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Dated: August 11, 2021.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2021-17444 Filed 8-13-21; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-125 and CP2021-129]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 18, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal

Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2021-125 and CP2021-129; *Filing Title:* USPS Request to Add Priority Mail Contract 719 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 10, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 18, 2021.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2021-17452 Filed 8-13-21; 8:45 am]

BILLING CODE 7710-FW-P

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92632; File No. S7-07-21]

Notice of Substituted Compliance Application Submitted by UBS AG and Credit Suisse AG in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation; Proposed Order

August 10, 2021.

AGENCY: Securities and Exchange Commission.

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

SUMMARY: The Securities and Exchange Commission ("Commission") is soliciting public comment on an application by UBS AG and Credit Suisse AG (the "Swiss Firms") requesting that, pursuant to rule 3a71-6 under the Securities Exchange Act of 1934 ("Exchange Act"), the Commission determine that registered security-based swap dealers ("SBSDs") that are not U.S. persons and that are subject to certain regulation in the Swiss Confederation ("Switzerland") may comply with certain requirements under the Exchange Act via compliance with corresponding requirements of Switzerland. The Commission also is soliciting comment on a proposed Order providing for conditional substituted compliance in connection with the application.

DATES: Submit comments on or before September 10, 2021.

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-07-21 on the subject line.

Paper Comments

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

All submissions should refer to File Number S7-07-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/>

rules/proposed.shtml). Typically, comments are also available for viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's Public Reference Room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

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

SUPPLEMENTARY INFORMATION: The Commission is soliciting public comment on an application by the Swiss Firms requesting that the Commission determine that SBSDs that are not U.S. persons and that are subject to certain regulation in Switzerland may satisfy certain requirements under the Exchange Act by complying with comparable requirements in Switzerland. The Commission also is soliciting comment on a proposed Order, set forth in Attachment A, providing for conditional substituted compliance in connection with the application.

I. Background

On August 6, 2021, market participants will begin to count security-based swap transactions toward the thresholds for registration with the Commission as SBSDs.¹ Exchange Act rule 3a71-6² conditionally provides that non-U.S. SBSDs and major security-based swap participants ("SBS Entities") may satisfy certain requirements under Exchange Act section 15F³ by complying with comparable regulatory requirements of a foreign jurisdiction.⁴ Substituted

compliance potentially is available in connection with requirements regarding business conduct and supervision, chief compliance officers, trade acknowledgment and verification, non-prudentially regulated capital and margin, recordkeeping and reporting, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.⁵

Substituted compliance in part is predicated on the Commission determining the analogous foreign requirements are "comparable" to the applicable requirements under the Exchange Act, after accounting for factors such as the "scope and objectives" of the relevant foreign regulatory requirements and the effectiveness of the relevant foreign authority's or authorities' supervisory and enforcement frameworks.⁶ Substituted compliance further requires that the Commission and the relevant foreign financial regulatory authorities have entered into an effective supervisory and enforcement

Kingdom ("UK"). See Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726 (Nov. 13, 2020) ("German Notice and Proposed Order"); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) ("German Substituted Compliance Order"); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) ("French Notice and Proposed Order"); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) ("French Reopening Release"); Exchange Act Release No. 92484 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) ("French Substituted Compliance Order"); Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) ("UK Notice and Proposed Order"); Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (Aug. 6, 2021) ("UK Substituted Compliance Order").

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

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

memorandum of understanding and/or other arrangement addressing cooperation and other matters related to substituted compliance.⁷

A party or group of parties that may potentially rely on a substituted compliance order may submit a substituted compliance application only if each such party provides a certification and opinion of counsel that the entity can, "as a matter of law, provide the Commission with prompt access to its books and records, and can, as a matter of law, submit to onsite inspection and examination by the Commission."⁸ Commission rule 0-13⁹ addresses procedures for filing substituted compliance applications. The rule provides that the Commission will publish a notice when a completed application has been submitted and that any person may submit to the Commission "any information that relates to the Commission action requested in the application."¹⁰

II. The Swiss Firms' Substituted Compliance Request

The Swiss Firms have submitted a complete substituted compliance application to the Commission ("Swiss Application").¹¹ Pursuant to rule 0-13, the Commission is publishing notice of the Swiss Application together with a proposed Order to conditionally grant substituted compliance to an entity that (1) is a security-based swap dealer registered with the Commission; (2) is not a "U.S. person," as that term is defined in rule 3a71-3(a)(4) under the

⁷ See Exchange Act rule 3a71-6(a)(2)(ii). The Commission and FINMA are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance. The memorandum of understanding or other arrangement will need to be in place before the Commission may make a final determination allowing Covered Entities (as defined herein) to use substituted compliance to satisfy obligations under the Exchange Act. The Commission expects to publish any such memorandum of understanding or arrangement on its website at www.sec.gov under the "Substituted Compliance" tab, which is located on the "Security-Based Swap Markets" page in the Division of Trading and Markets section of the site.

⁸ See 17 CFR 240.15Fb2-4(c)(1); Exchange Act rule 3a71-6(c)(1)(ii). In the Commission's view the Swiss Firms have satisfied this prerequisite. See Letter from Colin Lloyd of Cleary Gottlieb Steen & Hamilton LLP on behalf of UBS AG and Credit Suisse AG to Vanessa Countryman, Secretary, Commission, dated August 10, 2021 ("Swiss Application"). The Swiss Firms' Application is available on the Commission's website at: <https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap>.

