance with EMIR RTS article 2.

As the Release notes, these requirements address counterparty credit and risk management topics. Given that paragraph (d) of the French Order does not extend to the risk management requirements of Exchange Act Section 15F(j)(2) or related requirements of Exchange Act rule 15Fh-3(h), which the French Order instead addresses separately in paragraph (b)(1), we fail to see the justification for adding these requirements to paragraph (d)(3). Simply asserting that these requirements "promote analogous compliance goals" is not enough; under that theory, seemingly every provision of EU or French law would be relevant to internal supervision and compliance, but this cannot be the case. Stated differently, we do not consider it appropriate for the Commission, through conditions to substituted compliance referencing provisions of foreign law, to expand the substantive ambit of the linked Exchange Act requirements.[28]

In a similar vein, we would like to reiterate our comment that paragraph (d)(2)(ii)(B) of the French Order should be conformed to be consistent with the linked Exchange Act requirement. Paragraph (d)(2)(ii)(B) would require that a Covered Entity provide to the Commission reports required pursuant to MiFID Org Reg Article 22(2)(c) including "a certification that, under penalty of law, the report is accurate and complete." The language is not consistent with the requirement of the linked Exchange Act rule, Exchange Act rule 15Fk-1(c)(2)(ii)(D), which requires a certification of an SBS Entity's annual report that, "*to the best of [the certifier's] knowledge and reasonable belief* and under penalty of law, the information contained in the compliance report is accurate and complete *in all material respects*" (emphases added). The Commission should conform the language of paragraph (d)(2)(ii)(B) to the language of Exchange Act rule 15Fk-1(c)(2)(ii)(D).

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

Additionally, the French Order should be amended to include a clarification as to the timing of the submission of the comparable MiFID report to the Commission. Without it, the submission of the comparable report would seemingly be required within 30 days following the deadline for filing the Covered Entity's annual financial report with the Commission, seemingly without regard to when a Covered Entity prepares the

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[28] Indeed, largely for this reason we previously recommended that the Commission eliminate these references to CRR provisions from paragraph (b)(1) of the French Order, given that the CRR provisions go well beyond the high-level Exchange Act Section 15F(j)(2) requirement to establish robust and professional risk management systems adequate for managing day-to-day business.

relevant report pursuant to MiFID. Instead, consistent with the approach adopted by the Commodity Futures Trading Commission,[29] the submission deadline to the Commission should be 15 days after the Covered Entity completes its annual MiFID report as required by MiFID.

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SIFMA appreciates the opportunity to comment on the Release and the Commission's consideration of our views. SIFMA looks forward to continuing dialogue with the Commission regarding substituted compliance. If you have questions or would like additional information, please contact Kyle Brandon, at 212-313-1280.

Very truly yours,

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

cc:

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

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

Enclosures

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[29] See 17 CFR § 3.3(f)(2)(ii).

Appendix A: Recommended Modifications to French and EU Law Citations

Appendix A

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

(a) General Conditions	***Comments concerning recommended changes***
This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (f):	
(1) *Activities as "investment services or activities*." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the Covered Entity's relevant security-based swap activities constitute "investment services" or "investment activities," as defined in MiFID article 4(1)(2) and in MFC L.321–1, and fall within the scope of the Covered Entity's authorization from the AMF or from the ACPR after approval by the AMF of the Covered Firm's program of operations to provide investment services and/or perform investment activities in the French Republic.	
(2) *Counterparties as* "*clients*." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the relevant counterparty (or potential counterparty) to the Covered Entity is a "client" (or potential "client"), as defined in MiFID article 4(1)(9) and as used in the relevant provision of MFC or is acting through an agent which the Covered Entity treats as its client (or potential client).	Part I.C of the letter provides an explanation for this change
(3) *Security-based swaps as* "*financial instruments*." For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of MiFID, provisions of MFC that implement MiFID and/or other EU and French requirements adopted pursuant to those provisions, the relevant security-based swap is a "financial instrument," as defined in MiFID article 4(1)(15) and in MFC L.211–1 and D.211–1A.	

(a) General Conditions	*Comments concerning recommended changes*
(4) *Covered Entity as "institution."* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, the provisions of CRD, provisions of MFC that implement CRD, CRR and/or other EU and French requirements adopted pursuant to those provisions, the Covered Entity is an "institution," as defined in CRD article 3(1)(3) and CRR article 4(1)(3), and is either a credit institution or finance company, each as defined in MFC L.511–1.	
(5) *Covered Entity's 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 and/or EMIR Margin RTS, if the counterparty to the Covered Entity is not a "financial counterparty" or "non-financial counterparty" as defined in EMIR articles 2(8) or 2(9), respectively, solely because the counterparty is not established in the European Union, the Covered Entity complies with the applicable condition of this Order: (i) As if the counterparty were a financial counterparty, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the European Union and authorized by an appropriate European Union authority, or, as if the counterparty were a non-financial counterparty, if the Covered Entity reasonably determines that the counterparty would be a non-financial counterparty if it were established in the European Union; and (ii) Without regard to the application of EMIR article 13.	Part I.A of the letter provides a detailed explanation regarding these changes.
(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 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 CCP 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 CCP.	Part I.A of the letter provides a detailed explanation regarding these changes.

(a) General Conditions	*Comments concerning recommended changes*
~~(5)~~(7) *Memorandum of Understanding with the French Authorities*. The Commission and the AMF and the ACPR have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.	
~~(6)~~(8) *Memorandum of Understanding Regarding ECB-Owned Information.* The Commission and the ECB and/or the AMF and/or the ACPR have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order as it pertains to information owned by the ECB at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.	
~~(7)~~(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 an email address provided on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must identify each specific substituted compliance determination within paragraphs (b) through (f) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.	These changes are intended to conform to the proposed UK Order.
~~(8)~~(10) *European Union Cross-Border Matters*. If, in relation to a particular service provided by a Covered Entity, responsibility for ensuring compliance with any provision of MiFID or any other EU or French requirement adopted pursuant to MiFID listed in paragraphs (b) through (f) of this Order is allocated pursuant to MiFID article 35(8) to an authority of the Member State of the European Union in whose territory a Covered Entity provides the service, the AMF or the ACPR must be the authority responsible for supervision and enforcement of that provision or requirement in relation to the particular service. If responsibility for ensuring compliance with any provision of MAR or any other EU requirement adopted pursuant to MAR listed in paragraphs (b) through (f) of this Order is allocated to one or more authorities of a Member State of the European Union, one of such authorities must be the AMF or the ACPR.	This change is intended to clarify which provision of MiFID is relevant to the allocation of authority between home and host country EU authorities, as explained by the Commission's initial substituted compliance proposal for France

(b) Substituted Compliance in Connection With Risk Control Requirements	*Comments concerning recommended changes*
This Order extends to the following provisions related to risk control:	
(1) Internal risk management. The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I), provided that the Covered Entity is subject to and complies with the requirements of: ~~MiFID articles 16(4) and 16(5); MFC L. 533–10.II (4) and (5);~~ MiFID Org Reg article~~s 21–24~~ 23; CRD articles 74~~,~~ and 76 ~~and 79–87;~~; as applicable MFC L. 511–41–1–B and L. 511–41–1–C, L. 511–55 through L. 511–57, L. 511–60 through L. 511–64 ~~L. 511–66, L. 511–89 through L. 511–97~~; Internal Control Order articles 106, ~~111~~, 114–15, ~~121–~~1122, ~~130–34, 146~~148–86, 211–12, 214–15; ~~Prudential Supervision and Risk Assessment Order article 7; CRR articles 286–88 and 293; and EMIR Margin RTS article 2~~.	We recommend deleting references to the following provisions, which do not correspond to, and go beyond, the general requirements of Exchange Act section 15(j)(2) and the related aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I), which solely require a firm to establish robust and professional risk management systems adequate for managing its day-to-day business (and associated policies and procedures): • Article 16(4) of MiFID, which relates to continuity and regularity of services; • Article 16(5) of MiFID, which relates to outsourcing; • MFC L. 533-10.II(4) and (5), which implement the foregoing; • Articles 21, 22 and 24 MiFID Org Reg, which impose a wide range of specific organizational, compliance and internal audit requirements; • Articles 79-87 of CRD, which are descriptions and requirements for each type of risk; • Articles L. 511–65 through L. 511–66 of MFC, which relate to granular requirements regarding the risk management function; • Articles L. 511–89 through L. 511–97 of MFC, which relate to specialized committees; • French Internal Control Order Article 111 (requiring decisions on loans, commitments or renewals, to be based on precise criteria, clearly formalized and adapted to the characteristics of the entity, in particular its size, its organization and the nature of its activity), Article 121 (requiring entities that are originators of securitizations of revolving exposures with prepayment provisions to have a liquidity program in place to deal with the implications of both scheduled and prepayments), Article 130-134 (relating to internal capital requirements) and Articles 147-148 (specific provisions relating to underwriting) • Articles 286-288 and 293 of CRR, which constitute specific requirements relating to the use of internal models for the risk-weighting of exposures under swaps and other types of instruments; and

