September 13, 2021

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

Re: Notice of Application for the Amendment of Substituted Compliance Determination Regarding Security-Based Swap Entities Subject to Regulation in the Federal Republic of Germany; Proposed Amendments to Order (S7-08-21)

Dear Ms. Countryman:

The Securities and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to comment on the above-captioned notice by the Securities and Exchange Commission ("**SEC**" or "**Commission**") regarding (a) the application submitted by the Bundesanstalt für Finanzdienstleistungsaufsicht ("**BaFin**") requesting that the Commission amend its substituted compliance order (the "**German Order**") for German security-based swap ("**SBS**") dealers ("**SBSDs**") and major SBS participants (together with SBSDs, "**SBS Entities**") subject to regulation in the Federal Republic of Germany (such SBS Entities, "**Covered Entities**") to extend the German Order to nonbank capital and margin requirements and (b) additional proposed amendments to the German Order (together, the "**Proposal**").[2]

We appreciate the Commission's proposal to extend the German Order to nonbank capital and margin requirements. We are concerned, however, regarding several of the proposed amendments to the German Order, including in particular the conditions that the Commission has proposed to apply to substituted compliance. As described

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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. 34–92647 (Aug. 12, 2021), 86 Fed. Reg. 46500 (Aug. 18, 2021).

below, several of these conditions present material ambiguities that the Commission will need to address before Covered Entities can be in a position to satisfy them.

Moreover, there will not be enough time between when the Commission finalizes the Proposal and the November 1, 2021 date by which Covered Entities must register with the Commission for Covered Entities to come into compliance with these conditions. In particular, compliance with those conditions will, in many cases, require outreach to, and cooperation by, foreign counterparties. Although several of these conditions were also present in the Commission's prior substituted compliance orders for the United Kingdom (the "**UK Order**") and the French Republic (the "**French Order**"), the Commission did not publish those orders until July 30 and July 23, 2021, respectively, leaving only a roughly three-month transition period, which is insufficient for these matters. Accordingly, our comments below apply equally to the UK and French Orders, as well as the German Order.

I. General Condition (5) – Counterparties as EMIR "counterparties"

The Proposal would amend the German Order to include new General Condition 5, which would require that, in each instance where the German Order includes a condition that requires the application of, and a Covered Entity's compliance with, provisions of the "European Market Infrastructure Regulation," Regulation (EU) 648/2012 ("**EMIR**"), Commission Delegated Regulation (EU) 149/2013 ("**EMIR RTS**"), or Commission Delegated Regulation (EU) 2016/2251 ("**EMIR Margin RTS**"), and/or other European Union ("**EU**") requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the Covered Entity's counterparty is not any of the specified types of counterparties, then the Covered Entity must comply with the applicable condition as if the counterparty were the specified type of counterparty[3] and without regard to the application of EMIR article 13.

Of particular note, proposed General Condition 5 would have the effect of overriding exemptions and exclusions from EMIR for certain public sector counterparties, such as multilateral development banks. It also would effectively expand the application of EMIR to counterparties that are not "undertakings," such as natural persons. Because several of the rules implicated by proposed General Condition 5, such as risk control requirements, will apply to Covered Entities on an entity-wide basis, the impact of the condition will extend to a Covered Entity's non-U.S. counterparties. To comply with proposed General Condition 5, a Covered Entity will accordingly need to assess whether these counterparties who are not subject to EMIR would be so subject as if it were the type of counterparty specified by EMIR as well as, in many cases, enter into documentation with those counterparties compliant with EMIR. A Covered Entity will accordingly need cooperation by these counterparties to comply with General Condition

[3] In this regard, if the Covered Entity reasonably determined that the counterparty would be a financial counterparty if it were established in the EU and authorized by an appropriate EU authority, it would be required to treat the counterparty as if the counterparty were a financial counterparty.

5. Many of these counterparties will be confused why a determination by a U.S. regulator now deprives them of an exception or exemption under EU law that has for some time applied to them. As a result, they will be reluctant to enter into new documentation to enable a Covered Entity to satisfy the German Order.

To address these obstacles, we request that the Commission adopt a six-month transition period, until May 1, 2022, before a Covered Entity will be required to comply with General Condition 5.

We also request that the Commission confirm that, when a Covered Entity enters into a security-based swap with a counterparty that is not subject to EMIR, the Covered Entity may *either* apply the relevant EMIR requirements to that counterparty as though it were covered by EMIR *or* comply directly with the relevant Exchange Act requirement. This clarification would simplify implementation efforts by permitting a Covered Entity, especially one that is part of a holding company group that includes one or more U.S. SBSDs, to leverage ongoing SBSD regulatory implementation efforts for counterparties not covered by EMIR rather than expanding its EMIR compliance program to apply to counterparties not subject to EMIR.

II. Capital and Margin Requirements

A. Overview of Capital and Margin Substituted Compliance Conditions

As conditions to substituted compliance in connection with capital requirements, the amended German Order would require a Covered Entity, among other measures, to:

(1) Maintain liquid assets[4] that have an aggregate market value that exceeds the amount of the Covered Entity's total liabilities by at least $100 million before applying a deduction equal to the Covered Entity's risk-weighted assets ("**RWAs**") divided by 12.5 (the "**RWA Deduction**") and by at least $20 million after applying the RWA Deduction ("**capital substituted compliance condition (1)**");

(2) Make and preserve for three years a quarterly record that: (a) identifies and values the liquid assets maintained by the Covered Entity; (b) compares the amount of the aggregate value of such liquid assets to the amount of the Covered Entity's total liabilities and shows the amount of the difference between the two amounts (the "**excess liquid assets amount**"); and (c) shows the amount of the RWA

[4] The German Order would define "liquid assets" to mean: (a) cash and cash equivalents; (b) collateralized agreements; (c) customer and other trading related receivables; (d) trading and financial assets; and (e) initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided: (i) the initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity; (ii) the loan agreement provides that the lender waivers re-payment of the loan until the initial margin is returned to the Covered Entity; and (iii) the liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

Deduction and the amount that deduction reduces the excess liquid assets amount; and

(3) Notify the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of capital substituted compliance condition (1) and include in the notice the contact information of an individual who can provide further information about the failure to meet the requirements.[5]

As conditions to substituted compliance in connection with margin requirements, the German Order would require a Covered Entity, among other measures, to:

(1) Collect variation margin, as defined in the EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) or (c)(2)(iii) of Exchange Act rule 18a-3 ("**Rule 18a-3**"); and

(2) Collect initial margin, as defined in the EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) of Rule 18a-3.