⁹ 17 CFR 240.0-13.

¹⁰ See Commission rule 0-13(h). The Commission may take final action on a substituted compliance application no earlier than 25 days following publication of the notice in the **Federal Register**. See *id.*

¹¹ See Swiss Application sections I-IV.

¹ See Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43954 (Aug. 22, 2019) ("Capital and Margin Adopting Release"); see also Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6345-49 (Feb. 4, 2020).

² 17 CFR 240.3a71-6.

³ 15 U.S.C. 78o-10.

⁴ The Commission also has discussed the parameters of substituted compliance in connection with substituted compliance requests regarding the Federal Republic of Germany ("Germany"), the French Republic ("France"), and the United

Exchange Act;¹² (3) is a systemically important bank authorized by the Swiss Financial Market Supervisory Authority (“FINMA”) to conduct banking activities in Switzerland; and (4) is supervised by FINMA under the intensive and continual supervision model as a Category 1 firm as that term is defined in BO Annex 3. In making its substituted compliance determination, the Commission will consider public comments on the Swiss Application and the proposed Order.

The Swiss Firms seek substituted compliance for Swiss market participants in connection with a number of requirements under Exchange Act section 15F, including:

A. Relevant Market Participants

The Commission will consider whether to allow substituted compliance to be used by any Covered Entity.¹³

B. Relevant Section 15F Requirements

The Swiss Firms request that the Commission issue an order determining that—for substituted compliance purposes—applicable requirements in Switzerland are comparable with the following requirements under Exchange Act section 15F:

- *Risk control requirements*—Requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.¹⁴

- *Internal supervision, chief compliance officer and additional Exchange Act section 15F(j) requirements*—Requirements related to diligent supervision, conflicts of interest, information gathering under Exchange Act section 15F(j) and chief compliance officers.¹⁵

- *Recordkeeping, reporting, and notification requirements*—Requirements related to making and keeping current certain prescribed records, the preservation of records, reporting, and notification.¹⁶

C. Comparability Considerations and Proposed Order

In the view of the Swiss Firms, Swiss requirements taken as a whole produce regulatory outcomes that are comparable to those of the relevant requirements under the Exchange Act.¹⁷ In the Commission’s preliminary view,

requirements under the Exchange Act and Swiss requirements maintain similar approaches with respect to achieving regulatory goals in several respects, but follow differing approaches or incorporate disparate elements in certain other respects. The Commission has considered those similarities and differences when analyzing comparability and developing preliminary views, while recognizing that differences in approach do not necessarily preclude substituted compliance in light of the Commission’s holistic, outcomes-oriented framework for assessing comparability.¹⁸

Based on the Commission’s analysis of the Swiss Application and review of relevant Swiss requirements, the Commission is proposing an Order, located at Attachment A, granting substituted compliance subject to specific conditions and limitations. When Covered Entities seek to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable Swiss requirements would lead to a violation of those requirements under the Exchange Act and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

III. Scope of Substituted Compliance

The Swiss Application relates solely to entity-level requirements and for entity-level Exchange Act requirements a Covered Entity must choose either to apply substituted compliance pursuant to the Order with respect to all security-based swap business subject to the relevant Swiss requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity may not choose to apply substituted compliance for some of the business subject to the relevant Swiss requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant Swiss requirements. Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant Swiss requirements, the

¹⁸ In this context, the Commission recognizes that other regulatory regimes will have exclusions, exceptions and exemptions that may not align perfectly with the corresponding requirements under the Exchange Act. Where the Commission preliminarily has found that the Swiss regime produces comparable outcomes notwithstanding those particular differences, the Commission proposes to make a positive determination on substituted compliance. Where the Commission preliminarily has found that those exclusions, exemptions and exceptions lead to outcomes that are not comparable, however, the proposed Order would not provide for substituted compliance.

Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.

IV. Applicable Entities and General Conditions

A. Covered Entities for Which the Commission is Proposing a Positive Conditional Substituted Compliance Determination

Under the proposed Order, substituted compliance would be available to “Covered Entities”—a term that would limit the scope of the substituted compliance determination to SBSBs that are subject to applicable Swiss requirements and oversight. Consistent with the parameters of substituted compliance under Exchange Act rule 3a71–6, the proposed “Covered Entity” definition provides that the relevant entity must be a security-based swap dealer registered with the Commission, and that the entity cannot be a U.S. person.¹⁹ The proposed “Covered Entity” definition further would provide that the entity must be a systemically important bank authorized by FINMA to conduct banking activities in Switzerland.²⁰ Each entity also must be supervised by FINMA under the intensive and continual supervision model as a Category 1 firm as that term is defined in BO Annex 3.²¹ These prongs of the definition are intended to help ensure that Covered Entities are subject to relevant Swiss requirements and oversight.

B. General Conditions and Prerequisites

Substituted compliance under the proposed Order would be subject to a number of conditions and other prerequisites, to help ensure that the relevant Swiss requirements that form the basis for substituted compliance in practice will apply to the SBSB’s security-based swap business and activities, and to promote the Commission’s oversight over entities that avail themselves of substituted compliance.

1. “Subject to and complies with” Applicable Provisions

Each relevant section of the proposed Order would be subject to the condition that the Covered Entity “is subject to and complies with” the applicable Swiss requirements that are needed to establish comparability. Accordingly,

¹⁹ See para. (e)(1)(i) and (ii) of the proposed Order.