(b) Substituted Compliance in Connection With Risk Control Requirements	*Comments concerning recommended changes*
	• Article 2 of the EMIR Margin RTS which provides for specific rules related to the exchange of margin. Considering that the Commission has not indicated that a firm must satisfy detailed requirements of the sort set forth in these rules in order to satisfy this high-level requirement, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these much more detailed requirements. We also recommend deleting references to French Prudential Supervision and Risk Assessment Order Article 7, as it does not impose any obligation on regulated entities and strictly relates to the competence of the supervisory authority.
(2) Trade acknowledgement and verification. The requirements of Exchange Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of ~~MiFID article 25(6), MFC article L. 533–15, MiFID Org Reg articles 59–61,~~ EMIR article 11(1)(a) and EMIR RTS articles 12(1) to (3).	We recommend deleting references to MiFID and its implementing regulations here. Part II of the letter provides a detailed explanation for these changes, which conform to the proposed UK order as modified by our comments thereon. We also recommend deleting the reference to the EMIR RTS article 12(4). As this specific rule relates to the procedures financial counterparties must have in place to report, on a monthly basis, the number of unconfirmed OTC derivative transactions that have been outstanding for more than 5 business days, they do not correspond to and go beyond the general requirements of Exchange Act rule 15Fi-2. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(3) Portfolio reconciliation and dispute reporting. The requirements of Exchange Act rule 15Fi–3, provided that: (i) The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b) and EMIR RTS article 13 and 15; (ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to competent authorities pursuant to EMIR RTS article 15(2).	

(b) Substituted Compliance in Connection With Risk Control Requirements	***Comments concerning recommended changes***
(4) Portfolio compression. The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with the requirements of EMIR RTS article 14.	
(5) Trading relationship documentation. The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that~~:~~	
~~(i)~~ ~~T~~the Covered Entity is subject to and complies with the requirements of ~~MiFID article 25(5), MFC article L. 533–15, MiFID Org Reg articles 24, 58, 73 and applicable parts of Annex I, and~~ EMIR article 11(1)(a), EMIR RTS article 12(1) to (3) ~~and EMIR Margin RTS article 2; and~~	Part II of the letter provides a detailed explanation for these changes, which conform to the proposed UK order as modified by our comments thereon.
~~(ii) The Covered Entity does not treat the applicable counterparty as an ''eligible counterparty'' for purposes of MiFID article 30 and MFC article L. 533–14, in relation to the MiFID and MFC provisions specified in paragraph (b)(5)(i).~~	

(c) Substituted Compliance in Connection With Capital and Margin	***Comments concerning recommended changes***
(1) Capital. The requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d, provided that (i) the Covered Entity is subject to and complies with ~~the capital requirements of the CRR, including recitals 40, 43 and 87, and articles 26, 28, 50–52, 61–63, 92, 111, 113(1), 114–122, 143, 153(8), 177(2), 283, 290, 300–311, 312(2), 362–377, 382–383, 412(1), 413(1), 416(1), 427(1), 413, 429, 430, and 499~~ the applicable provisions of CRR subject to any waivers or permissions granted to the Covered Entity by the ECB or the ACPR in respect thereof; MiFid Org. Reg., article 23(1); BRRD, ~~articles 27(1), 31(2), 31(1)(a) and (5), 32(5), 45(6)~~ 45 through 45f (as applicable) and 81(1); the following provisions of CRD, as applicable: articles 73, 79, 86, ~~97, 98(1)(e), 98(6), 99, 100(1), 102(1), 104, 104(1), 105, 129,~~ 129(1)and (5), ~~130,~~ 130(1) and 130(5), 131(4) through 131(5a), 131(8) and 131(14), 133(2) and (14), ~~133(1), 133(4),~~ 141, ~~142,~~ 142(1) and (2), ~~and 142(4)~~; as applicable either MFC articles L. ~~511–13, L. 511–15,~~ 511–41–1 A, ~~511–41–1 A(XIV),~~ L. 511–41–1 B, ~~L. 511–41–1 C, L. 511–41–3, L. 511–41–3.II, L. 511–41–3.III, L. 511–41–3.IV, L. 511–41–4, L. 511–41–5, L. 511–42,~~ or MFC articles L. 532–6, L. 533–2–1, L. 533–2–2, ~~L. 533–2–3,~~ and MFC articles ~~L. 612–24, R. 612–30, L. 612–32, R. 612–32, L. 612–33.I, L. 612–33.II,~~ L. 612–40, L. 613–44, L. 613–49.I. ~~L. 613–49.II, L. 613–50.I, L. 631–2–1~~; Decree of 3 November 2014 on internal control, articles ~~10,~~ 94–197, and 211–230; ~~Ministerial Order on the Supervisory Review and Evaluation Process, articles 6–10;~~ Decree of 3 November 2014 relating to capital buffers, articles 2, 16, ~~23, 37, 38,~~ 56–62, ~~63 and 64~~; ~~and EMIR Margin RTS, recital 31, articles 2, 3(b), 7, and 19(1)(d)–(e), (3) and (8)~~.	We recommend deleting references to recitals on retained EU regulations in the Order since they do not form part of the legally binding regulation. We recommend deleting the references to specific articles of the CRR. As CRR institutions, the Covered Entities would be covered by the applicable provisions of the whole text subject to any specific waivers and permissions granted by the relevant regulator with respect to specific articles. The references quoted in their current form are overall not comprehensive in terms of the application to firms and how they would approach meeting the minimum capital requirements under EU and French law. We recommend deleting the references to the following provisions because they do not impose any obligation on firms as opposed to the relevant authorities: • Articles 27(1) and 31(2) of BRRD; • Article 31(1)(a) and (5) of BRRD;[1] • Articles 97, 98(1)(e), 98(6), 99, 100(1), 102(1), 104, 104(1), 105 and 142(4) of CRD;[2] • MFC Articles L. 511-15, L. 511–41–1 C, L. 511-41-3, L. 511-41-4, L. 511-41-5, L. 511-42, L. 532-6, L. 533-2-3, L. 612-24, L. 612-32, R. 612-30, L. 612-33.I, L. 612-33.II, R. 612-32, L. 612-40, L. 613-50.I and L. 631-2-1; • Article 10 of the Decree of 3 November 2014 on internal control; • Articles 6-10 of the Ministerial Order on the Supervisory Review and Evaluation Process; and • Articles 37, 38, 63 and 64 of the Decree of 3 November 2014 relating to capital buffers.

[1] Also, this reference is incorrect. We understand the correct reference would be Article 32(1)(a) and (5) of BRRD.
[2] We also recommend to limit the reference to Article 142 to its paragraphs 1 and 2 for the same reason (paragraphs 3 and 4 apply only to the relevant authorities).

(c) Substituted Compliance in Connection With Capital and Margin	*Comments concerning recommended changes*
	We recommend limiting the reference to Articles 129 and 130 of CRD to their respective paragraphs (1) and (5), because the other paragraphs do not impose any obligation on firms. We would also recommend limiting the reference to Article 131 to its paragraphs (4), (5), (5a), (8) and (14), and the reference to Article 133 to its paragraphs (2) and (14) because the other paragraphs do not impose any obligation on firms. Similarly, we recommend narrowing the reference to MFC Article L. 613-49 to the first paragraph of this Article because this is the only one that imposes an obligation on firms (the other two paragraphs impose obligations on the relevant authorities). We recommend replacing the reference to Article 45(6) of BRRD by a reference to Articles 45 through 45f because the reference to Article 45(6) of BRRD is no longer accurate and has been modified as a result of the adoption of Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019. We recommend introducing an alternative (“as applicable”) for compliance with MFC articles because firms need only to comply with the provisions of the MFC applicable to credit institutions or investment firms, depending on their license. We recommend deleting the reference to MFC Article L. 511-13 because this Article does not relate to capital requirements, but relates to governance requirements for institutions. It thus does not correspond to requirements in Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We also recommend deleting the reference to Article 23 because it has been deleted from the Decree by the implementing texts of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending CRD. We recommend that references to the EMIR Margin RTS be deleted for the purposes of this section on capital. Its requirements are more appropriately addressed in relation to margin rules.