B. Request for Clarification or Relief Relating to the Capital Conditions

We are requesting clarification or relief relating to the scope of (1) liabilities that constitute "total liabilities" and (2) RWAs that are covered by the RWA Deduction.

1. Scope of Total Liabilities

As described in Part II.A, capital substituted compliance condition (1) requires a Covered Entity to deduct its total liabilities from its liquid assets in order to determine its excess liquid assets amount, which must exceed $100 million (before applying the RWA Deduction) and $20 million (after applying the RWA Deduction). This requirement is intended to align the $100 million tentative net capital and $20 million net capital requirements set forth in Exchange Act rule 18a-1 ("**Rule 18a-1**").

Rule 18a-1 requires an SBSD that does not have a prudential regulator (a "**nonbank SBSD**") to compute its net capital by, <u>first</u>, computing its net worth under U.S. generally accepted accounting principles ("**GAAP**"), <u>second</u>, making certain adjustments, such as deducting illiquid assets and taking other capital charges and adding qualifying

[5] In addition, the German Order would require a Covered Entity to apply substituted compliance for specified recordkeeping and notification requirements and to include its most recent statement of financial condition filed with its local supervisor with its initial written notice to the Commission of its intent to rely on substituted compliance. We are not requesting any clarification or relief in relation to these requirements.

subordinated loans (which results in computation of the nonbank SBSD's "tentative net capital"), and, third, taking prescribed percentage deductions (standardized haircuts) or model-based deductions from the mark-to-market value of the nonbank SBSD's proprietary positions that are included in its tentative net capital.

Importantly, Rule 18a-1 therefore permits a nonbank SBSD to exclude qualifying subordinated loans (*i.e.*, subordinated loans that satisfy the requirements of Rule 18a-1d) from the scope of liabilities that would otherwise reduce its tentative net capital and net capital. Further, under Rule 18a-1(g), qualifying subordinated loans may comprise up to 70 percent of a nonbank SBSD's net capital, with the balance composed of equity capital. In our view, the scope of "total liabilities" that a Covered Entity should accordingly exclude the following loss-absorbing liabilities that have characteristics comparable to subordinated loans that qualify under Rule 18a-1d:

- **Tier 2 Capital.** Tier 2 capital generally consists of certain hybrid debt-equity instruments and long-term subordinated debt (among other instruments). As laid out in the attached Appendix, tier 2 capital generally accords with most of the requirements for qualifying subordinated loans under Rule 18a-1d. Accordingly, to be consistent with the capital substituted compliance condition (1)'s purpose to establish comparability with Rule 18a-1's tentative net capital and net capital requirements, it would be appropriate to exclude tier 2 capital from that condition's "total liabilities."[6]

  Such exclusion is also consistent with the method for calculating the RWA Deduction. That deduction is calculated by dividing a Covered Entity's RWAs by 12.5 (*i.e.*, the reciprocal of 8%) because, under the Basel capital standard, Covered Entities must hold regulatory capital equal to at least 8% of the amount of their RWAs. In this context, "regulatory capital" includes both Tier 1 capital (such as common equity) *and* Tier 2 capital. By contrast, the minimum common equity tier 1 requirement is 4.5% of RWAs (which would imply that the RWA Deduction should equal RWAs divided by 22.2, not 12.5), and the minimum tier 1 capital requirement is 6% of RWAs (which would imply that the RWA Deduction should equal RWAs divided by 16.67, not 12.5).

- **Eligible Liabilities under MREL.** In addition to capital requirements, Covered Entities are also generally subject to a minimum requirement for own funds (*i.e.*, capital) and eligible liabilities ("**MREL**"), the purpose of which is to support "bail-in" tools set out under applicable special resolution regimes. These tools enable relevant resolution authorities to impose losses on the shareholders and unsecured creditors of a failing institution by cancelling or reducing the value of their claims, or converting them to equity, in order to restore that institution to

[6] Additional Tier 1 ("**AT1**") capital instruments, which are another form of regulatory capital, are treated as equity for purposes of international financial reporting standards ("**IFRS**"). Accordingly, AT1 instruments would not be included in the "total liabilities" standard in the capital condition of the German Order, which is calculated under IFRS or other applicable local accounting standards.

solvency without recourse to public funds. MREL seeks to ensure that an institution has sufficient liabilities which can be subject to bail-in, in order to facilitate the effective application of the bail-in tool.

For a liability other than capital to be eligible to meet MREL requirements (an "**eligible liability**"), it must satisfy certain requirements relating to maturity, subordination, repayment, ownership and reduction and/or conversion, which distinguish such eligible liabilities from other liabilities. As a result, such eligible liabilities share certain key characteristics with tier 2 capital (including tier 2 subordinated loans). The attached Appendix compares the eligibility requirements for MREL with those for tier 2 capital as well as qualifying subordinated loans under Rule 18a-1d. Based on this comparison, eligible liabilities should, like tier 2 capital, be excluded from the scope of total liabilities that a Covered Entity must subtract from its liquid assets under capital substituted compliance condition (1).

Accordingly, we request clarification such that a Covered Entity may exclude its tier 2 capital and eligible liabilities under MREL from the total liabilities that capital substituted compliance condition (1) requires a Covered Entity to subtract from its liquid assets. We note that, because Covered Entities are already required to compute and record their amounts of tier 2 capital and eligible liabilities under MREL, it will be straightforward and transparent to exclude these amounts.