²⁰ See para. (e)(1)(iii) of the proposed Order.

²¹ See para. (e)(1)(iv) of the proposed Order.

¹² 17 CFR 240.3a71–3(a)(4).

¹³ See para. (d)(1) of the proposed Order.

¹⁴ See part V, *infra*.

¹⁵ See part VI, *infra*.

¹⁶ See part VII, *infra*.

¹⁷ See Swiss Application section II at 3.

the proposed Order would not provide substituted compliance when a Covered Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant Swiss requirements do not apply to the security-based swap activities of a branch of a Swiss SBSB located outside of Switzerland. In that event, the Covered Entity would not be “subject to” those requirements, and the Covered Entity could not rely on substituted compliance in connection with those activities.²²

2. Additional General Conditions

Substituted compliance under the proposed Order would be subject to the following general conditions intended to help ensure the applicability of relevant Swiss requirements. In particular:

- *Security-based swaps and transactions as “derivatives” or “derivative transactions”*—For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FinMIA and FMIO, the relevant security-based swaps and security-based swap transactions are “derivatives” and/or “derivative transactions” for purposes of FinMIA article 2(c), or otherwise are described by the relevant language of that provision.²³

- *“Counterparty” status*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FinMIA and FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of whether the Covered Entity’s counterparty is a “counterparty” for purposes of FinMIA article 93, or otherwise is described by the relevant language of that provision.²⁴

- *Counterparty status as “company”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FMIO, the Covered Entity

complies with the applicable conditions of the Order regardless of whether a Covered Entity’s counterparty is a “company” for purposes of FMIO article 77, or otherwise is described by the relevant language of that provision.²⁵

- *Covered Entity as “bank”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the BA and BO and/or other Swiss requirements adopted pursuant to those provisions, the Covered Entity is a “bank” for purposes of BA article 1a, or otherwise is described by the relevant language of that provision.²⁶

- *Covered Entity as “systemically important”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the FINMA Circular 2017/1, the Covered Entity is “systemically important” for purposes of BA article 8(3), or otherwise is described by the relevant language of that provision.²⁷

- *Covered Entity as “category 1”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2017/1, the Covered Entity is supervised as “category 1,” as defined in BO articles 2(2) and 2(3) and BO Annex 3, or otherwise is described by the relevant language of those provisions.²⁸

- *“Institution-specific approach” to operational risk quantification*—For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2008/21 margins 45–107, the Covered Entity applies the “institution-specific approach” to quantifying capital requirements for operational risk, as defined in CAO article 94, or otherwise is described by the relevant language of those provisions, and as approved by FINMA.²⁹

- *Memorandum of understanding*—The Commission has an applicable memorandum of understanding or other arrangement with FINMA addressing cooperation with respect of the proposed Order at the time the Covered Entity makes use of substituted compliance.³⁰

- *Notice of reliance on substituted compliance*—A Covered Entity must provide notice of its intent to rely on the proposed Order by notifying the Commission in the manner specified on the Commission’s website.³¹ In the notice, the Covered Entity would need to identify each specific substituted compliance determination in the proposed Order for which the Covered Entity intends to apply substituted compliance.³² If a Covered Entity elects not to apply substituted compliance with respect to a specific substituted compliance determination in the proposed Order, it must comply with the Exchange Act requirements subject to that determination. Finally, a Covered Entity must promptly update its notice to the Commission if it intends to modify its reliance on the positive substituted compliance determinations in the proposed Order.³³

- *Notification related to changes in capital category*—Covered Entities with a prudential regulator would need to apply substituted compliance with respect to the requirements of Exchange

³¹ See para. (a)(9) of the proposed Order.

³² If the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the proposed Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the risk control determinations in paragraph (b) of the proposed Order, it would indicate in the notice that it is relying on the determinations in paragraph (b). However, if the Covered Entity intends to rely on the internal risk management, trade acknowledgement and verification, and portfolio reconciliation determinations but not the portfolio compression determination, it would need to indicate in the notice that it is relying on paragraphs (b)(1)–(3) of the proposed Order. In this case, paragraph (b)(4) of the proposed Order (the portfolio compression determination) would be excluded from the notice and the Covered Entity would need to comply with the Exchange Act portfolio compression requirements. Further, as discussed below in section VII.B of this notice, the recordkeeping and reporting determinations in the proposed Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those rules for which they want to rely on substituted compliance. For example, paragraph (d)(1)(i) of the proposed Order sets forth the Commission’s preliminary substituted compliance determinations with respect to the requirements of Exchange Act rule 18a–5, 17 CFR 240.18a–5. These proposed determinations are set forth in paragraphs (d)(1)(i)(A) through (O). If a Covered Entity intends to rely on some but not all of the determinations, it would need to identify in the notice the specific determinations in this paragraph it intends to rely on (e.g., paragraphs (d)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a–5 requirement.

³³ A Covered Entity would modify its reliance on the positive substituted compliance determinations in the proposed Order, and thereby trigger the requirement to update its notice, if it adds or subtracts determinations for which it is applying substituted compliance or completely discontinues its reliance on the proposed Order.

²² An SBSB’s “voluntary” compliance with the relevant Swiss requirements would not suffice for these purposes. Substituted compliance reflects an alternative means by which an SBSB may comply with applicable requirements under the Exchange Act, and thus mandates that the SBSB be subject to the requirements needed to establish comparability and face consequences arising from any failure to comply with those requirements. Moreover, the comparability assessment takes into account the effectiveness of the supervisory compliance program administered and the enforcement authority exercised by FINMA, which would not be expected to promote comparable outcomes when compliance merely is “voluntary.”