(c) Substituted Compliance in Connection With Capital and Margin	*Comments concerning recommended changes*
(ii) The Covered Entity: (A) Provides to the Commission the same reports concerning liquidity metrics that the Covered Entity provides to the ACPR; (B) Maintains at least $100 million of "high quality liquid assets" as defined in the Basel liquidity coverage ratio; and (C) Includes its most recent statement of financial condition filed with its local supervisor, whether audited or unaudited, with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(16) above.	Part III of the letter provides a detailed explanation for these changes.
(2) Margin. The requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3, provided that the Covered Entity is subject to and complies with the requirements of: EMIR article 11(3); EMIR Margin RTS; ~~CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1);~~ MiFID Org Reg. article 23(1); CRD articles 74 and 79(b); as applicable MFC articles L.511–41–1–B, L.533–2–2, L.533–29, I al. 1, and L. 511–55 al. 1; and Decree of 3 November 2014 on internal control, article 114.	We recommend referring specifically to paragraph 3 of EMIR article 11, which sets out the Level 1 margin requirement. The other paragraphs of EMIR article 11 address other requirements. We recommend deleting the references to CRR in this section on margin, as the EMIR Margin RTS is comprehensive in relation to margin, including related risk monitoring requirements.

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:	

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	***Comments concerning recommended changes***
(1) Internal supervision. The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that: (i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3); (ii) The Covered Entity complies with paragraph (d)(4) to this Order; and (iii) This paragraph (d) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.	
(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that: (i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) to this Order; (ii) All reports required pursuant to MiFID Org Reg article 22(2)(c) must, to the extent they relate to the Covered Entity's business as a security-based swap dealer or major security-based swap participant, also: (A) Be provided to the Commission at least annually and in the English language; (B) Include a certification that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects; and (C) Address the firm's compliance with other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order; provided that the Covered Entity may make an annual submission of this report 15 days after submission to the AMF.	Part V of the letter provides a detailed explanation for these changes.

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<td>(3) Applicable supervisory and compliance requirements. Paragraphs (d)(1) and (d)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements: MiFID articles 16(1) to (5) and 23; MFC articles L. 533–2, L.533–10.II 1° to 5°~~and III~~, L. 533–24 and L. 533–24–1; MiFID Org Reg articles 21–22, 24-26, 28-29, 33, 37, ~~72–76 and Annex IV~~; CRD articles 74, 76, ~~79–87,~~ 88(1), 91(1)–(2), 91(7)–(9) ~~and 92–95~~; and as applicable MFC L. 511–41–1–B and L. 511–41–1–C, L. 511–51, L. 511–52.I, L. 511.53, L. 511–55 through L. 511–69; ~~L. 511–71 through 86~~, ~~L. 511–89 through L. 511–97, L. 511–102, R. 511–16–2~~ and ~~R. 511–16–3~~; Internal Control Order articles 106, ~~111~~, 114, 115, ~~121–~~122, ~~130–34~~, 146–86, 211–12, 214–15; ~~Prudential Supervision and Risk Assessment Order article 7.~~</td>
<td> We recommend deleting the reference to Article 23 MiFID Org Reg which relates to risk management, and is more appropriately addressed with in respect of Paragraph (b).
We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5) or Exchange Act section 15F(k) and Exchange Act rule 15Fk–1:

The paragraphs of Article 16 of the MiFID Org Reg, other than paragraphs (1) to (5), since they do not relate to supervisory or compliance requirements, and corresponding implementing provisions;
Article 27 of the MiFID Org Reg, which relates to remuneration policies and practices;
Articles 30 through 32 of the MiFID Org Reg, which relate to outsourcing in relation to portfolio management activity, are not relevant to SBSD business;
Articles 72-76 of the MiFID Org Reg and Annex IV, which relate to record keeping;
Articles 79-87 of CRD which are descriptions and requirements for each type of risk;
Articles 92-95 of CRD and articles L. 511–71 through 86 of the MFC, which relate to remuneration policies;
Articles L. 511–89 through L. 511–97, and Article L. 511-102 of the French Financial and Monetary Code, which relate to specialized committees; and
French Internal Control Order Article 111 (requiring decisions on loans, commitments or renewals, to be based on precise criteria, clearly formalized and adapted to the characteristics of the entity, in particular its size, its organization and the nature of its activity), Article 121 (requiring entities that are originators of securitizations of revolving exposures with prepayment provisions to have a liquidity program in place to deal with the implications of both scheduled and prepayments) and Article 130-134 (relating to capital requirements)
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(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(j) Requirements	*Comments concerning recommended changes*
	As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to Article R. 511-16-3 as this article does not exist. We recommend deleting references to French Prudential Supervision and Risk Assessment Order Article 7, as it does not impose any obligation on regulated entities and strictly relates to the competence of the supervisory authority.
(4) Additional condition to paragraph (d)(1). Paragraph (d)(1) further is conditioned on the requirement that Covered Entities comply with the provisions specified in paragraph (d)(3) as if those provisions also require compliance with: (i) Applicable requirements under the Exchange Act; and (ii) The other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order.	

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

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
(1) *Disclosure of information regarding material risks and characteristics*. The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of a security-based swap, provided that the Covered Entity is subject to and complies with the requirements of MiFID article 24(4)(b); MFC L. 533–12.II and D. 533–15.2°; and MiFID Org Reg article~~s~~ 48, ~~49 and 50,~~ in each case in relation to that security-based swap.	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements in Exchange Act rule 15Fh–3(b): • MiFID Org Reg article 49, relating to information concerning safeguarding of client financial instruments or client funds; and • MiFID Org Reg article 50, which relates to cost and charges disclosure. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend narrowing down the reference to Article 24(4) to its sub-paragraph (b) because sub-paragraph (a) relates to whether the advice is provided on an independent basis and sub-paragraph (c) relates to costs and charges, which does not correspond to and goes beyond the requirements in Exchange Act rule 15Fh–3(b). For the same reason, we recommend narrowing down the reference to Article D. 533-15 MFC to its 2°, excluding the rest of the Article.
(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with a security-based swap, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either: (i) MiFID article 23(2)–(3); MFC L. 533–10.II(3); and MiFID Org Reg articles 33–35; (ii) ~~MiFID article 24(9); MFC L. 533–12–4;~~ MiFID Delegated Directive article 11(5); and AMF General Regulation article 314–17; or (iii) MAR article 20(1).	We recommend deleting the references to MiFID Article 24(9) as well as its French transposition under Article L. 533-12-4 MFC, relating to third-party payments, as they do not correspond to and go beyond the requirements in Exchange Act rule 15Fh-3(b). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	*Comments concerning recommended changes*
(3) *''Know your counterparty.''* The requirements of Exchange Act rule 15Fh–3(e), provided that the Covered Entity is subject to and complies with the requirements of ~~MiFID article 16(2); MFC L 533–10.II(2)~~; ~~MiFID Org Reg articles 21–22, 25–26 and applicable parts of Annex I; CRD articles 74(1) and 85(1); MFC L. 511–55 and L. 511–41–1–B~~; ~~MLD articles 11 and 13~~; MFC L. 561–5, L. 561–5–1, ~~L. 561–6, L. 561–10, L. 561–4–1,~~ R. 561–5, R. 561–5–1, ~~R. 561–5–2~~, R. 561–5–4, ~~R. 561–7, R. 561–10–3, R. 561–11–1~~ and R. 561–12; L. 561-12~~MLD articles 8(3) and 8(4)(a) as applied to internal policies, controls and procedures regarding recordkeeping of customer due diligence activities~~; ~~and MFC L. 561–4–1 as applied to vigilance measures regarding recordkeeping of customer due diligence activities~~, in each case in relation to that security-based swap.	We recommend deleting references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 15Fh-3(e): • MiFID article 16(2); MFC L 533–10.II(2), which relate to broad organizational requirements • MiFID Org Reg, which related to organizational requirements, compliance, responsibility of senior management, complaints handling and associated recordkeeping; • CRD articles 74(1) and 85(1); MFC L. 511–55 and L. 511–41–1–B, which relate to governance and prudential requirements; • MLD articles 11 and 13, and MLD articles 8(3) and 8(4)(a), which are overbroad; and • MFC Articles L. 561-4-1; L. 561-6, L. 561-10, R. 561-5-2, R. 561-7, R. 561-10-3 and R. 561-11-1, which relate to AML requirements other than KYC. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that:	This change corresponds to the same provision of the proposed UK Order.