2. Scope of RWAs

The requirement in capital substituted compliance condition (1) to apply the RWA Deduction to a Covered Entity's excess liquid assets amount is intended to mirror the requirement in Rule 18a-1 for a nonbank SBSD to reduce its tentative net capital through standardized haircuts or model-based deductions to arrive at its net capital. Because these deductions are applied to tentative net capital, they do not apply to illiquid assets already deducted from a nonbank SBSD's to arrive at its tentative net capital. In addition, the standardized haircuts or model-based deductions required by Rule 18a-1 are only designed to address market and credit risks.

Accordingly, to promote parity with Rule 18a-1, which is the goal of capital substituted compliance condition (1), we request clarification such that a Covered Entity is not required to include the following RWAs when computing its RWA Deduction:

- **RWAs for Illiquid Assets.** A Covered Entity should be permitted to exclude from the RWA Deduction its RWAs for illiquid assets (*i.e.*, those assets that do not qualify as "liquid assets" for purposes of capital substituted compliance condition (1)). Because these assets are already excluded from the calculations required by that condition, the condition already effectively subjects them to a 100 percent deduction. Imposing a further deduction by including RWAs for these assets in the RWA Deduction would therefore result in double-counting. It also would be inconsistent with the fact that Rule 18a-1 does not impose haircuts

or model-based deductions on positions not included within a nonbank SBSD's tentative net capital.

- **RWAs Not Related to Market or Credit Risk.** As noted above, the standardized haircuts or model-based deductions required by Rule 18a-1 are only designed to address market and credit risks. The parallel market and credit risk RWA requirements in the Capital Requirements Regulation ("**CRR**")[7] are found in Part Three, Titles IV (market risk) and II (credit risk). The RWA Deduction should accordingly exclude other RWAs, namely those found in Part Three, Titles II (operational risk), V (settlement risk), and VI (credit valuation adjustment risk) of CRR, which have no analogue within the standardized haircuts or model-based deductions that a nonbank SBSD is required to apply under Rule 18a-1.

We note that, because a Covered Entity will already need to track which of its assets constitute illiquid assets, and already must under CRR separately compute the different categories of RWAs described above, excluding the RWAs described above will be a straightforward and transparent process.

C. Articles 7 and 8 of the CRR

The Commission should grant substituted compliance for Covered Entities operating pursuant to waivers under Article 7 and 8 of the CRR (the **"Article 7 Waiver**" or "**Article 8 Waiver**") without imposing additional conditions.

Although Covered Entities operating under the Article 7 and 8 Waivers are not subject to standalone capital and liquidity requirements, the relevant competent authorities will only approve a request to calculate and report capital, liquidity, and/or MREL on a consolidated basis if the Covered Entity and/or its intermediate holding company satisfy a number of stringent requirements that are designed to ensure that the relevant resources will be available to the Covered Entity to substantially the same extent as would be the case absent the Waivers. Additionally, the level of oversight by the German and European regulators over the Covered Entity does not change; only the level at which capital and liquidity are calculated. As a result, calculating the relevant requirements on a consolidated basis achieves substantially the same objectives as calculating the requirements on an individualized basis.

1. Article 7

As discussed above, in order to operate under an Article 7 Waiver, the European Central Bank ("**ECB**") requires a Covered Entity and its intermediate holding company to meet stringent requirements, including, for instance that: 1) there are no structural or corporate impediments to the free transfer of funds between the entities, 2) the parent is sufficiently involved in setting the risk appetite and the risk management of the subsidiary; and 3) the Covered Entity complies with the group's risk management policy

[7] References in this letter to CRR refer to Regulation (EU) 575/2013.

and risk appetite framework.[8] This ensures that despite the Article 7 Waiver, capital is freely transferrable from the parent to the Covered Entity, and the Covered Entity does not face undue additional risk due to the existence of the Waiver. Furthermore, the Covered Entity is still required to ensure they are not subject to excessive leverage.[9] We also note that the regulatory frameworks of peer jurisdictions, including the United Kingdom, accommodate Article 7 arrangements without imposition of supplemental conditions. Thus, the Commission does not need to impose additional conditions on Covered Entities subject to the Article 7 Waiver.

Should the Commission decide to impose additional capital requirements on either the Covered Entity and/or its immediate holding company, we request that the Commission limit such additional conditions to requiring both the Covered Entity and its immediate holding company be subject to the proposed capital substituted compliance condition. The proposed condition was designed by the Commission to "bridge the gap between the Basel capital standard and the net liquid assets test of Exchange Act rule 18a-1."[10] Imposing the proposed capital condition at both the intermediate holding company and Covered Entity levels would therefore be sufficient to ensure that the Covered Entity holds capital equivalent to the requirements of Rule 18a-1.

2. Article 8

The Commission should decline to impose any additional conditions on the liquidity resources of the Covered Entity subject to the Article 8 Waiver. Unlike the Article 7 Waiver, under the Article 8 Waiver, liquidity requirements are already calculated at the Covered Entity level for the nonbank SBSDs that will be subject to the Commission's Order. The Article 8 Waiver allows liquidity to be calculated at a "subgroup" level, with an institution[11] as the parent entity. The Covered Entity, as an institution, can serve as the parent of the group and consolidate its subsidiaries into its liquidity requirements. Article 8 does not permit a holding company to be the parent of a liquidity subgroup. Thus, the Covered Entity itself is subject to liquidity requirements, rather than the intermediate holding company.

However, if the Commission decides to impose additional requirements on Covered Entities subject to the Article 8 Waiver, such requirements should be based on the Covered Entities' 30-day internal liquidity stress testing ("**ILST**") constraint. The 30-day ILST constraint ensures the Covered Entity would have sufficient liquid and unencumbered assets to meet potential cash outflows over a 30-day stress period, which

[8] *See* ECB Guide on options and discretions available in Union law (Nov. 2016), pages 5-7. Available online at: ECB Guide on options and discretions available in Union law – Consolidated version (europa.eu)

[9] Directive 2013/36/EU ("**CRD**"), Article 87.