²³ See para. (a)(1) of the proposed Order.

²⁴ See para. (a)(2) of the proposed Order.

²⁵ See para. (a)(3) of the proposed Order.

²⁶ See para. (a)(4) of the proposed Order.

²⁷ See para. (a)(5) of the proposed Order.

²⁸ See para. (a)(6) of the proposed Order.

²⁹ See para. (a)(7) of the proposed Order.

³⁰ See para. (a)(8) of the proposed Order.

Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule (c).³⁴ Exchange Act rule 18a–8(c) generally requires every security-based swap dealer with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact to the that same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a–8(h).³⁵ Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made. While Exchange Act rule 18a–8(c) is not linked to an Exchange Act capital requirement, it is linked to capital requirements in the U.S. promulgated by the prudential regulators. In its application, the Swiss Firms cited various Swiss provisions as providing similar outcomes to the notifications requirements of Exchange Act Rule 18a–8.³⁶ This general condition would be designed to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by Swiss law. The intent is to align the notification requirement with the Swiss capital requirements applicable to the Covered Entity.

V. Substituted Compliance for Risk Control Requirements

A. Swiss Firms' Request and Associated Analytic Considerations

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

- *Internal risk management*—Internal risk management system requirements pursuant to Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I).³⁷ Those provisions address the obligation of SBSDs to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.³⁸

- *Trade acknowledgment and verification*—Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–2.³⁹ Those provisions help avoid legal and operational risks by requiring definitive written records of transactions and for procedures to avoid disagreements regarding the meaning of transaction terms.⁴⁰

- *Portfolio reconciliation and dispute reporting*—Portfolio reconciliation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–3.⁴¹ Those provisions require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps and promptly notify the Commission and applicable prudential regulators regarding certain valuation disputes.⁴²

- *Portfolio compression*—Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–4.⁴³ Those provisions require that SBSDs have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.⁴⁴

- *Trading relationship documentation*—Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–5.⁴⁵ Those provisions require that SBSDs have procedures to execute written security-based swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.⁴⁶

Swiss Application discusses Swiss requirements that address Covered Entities' obligations related to internal risk management. See Swiss Application section II.1.a at 5–8.

³⁹ 17 CFR 240.15Fi–2.

⁴⁰ See Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39808, 39809 & 39820 (June 17, 2016) (“Trade Acknowledgment and Verification Adopting Release”). The Swiss Application discusses Swiss requirements that address Covered Entities' obligations related to confirmations. See Swiss Application section II.1.b at 9–16.

⁴¹ 17 CFR 240.15Fi–3.

⁴² See Exchange Act Release No. 87782 (Dec. 18, 2019), 85 FR 6359, 6360–61 (Feb. 4, 2020) (“Risk Mitigation Adopting Release”). The Swiss Application discusses Swiss requirements that address portfolio reconciliation and dispute resolution and reporting. See Swiss Application section II.1.c at 17–23.

⁴³ 17 CFR 240.15Fi–4.

⁴⁴ See Risk Mitigation Adopting Release, 85 FR at 6361. The Swiss Application discusses Swiss portfolio compression requirements. See Swiss Application section II.1.c at 17–19, 23–24.

⁴⁵ 17 CFR 240.15Fi–5.

⁴⁶ See Risk Mitigation Adopting Release, 85 FR at 6361. The Swiss Application discusses Swiss

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

B. Preliminary Views and Proposed Order

1. General considerations

In the Commission's preliminary view based on the Swiss Application and the Commission's review of applicable provisions, relevant Swiss requirements would produce regulatory outcomes that are comparable to those associated with the internal risk management, trade acknowledgment and verification, portfolio reconciliation, and portfolio compression risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with those elements of their security-based swap businesses. Substituted compliance for those risk control requirements accordingly would be conditioned on Covered Entities being subject to and complying with the Swiss provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with the analogous risk control requirements under the Exchange Act.⁴⁷

In connection with dispute reporting, the Commission preliminarily believes that Swiss requirements are not comparable to Exchange Act requirements.⁴⁸ Paragraph (c) of

requirements regarding records of agreements with counterparties. See Swiss Application section II.1.c at 17–19, 24–31.

⁴⁷ See para. (b)(1) of the proposed Order (listing the requirements a Covered Entity must be subject to and comply with in connection with internal risk management); para. (b)(2) (listing the requirements a Covered Entity must be subject to and comply with in connection with trade acknowledgment and verification); para. (b)(3) (listing the requirements a Covered Entity must be subject to and comply with in connection with portfolio reconciliation); and para. (b)(4) (listing the requirements a Covered Entity must be subject to and comply with in connection with portfolio compression).

⁴⁸ See para. (b)(3) of the proposed Order (excluding Exchange Act rule 15Fi–3(c) covering reporting of security-based swap valuation disputes

³⁴ See para. (a)(10) of the proposed Order.

³⁵ 17 CFR 240.18a–8(c).

³⁶ See FINMASA article 29(2); CAO articles 14, 42(3), 101, and 130(4); and Liquidity Ordinance articles 17b, and 26(2).

³⁷ 17 CFR 240.15Fh–3(h)(2)(iii)(I).