(e) Substituted Compliance in Connection With Counterparty Protection Requirements	***Comments concerning recommended changes***
(i) The Covered Entity is subject to and complies with the requirements of MiFID articles 24(2)–~~(3)~~ and 25~~(1)~~–(2); MFC ~~L. 533–24,~~ L. 533–24–1, ~~L. 533–12(I), L. 533–12–6~~ and L. 533–13(I); and ~~MiFID Org Reg articles 21(1)(b) and (d),~~ 54 and 55, in each case in relation to the recommendation of a security-based swap or trading strategy involving a security-based swap that is provided by or on behalf of the Covered Entity; and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements in Exchange Act rule 15Fh–3(f): • MiFID Article 24(3) and its French transposition under MFC Article L. 533-12.I, which relate to the requirement that any information communicated to clients is fair, clear and not misleading; • MiFID Article 25(1) and its French transposition under MFC Article L. 533-12-6, as well as MiFID Org. Reg. article 21(1)(d), which refer to the skills, knowledge and expertise of the firm's personnel; and • MFC Article L. 533-24, which relates to obligations imposed on firms who design financial instruments As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to MiFID Org. Reg. article 21(1)(b) (a firm must ensure that relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities) since the relevant provisions are more appropriately addressed in respect of paragraph (d)(1) of the Order.
(ii) The counterparty to which the Covered Entity makes the recommendation is a ''professional client'' mentioned in MiFID Annex II section I or section II and MFC Articles D. 533–11 and D. 533-12 and is not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).	We recommend extending the definition of "professional client" to elective professional clients under MiFID Annex II section II and MFC Article D. 533-12.
(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.	The reference to EMIR article 11(2) concerns the daily mark-to-market or mark-to- model of contracts where both parties are financial counterparties or non-financial counterparties above the clearing threshold, and as such it is not related to portfolio reconciliation, which is covered by EMIR article 11(1)(b) and EMIR RTS article 13.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, notification and securities counts:	
(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(1)(i) and with the applicable conditions in paragraph (f)(1)(ii):	
(A) The requirements of Exchange Act rule 18a–5(a)(1) or (b)(1), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of Articles 85, 87, 92, and 93 of the Internal Control Order (2) With respect to the requirements of Exchange Act rule 18a–5(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend to delete references to Article 16(7) MiFID and French implementation under MFC Article L. 533-10.III, Articles 74, 75, 76 and Annex IV MiFID Org. Reg., and Article 25(1) MiFIR. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Articles 85, 87, 92, and 93 of the Internal Control Order relating to accounting information and audit trail of both own account and client transactions, which do not raise these issues.
(B) The requirements of Exchange Act rule 18a–5(a)(2), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(1) The Covered Entity is subject to and complies with the requirements of Articles 85, 87, 92, and 93 of the Internal Control Order; (2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend to delete references to Article 16(6) MiFID and French implementation under MFC Article L. 533-10.II and Articles 72(1), 74, and 75 MiFID Org. Reg. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Articles 85, 87, 92,and 93 of the Internal Control Order relating to accounting information and audit trail of both own account and client transactions, which do not raise these issues. We also recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a-5(a)(2): • Article 73 CRD IV (including the reference to the French transposition in Article L511-41-1-B of the MFC), which relate to substantive capital requirements; and • Article 2 MiFID Delegated Directive and Article 39(4) EMIR, which do not relate to recordkeeping As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(C) The requirements of Exchange Act rule 18a–5(a)(3) or (b)(2), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(1) The Covered Entity is subject to and complies with the requirements of Article 2 MiFID Delegated Directive, implemented under French law under Article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms and Article 312-6 of the General Regulation of the AMF. (2) With respect to the requirements of Exchange Act rule 18a–5(a)(3), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a-5(a)(3) and (b)(2): • Articles 16(8) and 16(9) of MiFID and Article 39(4) of EMIR, which relate to general client asset safekeeping and segregation requirements; • Art. 72(1) MiFID Org. Reg., which relates to the manner of keeping records rather than the records themselves; and • Art. 74 and 75 MiFID Org. Reg., which could raise the issues described in Part I.B of the letter. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(D) The requirements of Exchange Act rule 18a–5(a)(4) or (b)(3), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(1) The Covered Entity is subject to and complies with the requirements of Articles 21(1)(f) and 21(4) MiFID Org Reg., Article 9(2) EMIR, and Articles 85, 86, 92 and 93 of the Internal Control Order; and	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a-5(a)(4) and (b)(3): • Article 25(1) MiFIR, which relates to the availability rather than the keeping of records; • Article 59 MiFID Org. Reg., which sets out the requirement to confirm execution of an order to the client; • 76 MiFID Org. Reg., which relates to the manner of keeping records rather than the records themselves; • Article 11(1)(a) EMIR, which relates to timely confirmation; and • Article 103 CRR, which relates to trading book strategy and policies. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend to delete references to Articles 74 and 75 and Annex IV MiFID Org. Reg. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Article 21(1)(f) and 21(4) of MiFID Org. Reg. and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues. (2) With respect to the requirements of Exchange Act rule 18a–5(a)(4), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(E) The requirements of Exchange Act rule 18a–5(b)(4), provided that the Covered Entity is subject to and complies with the requirements of EMIR article 9(2);	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a-5(b)(4): • Article 59 MiFID Org. Reg. (which relates to reporting to clients); and • Article 11(1)(a) EMIR (which relates to timely confirmation) As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(F) The requirements of Exchange Act rule 18a–5(a)(5) or (b)(5), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of Articles 21(1)(f) and 21(4) MiFID Org Reg., and Articles 85, 86, 92 and 93 of the Internal Control Order; and	 We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a-5(a)(5) and (b)(4): • Article 25(1) MiFIR, (which relates to the availability rather than the keeping of records); and • Article 76 MiFID Org. Reg. (which relates to the manner of keeping records rather than the records themselves) As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We also recommend to delete references to Articles 74 and 75 and Annex IV MiFID Org. Reg. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Article 21(1)(f) and 21(4) of MiFID Org. Reg. and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues.

<table>
<tr><th>(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements

*Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.</th><th>Comments concerning recommended changes

*Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column</th></tr>
<tr><td>(2) With respect to the requirements of Exchange Act rule 18a–5(a)(5), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;</td><td></td></tr>
<tr><td>(G) The requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11), as applicable, provided that:

(1) The Covered Entity is subject to and complies with the requirements of Articles 21(1)(f), 21(4), Article 9(2) EMIR, and Articles 85, 86, 92 and 93 of the Internal Control Order; and</td><td>We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11):
Article 25(6) MiFID (which relates to reporting to the client);
Article 16(6) MiFID (which is overbroad in light of the specific nature of this SEC rule);
Article 59 MiFID Org. Reg. (which relates to reporting to clients);
Article 76 MiFID Org. Reg. (which relates to the manner of keeping records rather than the records themselves);
Article 25(1) MiFIR (which relates to the availability rather than the keeping of records); and
EMIR article 11(1)(a), which relates to the timely confirmation of transactions
As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