[10] Proposal, 86 Fed. Reg. at 46,523.

[11] CRR Art. 4. defines "institution" as "a credit institution authorised under Article 8 of Directive 2013/36/EU or an undertaking as referred to in Article 8a(3) thereof."

would, in combination with the existing Article 8 constraints, be more than sufficient to ensure the soundness of the Covered Entity's liquidity position.

3. Rule 18a-4

The Commission should not condition substituted compliance on the Covered Entity complying with paragraph (f) under Exchange Act rule 18a-4 in order to limit its business activities. If a Covered Entity does not comply with paragraph (f), then it will be subject to Rule 18a-4(e), requiring it to segregate certain customer assets for SBS customers that are U.S. persons. If the Covered Entity does directly comply with Rule 18a-4(e), there is no additional risk to its U.S. person customers, as the assets of such customers would be segregated pursuant to the requirements of the Rule. Those segregation requirements are not affected by the Article 7 or 8 Waivers as they do not implicate how the Covered Entity calculates local capital or liquidity requirements.

D. Transition Period

Given that the Commission did not propose *any* conditions to substituted compliance in connection with margin requirements, and it proposed substantially different conditions to substituted compliance in connection with capital requirements, Covered Entities did not receive effective notice of the conditions summarized in Part II.A above until, at the earliest, the July 23rd adoption of the French Order. There will not be sufficient time during the roughly three-month period from that date to the November 1st deadline by which SBSDs must register with the Commission for Covered Entities to come into compliance with those conditions. In particular, in order to come into compliance, Covered Entities will need to:

- Put in place systems for performing the excess liquid assets amount calculation on a sufficiently frequent basis to satisfy the quarterly recordkeeping and 24-hour notice requirements of the conditions;

- Put in place inter-affiliate loan arrangements to fund initial margin posted by a Covered Entity in order to count such initial margin as a liquid asset;

- To the extent not previously done, collect representations from (or otherwise conduct reasonable diligence on) counterparties, including non-U.S. counterparties, not subject to variation margin requirements under the EMIR Margin RTS, in order to determine whether those counterparties qualify for exceptions from the collateral collection requirements under paragraph (c)(1)(iii) or (c)(2)(iii) of Rule 18a-3;

- To the extent not previously done, collect representations from (or otherwise conduct reasonable diligence on) counterparties, including non-U.S. counterparties, not subject to initial margin requirements under the EMIR Margin RTS, in order to determine whether those counterparties qualify for exceptions

from the collateral collection requirements under paragraph (c)(1)(iii) of Rule 18a-3; and

- For counterparties not subject to such margin requirements under the EMIR Margin RTS, but who do not qualify for such a Rule 18a-3 exception, enter into written agreements and put in place systems as necessary for the Covered Entity to collect variation and/or initial margin, as applicable.

Notably, in connection with these margin-related tasks, Covered Entities will need the cooperation of their counterparties, many of which will have no familiarity with the Commission's substituted compliance framework or its related conditions, nor resources or bandwidth to work with Covered Entities to come into compliance with these conditions while such counterparties are otherwise engaged with continuing Brexit and IBOR transition matters. In this regard, even if the Covered Entity already collects collateral from such counterparties, it will need to perform the counterparty classification, documentation and operational tasks described above to ensure that the amount and type of collateral it collects and the timing within which it does so is at least as strict as what the relevant rules would require if they applied.

Furthermore, the fact that Covered Entities may not be able to complete these tasks before the November 1st registration deadline unduly stresses the overall registration process. In connection with applying for registration, a Covered Entity's senior officer will be required to certify that the Covered Entity has developed and implemented written policies and procedures reasonably designed to prevent violation of federal securities laws and rules thereunder, which include Rules 18a-1 and 18a-3 as modified by these conditions. A lack of appropriate transition relief will create significant challenges for this senior officer certification.

To address these issues, we request that the Commission provide relief affording Covered Entities a transition period until September 1, 2022 before they are required to comply with the conditions summarized in Part II above.[12] The end of this transition period is intended to align with the compliance date for the last phase of initial margin requirements under the rules adopted by other regulators in the U.S. and globally and the Staff's recent no-action letter.[13] Such alignment will be conducive to a smooth transition period because it will enable Covered Entities to conduct outreach to relevant counterparties as part of the broader outreach required in conjunction with the phase-in of initial margin requirements.

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[12] This transition period would not apply to the conditions summarized in footnote 7, *supra*.

[13] Letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, the Commission, to Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA, and Tara Kruse, Global Head, Infrastructure, Data, and Non-Cleared Margin, ISDA, dated Aug. 5, 2021.

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

Very truly yours,

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

cc:

Honorable Gary Gensler, Chair, 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

Appendix

The table below compares the requirements for qualifying subordinated debt under SEC Rule 18a-1d to tier 2 subordinated debt under CRR and the standard for MREL, as implemented in the UK.