³⁸ See Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70250 (Nov. 23, 2012). The

Exchange Act rule 15Fi-3 requires SBSDs to promptly report to the Commission valuation disputes in excess of \$20 million that have been outstanding for three or five business days (depending on counterparty types).⁴⁹ However, Swiss law lacks a specific requirement for reporting security-based swap valuation disputes in excess of \$20 million.⁵⁰ Therefore, substituted compliance in connection with dispute reporting requirements is preliminarily determined to not be available. To fulfill the requirements of Exchange Act section 15F(i) and Exchange rule 15Fi-3, a Swiss Covered Entity would be required to comply with the dispute reporting requirements of Exchange Act rule 15Fi-3(c) directly.

In connection with portfolio reconciliation requirements, the Commission preliminarily believes that Swiss requirements are comparable to Exchange Act requirements when part of one of the applicable Swiss requirements is not applied. The proposed Order includes the requirement that a Covered Entity be subject to and comply with FinMIA 108(b). However, the proposed Order also requires that Covered Entities not apply FinMIA article 108(b)'s exception for "small non-financial counterparties" as defined in FinMIA article 98. Requiring that Covered Entities not apply this exception helps ensure that the Swiss requirements for portfolio reconciliation are applied to Covered Entities in a manner comparable to the applicable Exchange Act requirements.

In connection with portfolio compression requirements, the Commission preliminarily believes that Swiss requirements are comparable to Exchange Act requirements but only when one of the applicable Swiss exclusions is not applied. The proposed Order includes the requirement that a Covered Entity be subject to and comply with FinMIA article 108(d).⁵¹ However, the proposed Order also requires that Covered Entities not apply the portion of FinMIA article 108(d) that excludes application of its requirements when

there are fewer than 500 non-centrally cleared OTC derivatives transactions outstanding.⁵² Requiring that Covered Entities not apply this exclusion helps ensure that the Swiss requirements for portfolio compression are applied to Covered Entities in a manner comparable to the applicable Exchange Act requirements.

In connection with trading relationship documentation requirements, the Commission preliminarily believes that Swiss requirements are not comparable to Exchange Act requirements. Under Swiss law, there is no explicit requirement to agree in writing to all terms governing the trading relationship.⁵³ By comparison, Exchange Act rule 15Fi-5 requires that "[t]he security-based swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the security-based swap dealer . . . and its counterparty."⁵⁴ The Swiss Application's statement that "[e]ven if OTC derivative transactions were to be initially traded on the basis of a purely verbal agreement, they would still be subject to the statutory requirements to have the key contractual terms confirmed and reconciled"⁵⁵ is insufficient to produce a comparable regulatory outcome to Exchange Act rule 15Fi-5, which specifically requires that "the security-based swap trading relationship documentation shall be executed prior to, or contemporaneously with, executing a security-based swap with any counterparty."⁵⁶ Swiss law also does not require particularized disclosures regarding the status of a Swiss bank or its counterparty as an insured financial institution or financial company,⁵⁷ as required by Exchange Act rule 15Fi-5(b)(5). Additionally, Swiss law does not require SBSDs to provide information regarding security-based swaps that have been accepted for clearing,⁵⁸ as required by Exchange Act rule 15Fi-5(b)(6). Given these discrepancies between the Swiss and U.S. trading relationship documentation requirements, the Commission

preliminarily believes that the analogous Swiss requirements—taken as a whole—cannot be determined to produce comparable outcomes. Therefore the Commission is not proposing to make a positive substituted compliance determination for trading relationship documentation requirements. To fulfill the requirements of Exchange Act section 15F(i) and Exchange rule 15Fi-5, a Swiss Covered Entity would be required to comply with the trading relationship documentation requirements of Exchange Act rule 15Fi-5 directly.

While the Commission recognizes these and certain other differences between Swiss requirements and the applicable risk control requirements under the Exchange Act, in the Commission's preliminary view those differences on balance would not preclude substituted compliance for internal risk management, trade acknowledgement and verification, portfolio reconciliation, and portfolio compression, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

VI. Substituted Compliance for Internal Supervision, Chief Compliance Officer and Additional Exchange Act Section 15F(j) Requirements

A. The Swiss Firms' Request and Associated Analytic Considerations

The Swiss Firms also request substituted compliance in connection with requirements under the Exchange Act relating to:

- *Internal supervision*—Diligent supervision is required pursuant to Exchange Act rule 15Fh-3(h),⁵⁹ and Exchange Act section 15F(j)(5) requires conflict of interest systems and procedures. These provisions generally require that SBSDs establish, maintain and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest.⁶⁰

- *Chief compliance officers*—Chief compliance officer requirements are set out in Exchange Act section 15F(k) and

from the risk control provisions covered by the proposed Order).

⁴⁹ See 17 CFR 240.15Fi-3(c).

⁵⁰ See Swiss Application section II.1.c at 17, 22-23 (noting that [t]he key difference between [Swiss and US portfolio reconciliation] requirements is the reporting of valuation disputes, which Swiss law does not require to be reported to the Commission . . . the Commission may consider granting the requested substituted compliance determination on the condition that a Swiss bank would comply with the Commission's reporting requirement for disputes with respect to more than USD \$20 million pursuant to Exchange Act rule 15Fi-3(c) with respect to U.S. person counterparties").

⁵¹ See para. (b)(4)(i) of the proposed Order.

⁵² See para. (b)(4)(ii) of the proposed Order.