We also recommend to delete references to Article 25(5) MiFID and its implementing provisions, and Articles 74 and 75 and Annex IV MiFID Org. Reg. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Article 21(1)(f) and 21(4) of MiFID Org. Reg. and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues</td></tr>
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(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi–2 pursuant to this Order;	
(H) The requirements of Exchange Act rule 18a–5(a)(7) or (b)(7), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of Articles L. 561-5, R. 561-5-4, R. 561-5, and R. 561-5-1 of the MFC, Articles 21(1)(f), 21(4), Article 9(2) EMIR, and Articles 85, 86, 92 and 93 of the Internal Control Order	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(7) and (b)(7): • Article 25(2) MiFID, implemented under French law under Article L. 533013 of the MFC, which relates to suitability assessments; • Article 59 MiFID Org. Reg., which relates to reporting to clients; • Article 76 MiFID Org. Reg., which relates to the manner of keeping records rather than the records themselves; • Article 25(1) MiFIR, which relates to the availability rather than the keeping of records; • Articles 11 and 13 MLD4, which relate to broad anti-money laundering requirements, related MFC articles not related strictly to identification of the client and authority of its legal representative; and • EMIR article 11(1)(a), which relates to the timely confirmation of transactions As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We also recommend to delete references to Articles 74 and 75 and Annex IV MiFID Org. Reg. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Article 21(1)(f) and 21(4) of MiFID Org. Reg. and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(2) With respect to the requirements of Exchange Act rule 18a–5(a)(7), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(I) The requirements of Exchange Act rule 18a–5(a)(8), provided that: (1) The Covered Entity is subject to and complies with the requirements of Articles 21(1)(f), 21(4), Article 9(2) EMIR, and Articles 85, 86, 92 and 93 of the Internal Control Order; and (2) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.;	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(8): • Article 25(2) MiFID, implemented under French law under Article L. 533013 of the MFC, which relates to suitability assessments; • Article 59 MiFID Org. Reg., which relates to reporting to clients; • Articles 72(1) and 76 MiFID Org. Reg., which relates to the manner of keeping records rather than the records themselves; • Article 25(1) MiFIR, which relates to the availability rather than the keeping of records; and • EMIR article 11(1)(a), which relates to the timely confirmation of transactions As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We also recommend to delete references to Articles 74 and 75 and Annex IV MiFID Org. Reg. These provisions could raise the issues described in Part I.B of the letter. Instead, the Commission can rely on Article 21(1)(f) and 21(4) of MiFID Org. Reg. and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(J) The requirements of Exchange Act rule 18a–5(a)(9), provided that:	
(1) The Covered Entity is subject to and complies with the requirements of Articles 85, 86, 92 and 93 of the Internal Control Order;	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(9): • Article 63 CRD IV and French transposition in Article L511-41-1-B of the MFC, which relate to substantive capital requirements; • Article 16(6) MiFID, which does not relate to capital calculations; • Articles 72(1) MiFID Org. Reg., which relates to the manner of keeping records rather than the records themselves; • Article 2 MiFID Delegated Directive implemented under French law under Article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms and under Article 312-6 of the General Regulation of the AMF, which relate to segregation of client funds; • EMIR Article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a central counterparty from their own positions; and • MiFID Org Reg article 74 and 75, which relate to record keeping of client orders and decision to deal and record keeping of transactions and order processing As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. Instead, the Commission can rely on Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues
(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(*3*) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(9) relating to Exchange Act rule 18a–2;	
(K) The requirements of Exchange Act rule 18a–5(a)(10) and (b)(8), provided that the Covered Entity is subject to and complies with the requirements of Articles 21(1)(a) and 35 MiFID Org. Reg.;	The other provisions cited in connection with these provisions (Articles 88, 91(1) and (8) CRD IV, Article 9(1) MiFID implemented under Article L. 533-25 of the MFC, Article 16(3) MiFID implemented under Article L.533-10 II 3° of the MFC, and Guidelines 74-75, 172 and Annex III EBA/ESMA Guidelines on Management Suitability) do not relate to recordkeeping.
(L) The requirements of Exchange Act rule 18a–5(a)(12), provided that: (*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3) and 105(10); (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3 pursuant to this Order;	We recommend deleting the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(12): • Articles 72(1) MiFID Org. Reg., which relates to the manner of keeping records rather than the records themselves; • EMIR Article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a central counterparty from their own positions; and • MiFID Org Reg article 74 and 75, which relate to record keeping of client orders and decision to deal and record keeping of transactions and order processing As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(M) The requirements of Exchange Act rule 18a–5(a)(17) and (b)(13), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:	
(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg. Article 72(2) and Annex I (compliance reports);	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–5(a)(17) and (b)(13): • Article 16(6) MiFID, which does not relate to capital calculations; • MiFID Article 16(7), which relates to the manner of keeping records rather than the records themselves • MiFID Org Reg article 73, which relates to keeping records of client agreements for service; • MiFID Org. Reg. article 76(8)(b), which relates to records of communications with client; and • EMIR article 39(5), which sets out the requirement for a clearing member to offer clients the choice of individual and omnibus segregation of the CCP-cleared positions As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(*2*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fh–3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and (*3*) With respect to the portion of Exchange Act rule 18a–5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.**	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(N) The requirements of Exchange Act rule 18a–5(a)(18)(i) and (ii) or (b)(14)(i) and (ii), as applicable, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of EMIR RTS article 15(1)(b); and (*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–3 pursuant to this Order; and	We recommend deleting the reference to EMIR article 11(1)(b), relating to portfolio reconciliation and dispute resolution, which does not contain a separate recordkeeping requirement except as specified by EMIR RTS article 15(1)(a): "when concluding OTC derivative contracts with each other, financial counterparties and non-financial counterparties shall have agreed detailed procedures and processes in relation to: (a) the identification, recording, and monitoring of disputes….".
(O) The requirements of Exchange Act rule 18a–5(a)(18)(iii) or (b)(14)(iii), as applicable, provided that: (1) The Covered Entity is subject to and complies with the requirements of EMIR RTS article 15(1)(b) with respect to such security-based swap portfolio(s); and (*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–4 pursuant to this Order.	We recommend deleting the reference to EMIR article 11(1)(b), relating to portfolio reconciliation and dispute resolution, which does not contain a separate recordkeeping requirement except as specified by EMIR RTS article 15(1).
(ii) Paragraph (f)(1)(i) is subject to the following further conditions: (A) Paragraphs (f)(1)(i)(A) through (D) and (H) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(B) A Covered Entity may apply the substituted compliance determination in paragraph (f)(1)(i)(M) to records of compliance with Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and (C) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(13), (a)(14), (a)(16), (b)(9), (b)(10) or (b)(12).	
(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a–6, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(2)(i) and with the applicable conditions in paragraph (f)(2)(ii):	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(A) The requirements of Exchange Act rule 18a–6(a)(1) or (a)(2), as applicable, provided that the Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Articles 21(1)(f) and 21(4), and Articles 85, 86, 92 and 93 of the Internal Control Order;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(a)(1) or (a)(2): • MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • MiFIR article 25(1), which relates to the recording of data regarding all transactions, including client information; and • EMIR articles 11(1)(a) (relating to the timely confirmation of transactions) and 39(4) (relating to the requirement for a clearing member to maintain separate accounts at CCPs, and on its books and records, for proprietary and client positions) As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to MiFID Article 16(6) (implemented under French law under Article L. 533-10 II of the MFC) and MiFID Org Reg articles 72(1), as these provisions could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID Org. Reg. Articles 21(1)(f) and 21(4), and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues.

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(B) The requirements of Exchange Act rule 18a–6(b)(1)(i) or (b)(2)(i), as applicable, provided that the Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Articles 21(1)(f) and 21(4), Articles 85, 86, 92 and 93 of the Internal Control Order, and EMIR Article 9(2);	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ii) or (b)(2)(i): • MiFIR article 25(1), which relates to the recording of data regarding all transactions, including client information; and • EMIR articles 11(1)(a) (relating to the timely confirmation of transactions) and 39(4) (relating to the requirement for a clearing member to maintain separate accounts at CCPs, and on its books and records, for proprietary and client positions) As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the references to MiFID Article 16(6) (implemented under French law under Article L. 533-10 II of the MFC) and MiFID Org Reg articles 72(1), as these provisions could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID Org. Reg. Articles 21(1)(f) and 21(4), and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues.
(C) The requirements of Exchange Act rule 18a–6(b)(1)(ii) and (iii), provided that:	

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(1) The Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Articles 21(1)(f) and 21(4), Articles 85, 86, 92 and 93 of the Internal Control Order, and EMIR Article 9(2); and (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ii) and (iii): • MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • EMIR article 25(1), which relates to the recognition of non-EU CCPs as eligible to provide clearing services to EU firms; and • EMIR article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a central counterparty from their own positions As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend that the references to MiFID Article 16(6), implemented under French Law under Article L. 533-10 II of the MFC, and MiFID Org Reg articles 74 and 75 should be deleted, as these provisions could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID Org. Reg. Articles 21(1)(f) and 21(4) and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues.