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
(b) Minimum requirements for subordinated loan agreements		
(1) Subordinated loan agreement. Subject to paragraph (a) of this section [i.e., the right of the Commission to impose additional requirements], a subordinated loan agreement shall mean a written agreement between the security-based swap dealer and the lender, which has a minimum term of one year, and is a valid and binding obligation enforceable in accordance with its terms (subject as to enforcement to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws) against the security-based swap dealer and the lender and their respective heirs, executors, administrators, successors and assigns.	CRR Article 63(g) similarly requires Tier 2 instruments to have an original maturity of at least five years. In addition, paragraphs (n) and (o) of CRR Article 63 achieve a comparable result to the enforceability requirement of SEC Rule 18a-1d(b)(1), as they require an institution to confirm that the provisions of a Tier 2 instrument or background law permitting the resolution authorities to write it down will be enforceable under the instrument's governing law. This ensures that the holders of a Tier 2 instrument cannot undermine the loss-absorbing capacity of the instrument through legal challenge. Furthermore, it is generally understood that an instrument that is not legal, valid, binding and enforceable would fail to satisfy the	Article 135(4)(d) of the BRR Order requires MREL instruments to have a residual maturity of at least one year at all times; an instrument therefore ceases to qualify as MREL in its final year of maturity. In addition, Article 135(4)(g) of the BRR Order and paragraphs 5.8 and 8.8 of the MREL SoP achieve a comparable result to the enforceability requirement of SEC Rule 18a-1d(b)(1), as they require an institution to confirm that the provisions of an MREL instrument or background law permitting the resolution authorities to write it down will be enforceable under the instrument's governing law. This ensures that the holders of an MREL instrument cannot undermine the loss-absorbing capacity of the instrument through legal challenge.

[14] The requirements for MREL are set forth in HM Treasury/Bank of England Bank Recovery and Resolution (No. 2) Order 2014 (the "BRR Order") and the Bank of England's June 2018 Statement of Policy entitled *The Bank of England's Approach to Setting a Minimum Requirement for Own Funds and Eligible Liabilities* (the "**MREL SoP**").

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
	other eligibility criteria applicable to the Tier 2 capital instruments described herein.	Furthermore, it is generally understood that an instrument that is not legal, valid, binding and enforceable would fail to satisfy the other eligibility criteria applicable to the MREL instruments described herein.
(2) Specific amount. All subordinated loan agreements shall be for a specific dollar amount which shall not be reduced for the duration of the agreement except by installments as specifically provided for therein and except as otherwise provided in this section.	CRR Article 63 does not contain a comparable requirement. However, Article 63 achieves a comparable result of ensuring that an institution only counts as Tier 2 capital those instruments that are fully funded and not subject to early repayment. CRR Article 63(a) requires any Tier 2 instrument to be "fully paid up" (thereby limiting the amount of the instrument to the principal actually received), and paragraphs (h), (i), (j), and (l) of CRR Article 63 impose strict limitations on repayment, as further discussed below.	MREL instruments are not subject to a comparable requirement. However, the BRR Order and the MREL SoP achieve a comparable result of ensuring that an institution only counts as MREL those instruments that are fully funded and not subject to early repayment. Article 135(4)(a) of the BRR Order requires that MREL instruments be "issued and fully paid up" (thereby limiting the amount of the instrument to the principal actually received), and Article 135(4)(d) precludes counting as MREL any instruments that have a remaining maturity of less than one year. Moreover, both the BRR Order and the MREL SoP contain a number of strict limitations on repayment as discussed below.
(3) Effective subordination. The subordinated loan agreement shall effectively subordinate any right of the lender to receive any Payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the security-based swap	CRR Article 63(d) similarly provides that the claim for the principal amount of any Tier 2 instrument must be wholly subordinated to the claims of all MREL instrument holders and thus subordinated to the institution's operating liabilities. In addition, paragraphs (e), (f), and (p) of CRR Article 63 contain a	Paragraph 8.3 of the MREL SoP similarly provides that MREL instruments must be wholly subordinated to the institution's operating liabilities (which include liabilities that the institution has by virtue of holding customer assets). In addition, Article 135(4)(b) of the BRR Order and

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
dealer arising out of any matter occurring prior to the date on which the related Payment Obligation matures consistent with the provisions of §§240.18a-1 and 240.18a-1d, except for claims which are the subject of subordinated loan agreements that rank on the same priority as or junior to the claim of the lender under such subordinated loan agreements.	number of anti-evasion provisions designed to prevent the holder of a Tier 2 instrument from effectively obtaining a higher priority. Paragraph (e) requires that the instrument not be secured or subject to a guarantee, paragraph (f) provides that the instrument cannot be subject to an arrangement that enhances the seniority of the claim thereunder, and paragraph (p) states that the instrument may not be subject to a setoff or netting arrangement that undermines the instrument's ability to absorb losses.	paragraphs 5.7 of the MREL SoP contain a number of anti-evasion provisions designed to prevent the holder of an MREL instrument from effectively obtaining a higher priority. Article 135(4)(b) of the BRR Order requires that MREL instruments not be secured by collateral or guaranteed by the issuing institution, and paragraph 5.7 of the MREL SoP states that the instrument may not be subject to a setoff or netting arrangement that undermines the instrument's ability to absorb losses.
(4) Proceeds of subordinated loan agreements. The subordinated loan agreement shall provide that the cash proceeds thereof shall be used and dealt with by the security-based swap dealer as part of its capital and shall be subject to the risks of the business.	CRR Article 63 does not contain a comparable requirement. However, paragraphs (n) and (o) of CRR Article 63 achieve a comparable result of ensuring that the proceeds of the instrument can be used to support the institution in a stress scenario. These paragraphs require a Tier 2 instrument to contain express provisions, or be subject to statutory provisions, that permit resolution authorities to write down and convert the instrument to common equity tier 1 capital in connection with a resolution.	MREL instruments are not subject to a comparable requirement. However, Article 135(4)(g) of the BRR Order and paragraphs 5.8 and 8.8 of the MREL SoP achieve a comparable result of ensuring that the proceeds of the instrument can be used to support the institution in a stress scenario. These provisions require an MREL instrument to contain express provisions, or be subject to statutory provisions, that permit resolution authorities to write down and convert the instrument to common equity tier 1 capital in (or prior to) resolution.
(5) Certain rights of the security-based swap dealer. The subordinated loan agreement shall provide that the security-based swap dealer shall have the right to deposit any cash proceeds of a subordinated loan agreement in an account or	CRR Article 63 does not contain a comparable requirement. However, paragraphs (a), (i), (h), (n) and (o) of CRR Article 63 achieve a comparable result of ensuring that the instrument provides the	MREL instruments are not subject to a comparable requirement. However, a number of provisions of the BRR Order and the MREL SoP achieve a comparable result of ensuring that the instrument provides the