⁵³ The voluntary "standard Swiss market practice to document OTC derivatives transactions through written agreements" described in the Swiss Application does not establish the requisite supervisory framework or enforcement authority to establish comparability with the specific regulatory requirements of Exchange Act section 15Fi-5. See Swiss Application section II.1.c at 24.

⁵⁴ 17 CFR 240.15Fi-5(b)(1).

⁵⁵ See Swiss Application section II.1.c at 24.

⁵⁶ 17 CFR 240.15Fi-5(a)(2).

⁵⁷ See Swiss Application section II.1.c at 18, 28-29.

⁵⁸ See *id.* at 30.

⁵⁹ 17 CFR 240.15Fh-3(h).

⁶⁰ The Swiss Application addresses Swiss provisions that address firms' supervisory systems, responsible individuals and qualification requirements for supervisors, supervisory system policies and procedures; the chief compliance officer and the chief compliance officer's reporting authority and job security, chief compliance officer policies and procedures, and chief compliance officer reports. See Swiss Application section II.3 at 67-109.

Exchange Act rule 15Fk-1.⁶¹ These provisions in general require that SBSDs designate individuals with the responsibility and authority to establish, administer and review compliance policies and procedures, to resolve conflicts of interest, and to prepare and certify an annual compliance report to the Commission.⁶²

• *Additional Exchange Act section 15F(j) requirements*—Additional requirements related to information-gathering pursuant to Exchange Act section 15F(j)(4)(A), and certain antitrust prohibitions specified by Exchange Act section 15F(j)(6).⁶³

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

B. Preliminary Views and Proposed Order

1. General considerations

Based on the Swiss Application and the Commission's review of applicable provisions, in the Commission's preliminary view the relevant Swiss requirements would produce regulatory outcomes that are comparable to those associated with the above-described

⁶¹ 17 CFR 240.15Fk-1.

⁶² The Swiss Application discusses Swiss requirements that address compliance officers and their responsibilities, compliance officer appointment, removal and compensation, related conflict of interest provisions and compliance-related reports. See Swiss Application section II.3.c at 90-109.

⁶³ Section 15F(j)(4)(A) particularly requires firms to have systems and procedures to obtain necessary information to perform functions required under section 15F. The Swiss Application in turn discusses Swiss provisions generally addressing information gathering and disclosure. See Swiss Application Section II.2 at 33. Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade, or to impose any material anticompetitive burden on trading or clearing. The Swiss Application addresses Swiss antitrust requirements. See Swiss Application section II.3.b at 78.

internal supervision, chief compliance officer, conflict of interest and information-related requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance and manage conflicts of interest.⁶⁴ As elsewhere, this part of the proposed Order conditions substituted compliance on Covered Entities being subject to and complying with specified Swiss requirements that are necessary to establish comparability.⁶⁵

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

2. Additional Conditions

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

a. Application of Swiss Supervisory and Compliance Requirements to Residual U.S. Requirements and Order Conditions

Under the proposed Order, substituted compliance for the relevant internal supervision requirements would be conditioned on Covered Entities complying with applicable Swiss supervisory and compliance provisions *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions to the Order.⁶⁶

⁶⁴ This portion of the proposed Order accordingly would extend generally to the internal supervision provisions of Exchange Act rule 15Fh-3(h), the requirement in Exchange Act section 15F(j)(4)(A) to have systems and procedures to obtain necessary information to perform functions required under Exchange Act section 15F and the conflict of interest provisions of Exchange Act section 15F(j)(5). See para. (c)(1) of the proposed Order. This portion of the proposed Order does not extend to the portions of rule 15Fh-3(h) that mandate supervisory policies and procedures in connection with: The risk management system provisions of Exchange Act section 15F(j)(2) (which are addressed by paragraph (b)(1) of the proposed Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not proposing to provide substituted compliance). See para. (c)(1)(ii) of the proposed Order.

⁶⁵ See para. (c)(3) of the proposed Order.

⁶⁶ See para. (c)(4) of the proposed Order.

Even with substituted compliance, Covered Entities still would be subject directly to a number of requirements under the Exchange Act and to the conditions to the Order. In some cases, particular requirements under the Exchange Act are outside the ambit of substituted compliance.⁶⁷ In other cases, certain requirements under the Exchange Act may not have comparable Swiss requirements or may be outside the scope of the Swiss Application,⁶⁸ or the Covered Entity may decide not to use substituted compliance for certain requirements under the Exchange Act.⁶⁹ While the Swiss regulatory framework in general reasonably appears to promote Covered Entities' compliance with applicable Swiss laws, those requirements do not appear to promote Covered Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance,⁷⁰ or promote Covered Entities' compliance with the applicable conditions to substituted compliance. This condition would address this issue, while still allowing Covered Entities to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and Order conditions, rather than having to establish separate special-purpose supervision and compliance frameworks.

b. Compliance Reports

Under the proposed Order, substituted compliance in connection with the compliance report requirements under Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) also would be subject to the condition that the compliance reports required pursuant to FINMA Circular 2017/1 margins 78-81 must: (1) Be provided to the Commission at least annually and in the English language; (2) include a certification signed by the chief compliance officer or senior

⁶⁷ As noted, substituted compliance does not extend to antifraud prohibitions or to certain other requirements under the Exchange Act (e.g., segregation requirements and requirements related to transactions with counterparties that are not ECPs). See note 5, *supra*.