(D) The requirements of Exchange Act rule 18a–6(b)(1)(iv) or (b)(2)(ii), as applicable, provided that the Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Articles 21(1)(f) and 21(4), Articles 85, 86, 92 and 93 of the Internal Control Order, and EMIR Article 9(2);	We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(iv) and (b)(2)(ii): • CRR article 103, which relates to the firm's management of trading book exposures; • MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; • MiFID Org Reg article 73 which relates to records of client agreements for services; • MiFID Org Reg articles 74 and 75, which relate to record keeping of transactions and order processing and the medium of retention of records; • MiFIR article 25(1), which sets a duration of 5 years for firms to keep relevant data relating to orders and transactions in financial instruments; • EMIR article 25(1), which relates to the recognition of non-EU CCPs as eligible to provide clearing services to EU firms; • EMIR article 39(4), which relates to a firm's requirement to segregate the positions they clear for a client with a central counterparty from their own positions; and • EMIR article 39(5), which sets out the requirement for a clearing member to offer clients the choice of individual and omnibus segregation of the CCP-cleared positions As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend that the references to MiFID Article 16(6), implemented under French Law under Article L. 533-10 II of the MFC, MiFID Article 16(7), implemented under French law under Article L. 533-10 III of the MFC, and MiFID Org Reg articles 74, 75, 76, and 76(8)(b) should be deleted, as these provisions could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID Org. Reg. Articles 21(1)(f) and 21(4) and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(E) The requirements of Exchange Act rule 18a–6(b)(1)(v), provided that: *(1)* The Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Articles 21(1)(f) and 21(4), Articles 85, 86, 92 and 93 of the Internal Control Order, and EMIR Article 9(2); (*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(v), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a– 1d pursuant this Order; and (*3*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(v) relating to Exchange Act rule 18a–2;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(v): • CRR and CRR Reporting ITS, which relate to supervisory reports to be made; • MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; and • MiFIR article 25(1), which sets a duration of 5 years for firms to keep relevant data relating to orders and transactions in financial instruments As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We also recommend adding MiFID Org. Reg. Articles 21(1)(f) and 21(4) and Articles 85, 86, 92 and 93 of the Internal Control Order.
(F) The requirements of Exchange Act rule 18a–6(b)(1)(vi) or (b)(2)(iii), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(1) The Covered Entity is subject to and complies with the requirements of MiFID article 21(1)(f), Article L. 561-12 of the MFC, and EMIR article 9(2); and (*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vi), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to MiFID Article 16(6), implemented under French law under Article L. 533-10 II of the MFC, MiFID Org Reg article 73 and MiFIR article 25(1), as this provision could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID article 21(1)(f) and Article L. 561-12 of the MFC, which do not raise these issues We recommend deleting the reference to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a– 6(b)(1)(vi) or (b)(2)(iii): • MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; and • MiFID Org Reg article 76, which relates to recording of telephone conversations or electronic communications. As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.
(G) The requirements of Exchange Act rule 18a–6(b)(1)(vii) or (b)(2)(iv), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(1) The Covered Entity is subject to and complies with the requirements of MiFID Org Reg article 21(1)(f) (*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(vii) or (b)(2)(iv): • MiFID Org Reg article 59, which sets out the requirement to confirm execution of an order to the client; • MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; and • MiFIR article 25(1), which sets a duration of 5 years for firms to keep relevant data relating to orders and transactions in financial instruments As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to MiFID Article 16(6), implemented under French law under Article L. 533-10 II of the MFC, and MiFID Org Reg article 73, as this provision could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID Org Reg article 21(1)(f), which does not raise these issues.
(H) The requirements of Exchange Act rule 18a–6(b)(1)(viii) or (b)(2)(v), as applicable, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 99, 294, 394, 415, 430 and Part Six: Title II & Title III; CRR Reporting ITS article 14 and annexes I, II, III, IV, V, VIII, IX, X, XI, XII, XIII, as applicable; MiFID Org. Reg. Articles 21(1)(f) and 21(4); Articles 85, 86, 92 and 93 of the Internal Control Order; and EMIR article 9(2); (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–7 pursuant to this Order; (*3*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(viii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; (*4*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(L); and (*5*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(M) relating to Exchange Act rule 18a–2.	We note that CRR article 105(1)(j) does not exist. We recommend deleting the reference to MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, as this does not correspond to, and goes beyond, the requirements of Exchange Act rule 18-6(b)(1)(viii) or (b)(2)(v). As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements. We recommend deleting the reference to MiFIR article 25(1), as this provision could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID Org. Reg. Articles 21(1)(f) and 21(4) and Articles 85, 86, 92 and 93 of the Internal Control Order, which do not raise these issues. We recommend adding the qualifier "as applicable" because not all firms submit all of the CRR Reporting ITS annexes.
(I) The requirements of Exchange Act rule 18a–6(b)(1)(ix), provided that:	

<table>
<tr>
<td>(1) The Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Article 21(1)(f), 72(2) and Annex I (compliance reports),Articles 94-96, Article 99 and Articles 100-102 of the Internal Control Order ;</td>
<td>We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ix):

MiFID Article 16(2), (3) and (5) (implemented under French law under Article L. 533-10 II of the MFC), which are general organizational requirements ;
MiFID Article 24(9) (implemented under French law under Article L.533-12-4 of the MFC), and MiFID Delegated Directive Article 11 (implemented under French law under Articles 314-16 and 314-17 of the General Regulation of the Autorité des Marchés Financiers) which relates to inducements ;
MiFID Org. Reg. Articles 2(3)(c), 23, 23(1)(b), 24, 25(2), 26, 29(2)(c), 35, MiFIR Article 25(1) and EMIR RTS, which relate to either substantive requirements, or transactional record-keeping requirements ;
CRD IV Article 73 (implemented under French law under Article L. 511-41-1-B of the MFC), which relates to prudential capital requirements rather than record keeping ;
CRD IV Article 76(1) (implemented under French law under Article L.511-60 of the MFC and Article L.533-29, I al. 1 of the MFC), which refers to the implementation and periodic review of the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to ;
CRR Articles 75-87, which cover matters of internal capital, remuneration of staff, treatment of risks, use of and supervisory approaches to capital models and the various risks to which entities are exposed ;
CRR Articles 286 and 293(1)(d), which were not included in the equivalent provisions of the Commission’s German substituted compliance order; and
EMIR Articles 9(1) and 11, which relate to transaction reporting and risk mitigation.

As described above, it is not appropriate for the Commission effectively to expand the scope and content of its requirements as applied to Covered Entities relative to other SBS Entities by conditioning substituted compliance on compliance with these additional requirements.

We recommend adding instead Article 21(1)(f) MiFID Org. Reg.. and Articles 94-96, Article 99 and Articles 100-102 of the Order on Internal Control.</td>
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</table>