Net capital subordinated debt capital standard (SEC Rule 18a-1d**)**	**Tier 2 subordinated debt capital standard (**CRR Article 63**)**	**MREL standard**[14]
accounts in its own name in any bank or trust company.	institution with cash that it can use in its operations, including (where relevant) to satisfy customer claims. Paragraph (a) requires that a Tier 2 instrument be fully paid up, paragraph (i) prohibits a Tier 2 instrument from providing the holder with a call option or similar right, paragraph (h) prohibits a Tier 2 instrument from containing incentives for the instrument to redeemed or repaid early, and paragraphs (n) and (o), as discussed above, effectively ensure that the resolution authorities can write down the instrument in the context of a liquidation or insolvency.	institution with cash it can use in its operations, including to satisfy customer claims. Article 135(4)(a) of the BRR Order requires that eligible liabilities instruments be "issued and fully paid up", Article 134(5) of the BRR Order limits call options by treating the first day of any such option as its maturity date, paragraph 5.4 of the MREL SoP prohibits MREL instruments from containing incentives for the instrument to be redeemed or repaid early, and Article 135(4)(g) of the BRR Order and paragraphs 5.8 and 8.8 of the MREL SoP, as discussed above, effectively ensures that the resolution authorities can write down or convert the instrument in (or prior to) resolution.
(6) Permissive prepayments. A security-based swap dealer at its option but not at the option of the lender may, if the subordinated loan agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordinated loan agreement became effective. No Prepayment shall be made, if, after giving effect thereto (and	CRR Article 63(j) places a similar limitation on voluntary prepayments. It provides that an institution may not repay or redeem a Tier 2 instrument unless the competent authorities authorize the redemption.[15] It further provides that, with very limited exceptions primarily designed to address a change-in-law scenario,[16] any such prepayment may only be made if the instrument has been outstanding for more than five years. In addition, paragraph (h) of CRR Article 63 prohibits a Tier 2 instrument from including	The MREL SoP places a similar limitation on voluntary prepayments. Paragraph 8.13 of the MREL SoP provides that "institutions should not change the form of their internal MREL resources in any way, such as through cancellation or conversion to equity, that reduces the amount of MREL eligible liabilities, unless the Bank [of England] approves such a transaction." In addition, paragraph 5.4 of the MREL SoP prohibits an MREL instrument from

[15] Paragraph (j) refers to Article 77 of the CRR, which in turn requires the approval of the competent authorities.
[16] This exception is set forth in Article 78(4) of the CRR.

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
to all Payments of Payment Obligations under any other subordinated loan agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the security-based swap dealer, either its net capital would fall below 120 percent of its minimum requirement under §240.18a-1, or, if the security-based swap dealer is approved to calculate net capital under §240.18a-1(d), its tentative net capital would fall to an amount below 120 percent of the minimum requirement. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Commission.	any incentive for the instrument to be prepaid.	including any incentive for the instrument to be prepaid.
(7) Suspended repayment. The Payment Obligation of the security-based swap dealer in respect of any subordinated loan agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such security-based swap dealer under any other subordinated loan agreement(s) then outstanding that are scheduled to mature on or before such Payment Obligation) either its net capital would fall below 120 percent of its minimum requirement under §240.18a-1, or, if the security-	CRR Article 63 does not contain a comparable requirement. However, paragraphs (l), (n) and (o) of CRR Article 63 achieve a comparable result of ensuring that an institution is not required to repay a Tier 2 instrument if doing so would leave it undercapitalized. Paragraph (l) provides that a Tier 2 instrument may not give the holder the right to accelerate principal or interest other than in the insolvency or liquidation of the institution. Paragraphs (n) and (o), in turn, provide that a Tier 2 instrument must	MREL instruments are not subject to a comparable requirement. However, the BRR Article and MREL SoP achieve a comparable result of ensuring that an institution is not required to repay an MREL instrument if doing so would leave it undercapitalized. Article 135(4)(g) of the BRR Order and paragraphs 5.8 and 8.8 of the MREL SoP require an institution to confirm that the resolution authorities will be able to write down or convert the instrument to common equity tier 1 capital

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
based swap dealer is approved to calculate net capital under §240.18a-1(d), its tentative net capital would fall to an amount below 120 percent of the minimum requirement. The subordinated loan agreement may provide that if the Payment Obligation of the security-based swap dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(7) for a period of not less than six months, the security-based swap dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of §§240.18a-1 and 240.18a-1d.	(either contractually or through background law) permit the write down or conversion of the instrument to common equity tier 1 capital in the context of a resolution. These provisions effectively limit the ability of a holder to force repayment of a Tier 2 instrument and allow the resolution authorities to write down such instrument in order to recapitalize the institution and permit it to continue meeting customer obligations.	in (or prior to) resolution. In addition, although the BRR Order and MREL SoP do not expressly address acceleration requirements, it is generally understood that an instrument would not qualify as MREL if it permitted the holder to accelerate outside the context of an insolvency or liquidation. These provisions and understandings effectively limit the ability of a holder to force repayment of an MREL instrument and allow the resolution authorities to write down such instrument in order to recapitalize the institution and permit it to continue meeting customer obligations.