⁶⁸ The Swiss Firms are not requesting substituted compliance in connection with: (1) Capital requirements: Exchange Act Rules 18a-1; (2) margin requirements: Exchange Act Rule 18a-3; (3) recordkeeping requirements not applicable to non-bank SBSEs in Exchange Act Rules 18a-5 and 18a-6; (4) reporting requirements applicable to non-bank SBSEs in Exchange Act Rule 18a-7; (5) notification requirements applicable to non-bank SBSEs in Exchange Act rule 18a-8; and (6) securities count requirements in Exchange Act rule 18a-9.

⁶⁹ See part III, *supra*.

⁷⁰ See note 5, *supra*.

officer⁷¹ of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects; (3) address the Covered Entity's compliance with applicable requirements under the Exchange Act and other applicable conditions of the proposed Order in connection with requirements for which the Covered Entity is relying on the proposed Order; (4) be provided to the Commission no later than 15 days following the earlier of the submission of the report to the Covered Entity's management body or the time the report is required to be submitted to the management body; and (5) together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) would be required to cover.⁷²

Although certain Swiss requirements address a Covered Entity's use of internal compliance reports, those provisions do not require it to submit compliance reports to the Commission. Under this condition, a Covered Entity could leverage the compliance reports that it otherwise must produce, by extending those reports to address compliance with the conditions of the proposed Order.⁷³

c. Antitrust Considerations

Under the proposed Order, substituted compliance would not extend to Exchange Act section 15F(j)(6) (and related internal supervision requirements of Exchange Act rule 15Fh-3(h)(2)(iii)(I)). Allowing an alternative means of compliance would not lead to outcomes comparable to that statutory prohibition.⁷⁴

⁷¹ See Exchange Act rule 15Fk-1(e)(2) (defining "senior officer" as "the chief executive officer or other equivalent officer").

⁷² See para. (c)(2) of the proposed Order. FINMA Circular 2017/1 margins 78–81 require that a Covered Entity's compliance function "annually report to the executive board its assessment of compliance risks and report on the activities of the compliance function. A copy of these reports shall be provided to Internal Audit as well as the audit firm." Under the proposed condition, those reports, as submitted to the Commission and the Covered Entity's management body, also would address the Covered Entity's compliance with the other conditions of the proposed Order (in addition to addressing the Covered Entity's compliance with applicable Swiss provisions).

⁷³ In practice, a Covered Entity may satisfy this condition by identifying relevant Order conditions and reporting on the implementation and effectiveness of its controls with regard to compliance with those Order conditions.

⁷⁴ See also German Substituted Compliance Order, 85 FR at 85691–92; French Substituted Compliance Order, 86 FR at 41643; UK Substituted Compliance Order, 86 FR at 43353. The Commission is not taking any position regarding the applicability of the section 15F(j)(6) antitrust

VII. Substituted Compliance for Recordkeeping, Reporting and Notification Requirements

A. Swiss Firms' Request and Associated Analytic Considerations

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

- *Record Making*—Exchange Act rule 18a-5 requires prescribed records to be made and kept current.⁷⁵
- *Record Preservation*—Exchange Act rule 18a-6 requires preservation of records.⁷⁶
- *Reporting*—Exchange Act rule 18a-7 requires certain reports.⁷⁷
- *Notification*—Exchange Act rule 18a-8 requires notification to the Commission when certain financial or operational problems occur.⁷⁸
- *Daily Trading Records*—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.⁷⁹

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

prohibitions in the cross-border context. Non-U.S. SBSs should assess the applicability of those prohibitions to their security-based swap businesses.

⁷⁵ 17 CFR 240.18a-5. The Swiss Application discusses Swiss record making requirements. See Swiss Application section II.2.a. at 33–47.

⁷⁶ 17 CFR 240.18a-6. The Swiss Application discusses Swiss record preservation requirements. See Swiss Application section II.2.b. at 48–61.

⁷⁷ 17 CFR 240.18a-7. The Swiss Application discusses Swiss requirements that address firms' obligations to make certain reports. See Swiss Application section II.2.c. at 62–64.

⁷⁸ 17 CFR 240.18a-8. The Swiss Application discusses Swiss requirements that address firms' obligations to make certain notifications. See Swiss Application section II.2.c. at 64–66.

⁷⁹ The Swiss Application discusses Swiss requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. See Swiss Application section II.2.b. at 50–52.

receive a positive substituted compliance determination.

B. Preliminary Views and Proposed Order

1. General Considerations

Based on the Swiss Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant Swiss requirements, subject to the conditions and limitations of the proposed Order, would produce regulatory outcomes that are comparable to the outcomes associated with the vast majority of the recordkeeping, reporting, and notification requirements under the Exchange Act applicable to SBS Entities with a prudential regulator pursuant to Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8.

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

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

within a given recordkeeping, reporting, or notification rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.⁸⁰

As applied to Exchange Act rules 18a-5 and 18a-6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities with a prudential regulator to make, keep current, and/or preserve. The objective of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities with a prudential regulator (e.g., business conduct requirements) as well as to promote the prudent operation of these firms.⁸¹ The Commission preliminarily believes the comparable Swiss recordkeeping rules achieve these outcomes with respect to compliance with substantive Swiss requirements for which preliminary positive substituted compliance determinations are being made in this proposed Order (e.g., the preliminary positive substituted compliance determinations with respect to the majority of the Exchange Act business conduct requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (e.g., paragraph (b)(1) of Exchange Act rule 18a-5 addressing trade blotters) can be viewed in isolation as a distinct recordkeeping rule. Therefore, it may be appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a-5 and 18a-6.