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(J) The requirements of Exchange Act rule 18a–6(b)(1)(x), provided that: (*1*) The Covered Entity is subject to and complies with the requirements of Article 21(1)(f) MiFID Org. Reg. Articles 94-96, Article 99 and Articles 100-102 of the Order on Internal Control ; and (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(x): • CRD IV Article 73 (implemented under French law under Article L. 511-41-1-B of the MFC), which relates to prudential capital requirements rather than record keeping ; • MiFID Article 16(6), implemented under French law under Article L.533-10 II of the MFC, which relates to general records; • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information ; • MiFID Org. Reg Article 72(1), which relates to the manner of keeping records; and • EMIR Article 9(2), which relates to the retention of contractual information. We recommend adding instead Article 21(1)(f), MiFID Org. Reg. and Articles 94-96, Article 99 and Articles 100-102 of the Order on Internal Control.
(K) The requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(1) The Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Article 21(1)(f) and Article L. 561-12 of the MFC ; (*2*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii) that relates to Exchange Act rule 15Fh–3, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and (*3*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;	We recommend deleting the references to Article 72(1) MiFID Org. Reg. as this provision could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID article 21(1)(f) and Article L. 561-12 of the MFC, which do not raise these issues. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii): • MLD4 Articles 11, 12 and 14 (implemented under French law under Articles L. 561–4–1, L. 561–5, L. 561–5–1, L. 561–6, R. 561–5, R. 561–5–1, R. 561–5– 2, R. 561–5–3, R. 561–7, R. 561–10 II, R. 561–10–3, R. 561–11–1, R. 561–12, R. 561–15, R. 561–16, R. 561–18 , R. 561–19 of the MFC, which are unrelated substantive requirements ; • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information ; • EMIR Article 9(2), which relates to the retention of contractual information. • MiFID Article 16(6), implemented under French law under Article L. 533-10 II of the MFC, which relates to general organization requirements.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(L) The requirements of Exchange Act rule 18a–6(c), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Article 21(1)(f);	We recommend deleting the references to the following provision, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii): • EMIR Article 9(2), which relates to the retention of contractual information. • MiFID Article 16(6), implemented under French law under Article L. 533-10 II of the MFC, which relates to general organization requirements ; • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information ; • MiFID Org. Reg. Article 72(1), which relates to the manner of keeping records. We recommend adding instead Article 21(1)(f) MiFID Org. Reg.
(M) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Article 21(1)(f);	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(1): • MiFID Articles 16(6) and Articles 21(1)(a) and 35 MiFID Org. Reg., as well as the EBA Guidelines, which relate to substantive requirements; • MiFID Org. Reg. Article 72(1), which relates to the manner of keeping records. We recommend adding instead Article 21(1)(f), MiFID Org. Reg.
(N) The requirements of Exchange Act rule 18a–6(d)(2), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org. Reg Articles 21(1)(f) and 72(3); and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(2): • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information; • MiFID Org. Reg. Article 72(1), which relates to the manner of keeping records; • EMIR Article 9(2), which relates to the retention of contractual information. We recommend adding instead Article 21(1)(f), MiFID Org. Reg.
(*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(2)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(O) The requirements of Exchange Act rule 18a–6(d)(3), provided that: (*1*) The Covered Entity is subject to and complies with the requirements of MiFID Org. Reg. Articles 21(1)(f) and 72(3); and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(2): • MiFID Articles 16(2), which relates to general organization requirements; • MiFID Article 16(6) (implemented under French law under Article L. 533-10 II), which relates to general records; • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information; and • EMIR Article 9(2), which relates to the retention of contractual information. We recommend adding instead Article 21(1)(f), MiFID Org. Reg.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(3)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(P) 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 Article 21(1)(f) MiFID Org. Reg., 21(4) MiFID Org Reg and Articles 85, 86, 92 and 93 of the Internal Control Order; and (*2*) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi–3, 15Fi–4, and 15Fi–5 pursuant to this Order;	We recommend deleting the references to MiFID Org Reg 72(1) and 73 as this provision could raise the issues described in Part I.B of the letter. The Commission can instead rely on MiFID article 21(1)(f) and Articles 85, 86, 92 and 93 of the Internal Control Order which do not raise these issues. We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(4) and (5) : • EMIR Article 9(2), which relate to the retention of contractual information; • MiFID Org Reg Articles 24 and 25(2) which relate to internal audit and the responsibility of the senior management; • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information; and • MiFID Articles 16(5) which relate to outsourcing requirements.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(Q) 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), 21(1)(f), 21(4) and 72(1); and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(e): • MiFID Article 16(5) (implemented under French law under Article L533-2 of the MFC, Article L. 533-10, II, of the MFC) which relate to obligations in relation to outsourcing; • MiFID Article 16(6) (implemented under French law under Article L.533-10 II of the MFC), which relates to general records; • MiFID Article 25(5) (implemented under French law under Article L.533-14 of the MFC) which relate to the responsibility of the senior management; • MiFID Org. Reg. Articles 58 and 72(3) and EMIR Article 9(2) which relate to certain specific obligations and records; and • MiFIR Article 25(1); which relates to the recording of data regarding all transactions, including client information. We recommend adding instead Article 21(1)(f) and 21(4) MiFID Org. Reg.
(R) The requirements of Exchange Act rule 18a–6(f), provided that the Covered Entity is subject to and complies with the requirements of Article 16(5) MiFID, implemented under French law under Article L533-2 of the MFC, Article L. 533-10, II, of the MFC.	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(f): • MiFIR Article 25(1), which relates to the recording of data regarding all transactions, including client information; • EMIR Article 9(2), which relate to records of derivative contracts; • MiFID Org Reg article 31(1), which relates to general requirements for outsourcing; • MiFID Org Reg article 72(1), which requires that records are retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority; and • EBA Guidelines on Outsourcing section 13.3, which are non-binding guidance.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(R) The requirements of Exchange Act rule 18a–6(g), provided that the Covered Entity is subject to and complies with the requirements of Article 21(1)(f) and 21(4) MiFID Org. Reg., and Articles 85, 86, 92 and 93 of the Internal Control Order.	We recommend deleting the references to MiFID Article 69(2), as implemented under French-law, relating to the powers of the competent authorities, rather than the obligations of the entity, which does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–6(g). We recommend adding instead Article 21(1)(f) and 21(4) MiFID Org. Reg., and Articles 85, 86, 92 and 93 of the Internal Control Order.
(ii) Paragraph (f)(2)(i) is subject to the following further conditions: (A) A Covered Entity may apply the substituted compliance determination in paragraph (f)(2)(i)(K) to records related to Exchange Act rule 15Fh–3(b), (c), (e), (f) and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and (B) This Order does not extend to the requirements of Exchange Act rule (b)(1)(xi), (b)(1)(xiii), (b)(2)(vi), or (b)(2)(viii).	
(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a–7, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(3):	
(i) The requirements of Exchange Act rule 18a–7(a)(1) or (a)(2), as applicable, and the requirements of Exchange Act rule 18a–7(j) as applied to such requirements, provided that: (A) The Covered Entity is subject to and complies with the requirements of Articles 99, 394, 430 CRR and articles 415-428 CRR, Annexes I–V and VII–XIII of CRR Reporting ITS, as applicable;	We recommend deleting the references to Article 104(1)(j) CRD, relating to the supervisory power of the authority to impose additional reporting requirements, which does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–7(a)(1) or (a)(2): We recommend adding the qualifier "as applicable" because not all firms submit all of the CRR Reporting ITS annexes. We note that Chapter 2 CRR Reporting ITS does not exist.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.**	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column**
(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 France; and (C) With respect to the requirements of Exchange Act rule 18a–7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(ii) The requirements of Exchange Act rule 18a–7(a)(3) and the requirements of Exchange Act rule 18a–7(j) as applied to such requirements, provided that: (A) The Covered Entity is subject to and complies with the requirements of Articles 99, 394 CRR, Annexes I–V and VII–XIII of CRR Reporting ITS, as applicable ; and	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–7(a)(3) and 18a–7(j): • Article 104(1)(j) CRD which relates to the supervisory power of the authority to impose additional reporting requirements; • Articles 431-455 CRR, Articles 431-434, 452, 454, 455 CRR Articles 437 to 440, 442, 443, 445 to 449 and 451 to 455 CRR, which relate to public disclosure (not regulatory reporting); • Article 34 Accounting Directive and Articles L. 232–1, R. 232–1 through R. 232–8 which relate to a general publication requirement for financial statements; and • Articles L. 823–1 through L. 823–8–1 of the French Commerce Code which relate to the appointment of external financial auditors. We note that Chapter 2 CRR Reporting ITS does not exist.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(iii) The requirements of Exchange Act rule 18a–7(b), provided that the Covered Entity is subject to and complies with the requirements of Article 434, 437 to 440, 442, 443, 445 to 449 and 451 to 455 CRR ;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–7(a)(3) and 18a–7(j): • CRR Articles 435-436, 441, 444, 450 which were not included in the UK Order; • Article 34 accounting directive and Articles L. 232–1, R. 232–1 through R. 232–8 which relate to a general publication requirement for financial statements; and • Articles L. 823–1 through L. 823–8–1 of the French Commerce Code which relate to the appointment of external financial auditors.
(iv) The requirements of Exchange Act rule 18a–7(c), (d), (e), (f), (g) and (h) and the requirements of Exchange Act rule 18a–7(j) as applied to such requirements, provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(A) The Covered Entity is subject to and complies with the requirements of either Articles L. 511-35 to 38 MFC or Article L. 533-5 MFC, as applicable; Article 2 MiFID Delegated Directive implemented under French law under article 3 of Decree of 6 September 2017 on the segregation of client funds of investment firms and article 312-6 of the General Regulation of the Autorité des marché financiers and Article 8 MiFID Delegated Directive implemented under French law under Article 10 of Decree of 6 September 2017 on the segregation of client funds of investment firms and Article 312-7 of the General Regulation of the Autorité des marches financiers; (B) With respect to financial statements the Covered Entity is required to file annually with the with French and/or European authorities, including a report of an independent public accountant covering the financial statements, the Covered Entity (if not prudentially regulated): (*1*) Simultaneously sends a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements to the Commission in the manner specified on the Commission's website; (*2*) Includes with the transmission the contact information of an individual who can provide further information about the financial statements and report;	We recommend deleting the references to the following provisions, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–7(c), (d), (e), (f), (g) and (h): • MiFID Org Reg article 72(2) and Annex I, which relate to record-keeping ; • CRR/CRD articles which set out a number of specific capital requirements; • Article 34 Accounting Directive and implementing articles of the French Commerce Code (which set out accounting and publication requirements applicable to corporations generally, and are not enforced by the ACPR or the AMF), and to replace them by Articles L. 511-35 to 38 MFC, which contain the accounting and publication obligations specific to credit institutions that are enforced by the ACPR, and Article L. 533-5 MFC (same obligations, but applicable to investment firms); and • Articles 16(8)-(10) MiFID, which are substantive, not reporting requirements

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements **Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.*	*Comments concerning recommended changes* **Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column*
(*3*) Includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) covering the annual financial statements if French or EU laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements; provided, however, that such report of the independent public accountant may be prepared in accordance with generally accepted auditing standards in France or the EU that the independent public accountant uses to perform audit and attestation services and the accountant complies with French or EU independence requirements; (*4*) Includes with the transmission the reports required by Exchange Act rule 18a–7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a–7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a–4; provided, however, that the report of the independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) may be prepared in accordance with generally accepted auditing standards in the France or the EU that the independent public accountant uses to perform audit and attestation services and the accountant complies with French or EU independence requirements; and (*5*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rule 18a–2; and (*6*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rules 18a–4 and 18a–4a; and (C) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	
(v) The requirements of Exchange Act rule 18a–7(i), provided that:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(A) The Covered Entity is subject to and complies with Articles R. 511-6 and R. 533-1 MFC or applicable exemptions thereto; (B) The Covered Entity: (*1*) Simultaneously sends a copy of any notice required to be sent by French or EU law cited in paragraph (f)(3)(v)(A) of the Order to the Commission in the manner specified on the Commission's website; and (*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice.	
(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(4)(i) and with the applicable conditions in paragraph (f)(4)(ii): (A) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 and the requirements of Exchange Act rule 18a– 8(h) as applied to such requirements, provided that: (*1)* The Covered Entity is subject to and complies with the requirements of Articles 249 and 249-1 of the Internal Control Order; (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;	We recommend deleting the references to Article 73 MiFID and Article 71 CRD (and implementing provisions), relating to whistle-blowing mechanisms., which do not correspond to, and go beyond, the requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 and the requirements of Exchange Act rule 18a– 8(h) as applied to such requirements:

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements **Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.*	*Comments concerning recommended changes* **Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column*
(B) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to such requirements, provided that the Covered Entity is subject to and complies with the requirements of Articles 249 and 249-1 of the Internal Control Order;	See above
(C) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to such requirements, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of Articles 249 and 249-1 of the Internal Control Order ; 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;	See above
(D) The requirements of Exchange Act rule 18a–8(e) and the requirements of Exchange Act rule 18a–8(h) as applied to such requirements, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of Articles 249 and 249-1 of the Internal Control Order; (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; (*3*) This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements; and (*4*) This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–4 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements;	See above
(ii) Paragraph (f)(4)(i) is subject to the following further conditions:	

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ***Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ***Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(A) The Covered Entity: (*1*) Simultaneously sends a copy of any notice required to be sent by French and EU laws cited in paragraph (f)(4)(i)(C) of the Order, to the Commission in the manner specified on the Commission's website, provided that, to fall within the scope of this condition, such notice must relate to a (I) breach of the EU or French laws cited in the relevant portions of paragraphs (f)(1) or (2) of the Order, which, in the case of a Covered Entity that is prudentially regulated, also relates to the Covered Entity's business as a security-based swap dealer or major security-based swap participant or (II) deficiency relating to capital requirements; and (*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice; (B) This Order does not extend to the requirements of paragraphs (a)(2) and (b)(3), and of Exchange Act rule 18a–8 relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements; (C) This Order does not extend to the requirements of paragraph (g) of rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements.	Part IV.C of the letter contains a detailed explanation for this change
(5) *Securities Counts.* The requirements of Exchange Act rule 18a– 9, provided that: *(1)* The Covered Entity is subject to and complies with the requirements of EMIR article 11(1)(b), Article 2 MiFID Delegated Directive, implemented under French law under article 3 of Decree of 6 September 2017 and article 312-6 AMF General Regulation Article 8 MiFID Delegated Directive, implemented under French law under article 10 of Decree of 6 September 2017 and article 312-7 AMF General Regulation; and	We recommend deleting the references to MiFID Org Reg articles 74 and 75, relating to record keeping, which do not correspond to, and go beyond, the requirements of Exchange Act rule 18a– 9.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements ****Note: in order to conform to the approach taken by the proposed UK Order, the following section provides a granular breakdown of Exchange Act rules in these areas. Given the extent of revisions, we do not provide redlining for them.***	***Comments concerning recommended changes*** ****Note: our comments below focus on the provisions of EU and French law that we propose to delete from these sections of the French Order relative to the Commission's original proposal, taking into account the proposed UK Order, but due to the absence of redlining these provisions are not shown in the first column***
(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.	
(6) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that: *(1)* The Covered Entity is subject to and complies with the requirements of Article 21(1)(f), 21(4) and 72(1) MiFID Org. Reg. (*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order if the Covered Entity is not prudentially regulated.	
(7) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.	
(8) *English Translations.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.	

(g) Definitions	*Comments concerning recommended changes*
(1) Covered Entity” means an entity that:	
(i) Is a security-based swap dealer or major security-based swap participant registered with the Commission;	
(ii) Is not a “U.S. person,” as that term is defined in rule 3a71–3(a)(4) under the Exchange Act; and	
(iii) Is an investment firm authorized by the ~~AMF~~ ACPR to provide investment services or perform investment activities in the French Republic or a credit institution authorized by the ACPR, after approval by the AMF of ~~the credit institution’s~~ its program of operations to provide investment services or perform investment activities in the French Republic.	Investment firms are authorized by the ACPR, not by the AMF. The AMF is competent for the authorization of management companies only.
(2) ‘‘MiFID’’ means the ‘‘Markets in Financial Instruments Directive,’’ Directive 2014/65/EU, as amended or superseded from time to time.	
(3) ‘‘MFC’’ means France’s ‘‘Code monétaire et financier,’’ as amended or superseded from time to time.	
(4) ‘‘Internal Control Order’’ means the French AMF’s Arrêté of 3 November 2014 on Internal Control of Companies in the Banking, Payment Services and Investment Services Sector Subject to the Supervision of the Authorité de Contrôle Prudentiel et de Résolution, as amended or superseded from time to time	
(5) ‘‘Prudential Supervision and Risk Assessment Order’’ means the French ministerial order on prudential supervision and risk assessment, as amended or superseded from time to time.	
(6) ‘‘MiFID Org Reg’’ means Commission Delegated Regulation (EU) 2017/565, as amended or superseded from time to time	
(5) ‘‘MiFID Delegated Directive’’ means Commission Delegated Directive (EU) 2017/593, as amended or superseded from time to time.	
(6) ‘‘MLD’’ means Directive (EU) 2015/849, as amended or superseded from time to time.	
(7) ‘‘MiFIR’’ means Regulation (EU) 600/2014, as amended or superseded from time to time.	
(8) ‘‘EMIR’’ means the ‘‘European Market Infrastructure Regulation,’’ Regulation (EU) 648/2012, as amended or superseded from time to time.	
(10) ‘‘EMIR Margin RTS’’ means Commission Delegated Regulation (EU) 2016/2251, as amended or superseded from time to time.	

(g) Definitions	*Comments concerning recommended changes*
(11) ‘‘CRR Reporting ITS’’ means Commission Implementing Regulation (EU) 680/2014, as amended or superseded from time to time.	
(12) ‘‘CRD’’ means Directive 2013/36/ EU, as amended or superseded from time to time	
(13) ‘‘CRR’’ means Regulation (EU) 575/2013, as amended or superseded from time to time.	
(14) ‘‘MAR’’ means the ‘‘Market Abuse Regulation,’’ Regulation (EU) 596/2014, as amended or superseded from time to time.	
(15) ‘‘MAR Investment Recommendations Regulation’’ means Commission Delegated Regulation (EU) 2016/958, as amended or superseded from time to time.	
(16) ‘‘AMF’’ means the French Autorité des Marchés Financiers.	
(17) ‘‘ACPR’’ means the French Autorité de Contrôle Prudentiel et de Résolution.	
(18) ‘‘ECB’’ means the European Central Bank.	
(19) ‘‘Accounting Directive’’ means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, as amended or superseded from time to time.	
(20) ‘‘Decree of 6 September 2017’’ means France’s Decree number 2017– 1324 of 6 September 2017, as amended or superseded from time to time.	
(21) ‘‘AMF General Regulation’’ means France’s ‘‘Règlement Général de L’Autorité des Marchés Financiers,’’ as amended or superseded from time to time.	
(22) ‘‘Ministerial Order on the Supervisory Review and Evaluation Process’’ means France’s Arrêté of 3 November 2014 on the Process for Prudential Supervision and Risk Assessment of Banking Service Providers and Investment Firms Other than Portfolio Management Companies, as amended or superseded from time to time.	
(23) ‘‘French Commerce Code’’ means the French Commercial Code, as amended or superseded from time to time.	
(24) ‘‘Prudentially regulated’’ means a Covered Entity that has a ‘‘prudential regulator’’ as that term is defined in Exchange Act section 3(a)(74).	

(g) Definitions	*Comments concerning recommended changes*
~~(25) ''Decree of 3 November 2014 on internal control'' means Arrêté of 3 November 2014 on internal control of companies in the banking, payment services and investment services sector subject to the supervision of the ACPR.~~	This is already defined in paragraph (4) above as the "Internal Control Order".
~~(26)~~ (25) ''Decree of 3 November 2014 relating to capital buffers'' means Arrêté of 3 November 2014 relating to the capital buffers of banking service providers and investment firms other than portfolio management companies.	
~~(27)~~ (26) ''BRRD'' means Bank Recovery and Resolution Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended or superseded from time to time.	
(27) "CCP" has the meaning given in EMIR article 2(1).	Further to our comment at (a)(6)(ii), we recommend the inclusion of "CCP" as a defined term.