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	Tier 2 subordinated debt capital standard (CRR Article 63)	MREL standard[14]
(8) Accelerated maturity—obligation to repay to remain subordinate. (i) Subject to the provisions of paragraph (b)(7), a subordinated loan agreement may provide that the lender may, upon prior written notice to the security-based swap dealer and the Commission given not earlier than six months after the effective date of such subordinated loan agreement, accelerate the date on which the Payment Obligation of the security-based swap dealer, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after the giving of such notice, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of §§240.18a-1 and 240.18a-1d. (ii) Notwithstanding the provisions of paragraph (b)(7), the Payment Obligation of the security-based swap dealer with respect to a subordinated loan agreement, together with accrued interest and compensation, shall mature in the event of any receivership, insolvency, liquidation, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other	CRR Article 63(l) similarly limits the ability of a holder of a Tier 2 instrument to accelerate the maturity of principal and interest. However, Article 63(l) is more restrictive than SEC Rule 18a-1d, as it permits acceleration only "in the case of the insolvency or liquidation of the institution."	Although the BRR Order and MREL SoP do not expressly address acceleration requirements, it is generally understood that an instrument would not qualify as MREL if it permitted the holder to accelerate outside the context of an insolvency or liquidation. These provisions and understandings effectively limit the ability of a holder to force repayment of an MREL instrument and allow the resolution authorities to write down such instrument in order to recapitalize the institution and permit it to continue meeting customer obligations.

Net capital subordinated debt capital standard (SEC Rule 18a-1d**)**	**Tier 2 subordinated debt capital standard (**CRR Article 63**)**	**MREL standard**[14]
marshalling of the assets and liabilities of the security-based swap dealer but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of §§240.18a-1 and 240.18a-1d.		

(9) Accelerated maturity of subordinated loan agreements on event of default and event of acceleration—obligation to repay to remain subordinate. (i) A subordinated loan agreement may provide that the lender may, upon prior written notice to the security-based swap dealer and the Commission of the occurrence of any Event of Acceleration (as hereinafter defined) given no sooner than six months after the effective date of such subordinated loan agreement, accelerate the date on which the Payment Obligation of the security-based swap dealer, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by the security-based swap dealer and the Commission. Any subordinated loan agreement containing such Events of Acceleration may also provide, that if upon such accelerated maturity date the Payment Obligation of the security-based swap dealer is suspended as required by paragraph (b)(7) of this section and liquidation of the security-based swap dealer has not commenced on or prior to such accelerated maturity date, then notwithstanding paragraph (b)(7) the Payment Obligation of the security-based swap dealer with respect to such subordinated loan agreement shall mature on the day immediately	CRR Article 63(l) similarly limits the ability of a holder of a Tier 2 instrument to accelerate the maturity of principal and interest. However, Article 63(l) is more restrictive than SEC Rule 18a-1d, permitting acceleration only "in the case of the insolvency or liquidation of the institution."	Although the BRR Order and MREL SoP do not expressly address acceleration requirements, it is generally understood that an instrument would not qualify as MREL if it permitted the holder to accelerate outside the context of an insolvency or liquidation. These provisions and understandings effectively limit the ability of a holder to force repayment of an MREL instrument and allow the resolution authorities to write down such instrument in order to recapitalize the institution and permit it to continue meeting customer obligations.

following such accelerated maturity date and in any such event the Payment Obligations of the security-based swap dealer with respect to all other subordinated loan agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section. Events of Acceleration which may be included in a subordinated loan agreement complying with this paragraph (b)(9) shall be limited to: (A) Failure to pay interest or any installment of principal on a subordinated loan agreement as scheduled; (B) Failure to pay when due other money obligations of a specified material amount; (C) Discovery that any material, specified representation or warranty of the security-based swap dealer which is included in the subordinated loan agreement and on which the subordinated loan agreement was based or continued was inaccurate in a material respect at the time made; (D) Any specified and clearly measurable event which is included in the subordinated loan agreement and		

which the lender and the security-based swap dealer agree: (*1*) Is a significant indication that the financial position of the security-based swap dealer has changed materially and adversely from agreed upon specified norms; or (*2*) Could materially and adversely affect the ability of the security-based swap dealer to conduct its business as conducted on the date the subordinated loan agreement was made; or (*3*) Is a significant change in the senior management of the security-based swap dealer or in the general business conducted by the security-based swap dealer from that which obtained on the date the subordinated loan agreement became effective; (E) Any continued failure to perform agreed covenants included in the subordinated loan agreement relating to the conduct of the business of the security-based swap dealer or relating to the maintenance and reporting of its financial position; and (ii) Notwithstanding the provisions of paragraph (b)(7) of this section, a subordinated loan agreement may provide that, if liquidation of the business of the security-based swap dealer has not already commenced, the		

Payment Obligation of the security-based swap dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the security-based swap dealer has not already commenced, the rapid and orderly liquidation of the business of the security-based swap dealer shall then commence upon the happening of an Event of Default. Any subordinated loan agreement which so provides for maturity of the Payment Obligation upon the occurrence of an Event of Default shall also provide that the date on which such Event of Default occurs shall, if liquidation of the security-based swap dealer has not already commenced, be the date on which the Payment Obligations of the security-based swap dealer with respect to all other subordinated loan agreements then outstanding shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section. Events of Default which may be included in a subordinated loan agreement shall be limited to: (A) The net capital of the security-based swap dealer falling to an amount below its minimum requirement under		

§240.18a-1, or, if the security-based swap dealer is approved to calculate net capital under §240.18a-1(d), its tentative net capital falling below the minimum requirement, throughout a period of 15 consecutive business days, commencing on the day the security-based swap dealer first determines and notifies the Commission, or the Commission first determines and notifies the security-based swap dealer of such fact; (B) The Commission revoking the registration of the security-based swap dealer; (C) The Commission suspending (and not reinstating within 10 days) the registration of the security-based swap dealer; (D) Any receivership, insolvency, liquidation, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the security-based swap dealer. A subordinated loan agreement that contains any of the provisions permitted by this paragraph (b)(9) shall not contain the provision otherwise permitted by paragraph (b)(8)(i) of this section.		

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
(c) Miscellaneous provisions		
(1) Prohibited cancellation. The subordinated loan agreement shall not be subject to cancellation by either party; no Payment shall be made with respect thereto and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of §§240.18a-1 and 240.18a-1d.	CRR Article 63 does not contain a comparable requirement, but paragraphs (i), (l), and (m) of Article 63 achieve a similar result of ensuring that a Tier 2 instrument cannot be terminated or changed in a way that frustrates its purpose. Paragraphs (i) and (l) prohibit a Tier 2 instrument from providing the holder with a call option or other mechanism to trigger early repayment outside the context of insolvency. Paragraph (m) provides that the interest and dividend provisions of any Tier 2 instrument cannot be amended on the basis of the credit standing of the institution or its parent.	Paragraph 8.13 of the MREL SoP similarly provides that "institutions should not change the form of their internal MREL resources in any way, such as through cancellation or conversion to equity, that reduces the amount of MREL eligible liabilities, unless the Bank approves such a transaction." In addition, Paragraph 5.4 of the MREL SoP restricts institutions from structuring "their MREL eligible liabilities in such a way as to reduce their effective maturity." Lastly, Article 134(5) effectively limits call options by providing that the maturity of any instrument with such an option will be the first day such option may be exercised.
(2) Notification. Every security-based swap dealer shall immediately notify the Commission if, after giving effect to all Payments of Payment Obligations under subordinated loan agreements then outstanding that are then due or mature within the following six months without reference to any projected profit or loss of the security-based swap dealer, either its net capital would fall below 120 percent of its minimum requirement under §240.18a-1, or, if the security-based swap dealer is approved to calculate net capital under §240.18a-1(d), its tentative net	CRR Article 63 does not contain a comparable requirement. However, the PRA's notification requirements achieve a comparable result. These requirements provide for institution to notify the PRA if at any time that institution has breached a capital buffer imposed by the PRA. In practice, given the levels at which the PRA's capital buffers are set, an institution will generally be required to provide notification to the PRA if future payment flows with respect to Tier 2 and MREL instruments will	MREL instruments are not subject to a comparable requirement. However, the PRA's notification requirements achieve a comparable result. These requirements provide for requires an institution to notify the PRA if at any time that institution has breached a capital buffer imposed by the PRA. In practice, given the levels at which the PRA's capital buffers are set, an institution will generally be required to provide notification to the PRA if future payment flows with respect to Tier 2 and MREL instruments will cause it to fall

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
capital would fall to an amount below 120 percent of the minimum requirement.	cause it to fall below 120% of its minimum capital requirements.	below 120% of its minimum capital requirements.
(3) Certain legends. If all the provisions of a satisfactory subordinated loan agreement do not appear in a single instrument, then the debenture or other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordinated loan agreement which shall be adequately referred to and incorporated by reference.	CRR Article 63 does not contain a comparable provision. However, investor protection and similar disclosure rules and practices generally require a publicly held Tier 2 instrument to reference all agreements and arrangements that govern the terms of the instrument.	The Order and the MREL SoP do not contain a comparable requirement. However, investor protection and similar disclosure rules and practices generally require a publicly held MREL instrument to reference all agreements and arrangements that govern the terms of the instrument.

Net capital subordinated debt capital standard (SEC Rule 18a-1d**)**	**Tier 2 subordinated debt capital standard (**CRR Article 63**)**	**MREL standard**[14]
(4) Revolving subordinated loan agreements. A security-based swap dealer shall be permitted to enter into a revolving subordinated loan agreement that provides for prepayment within less than one year of all or any portion of the Payment Obligation thereunder at the option of the security-based swap dealer upon the prior written approval of the Commission. The Commission, however, shall not approve any prepayment if: (i) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated loan agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the security-based swap dealer, either its net capital would fall below 120 percent of its minimum requirement under §240.18a-1, or, if the security-based swap dealer is approved to calculate net capital under §240.18a-1(d), its tentative net capital would fall to	CRR Article 63(a) does not permit revolving Tier 2 instrument agreements, as it requires that the instrument be fully paid up. In addition, Article 63(j) does not permit prepayment except upon approval of the competent authorities and, with limited exceptions to address change-in-law issues, more than five years after issuance.	Article 135(4)(a) of the BRR Order does not permit revolving MREL instruments, as it requires that the instrument be fully paid up. In addition, paragraphs 5.5 and 8.13 of the MREL SoP limit prepayment or redemption of MREL instruments without approval of the competent authorities.

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
an amount below 120 percent of the minimum requirement; or (ii) Pre-tax losses during the latest three-month period equaled more than 15 percent of current excess net capital. Any subordinated loan agreement entered into pursuant to this paragraph (c)(4) shall be subject to all the other provisions of this section. Any such subordinated loan agreement shall not be considered equity for purposes of §240.18a-1(g), despite the length of the initial term of the loan.		
(5) Filing. Two copies of any proposed subordinated loan agreement (including	The PRA's PIN rules require institutions to notify the PRA on or immediately after the	The Order and the MREL SoP do not contain a comparable requirement.

Net capital subordinated debt capital standard (SEC Rule 18a-1d)	**Tier 2 subordinated debt capital standard** (CRR Article 63)	**MREL standard**[14]
nonconforming subordinated loan agreements) shall be filed at least 30 days prior to the proposed execution date of the agreement with the Commission. The security-based swap dealer shall also file with the Commission a statement setting forth the name and address of the lender, the business relationship of the lender to the security-based swap dealer, and whether the security-based swap dealer carried an account for the lender for effecting transactions in security-based swaps at or about the time the proposed agreement was so filed. All agreements shall be examined by the Commission prior to their becoming effective. No proposed agreement shall be a satisfactory subordinated loan agreement for the purposes of this section unless and until the Commission has found the agreement acceptable and such agreement has become effective in the form found acceptable.	date of issuance of any Tier 2 instrument. That notification must include the terms and conditions of the instruments (together with any side agreement), an independent legal opinion confirming the eligibility of the instrument as Tier 2, and other details set out in a standard PRA form. This also applies to any amendments made to Tier 2 instruments. An institution must notify the PRA at least a month before entering into any new side agreement related to a Tier 2 instrument.	