As discussed in more detail below, the Commission's preliminary view is that substituted compliance is appropriate for most of the requirements applicable to SBS Entities with a prudential regulator within the recordkeeping, reporting, and notification rules. However, certain of the discrete requirements in these rules are fully or partially linked to substantive Exchange Act requirements for which substituted compliance is not

available or for which a positive substituted compliance determination would not be made under the proposed Order. In these cases, a preliminary positive substituted compliance determination is not be made for the requirement that is fully linked to the substantive requirement or to the part of the requirement that is linked to the substantive requirement. In particular, a preliminary positive substituted compliance determination is not being made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a preliminary positive substituted compliance determination is not being made: (1) Exchange Act rule 15Fh-4 ("Rule 15Fh-4 Exclusion"); (2) Exchange Act rule 15Fh-5 ("Rule 15Fh-5 Exclusion"); (3) Exchange Act rule 15Fh-6 ("Rule 15Fh-6 Exclusion"); (4) Exchange Act rule 18a-4 ("Rule 18a-4 Exclusion"); (5) Regulation SBSR ("Regulation SBSR Exclusion"); (6) Form SBSE and its variations ("Form SBSE Exclusion"); (7) Exchange Act rule 15Fh-1 Exclusion ("Rule 15Fh-1 Exclusion"), (8) Exchange Act rule 15Fh-2 ("Rule 15Fh-2 Exclusion"); and (9) Exchange Act rule 15Fi-5 ("Rule 15Fi-5 Exclusion"). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.⁸²

In addition, certain of the requirements in the recordkeeping, reporting, and notification rules are expressly linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the linked requirement in the recordkeeping, reporting, or notification rule is conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement. This is the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement. The recordkeeping, reporting, and notification requirements that are linked to a substantive Exchange Act requirement are designed and tailored to assist the Commission in monitoring and examining an SBS Entity's compliance with the substantive Exchange Act requirement. Swiss recordkeeping, reporting, and

notification requirements are designed to perform a similar role with respect to the substantive Swiss requirements to which they are linked. Consequently, this condition is designed to ensure that the records, reports, and notifications of a Covered Entity align with the substantive Exchange Act or Swiss requirement to which they are linked. For these reasons, under the proposed Order, substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3(h) ("Rule 15Fh-3 Condition"); (2) Exchange Act rule 15Fi-2 ("Rule 15Fi-2 Condition"); (3) Exchange Act rule 15Fi-3 ("Rule 15Fi-3 Condition"); (4) Exchange Act rule 15Fi-4 ("Rule 15Fi-4 Condition"); and (5) Exchange Act rule 15Fk-1 ("Rule 15Fk-1 Condition"). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.⁸³

2. Exchange Act Rule 18a-5

Exchange Act rule 18a-5 requires SBS Entities to make and keep current various types of records. The requirements for SBS Entities without a prudential regulator are set forth in paragraph (a) of the rule.⁸⁴ The requirements for SBS Entities with a prudential regulator are set forth in paragraph (b) of the rule.⁸⁵ The Commission is making a preliminary positive substituted compliance determination for many of the requirements of paragraph (b) of Exchange Act rule 18a-5 in the granular manner discussed above.⁸⁶

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

⁸³ See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

⁸⁴ See paras. (a)(1) through (18) of Exchange Act rule 18a-5.

⁸⁵ See paras. (b)(1) through (14) of Exchange Act rule 18a-6.

⁸⁶ See para. (d)(1) of the proposed Order.

⁸⁰ See French Substituted Compliance Order, 86 FR at 41649; UK Substituted Compliance Order, 86 FR at 43360.

⁸¹ See, e.g., Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199-200 (May 2, 2014).

⁸² See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

to the substantive Exchange Act requirement.⁸⁷

In addition, certain of the requirements in Exchange Act rule 18a-5 are fully or partially linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.⁸⁸

In addition, the proposed Order would allow a Covered Entity to apply substituted compliance on a transaction-by-transaction basis for the Commission's recordkeeping requirements that are linked with the counterparty protection requirements in Exchange Act rule 15Fh-3(h).⁸⁹ This approach is intended to be consistent with the Commission preliminarily allowing Covered Entities to apply substituted compliance on a transaction-by-transaction basis for the

Commission's counterparty protection requirements.

Under the proposed Order, substituted compliance in connection with the record making requirements of Exchange Act rule 18a-5 would be subject to the condition that the Covered Entity: (1) Preserves all of the data elements necessary to create the records required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7); and (2) upon request furnishes promptly to representatives of the Commission the records required by those rules ("SEC Format Condition").⁹⁰ This proposed condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a-5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a-5 would need to comply with the comparable Swiss requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of Exchange Act rule 18a-5 at the request of Commission staff. The objective is to require—on a very

limited basis—the production of a record that consolidates the information required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7) in a single record and, as applicable, in a blotter or ledger format. This will assist the Commission staff in reviewing the information on the record.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-5 by listing in each row: (1) The paragraph of the proposed Order that sets forth the preliminary determination; (2) the paragraph(s) of Exchange Act rule 18a-5 to which the preliminary determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.⁹¹

EXCHANGE ACT RULE 18a-5
[Record making]

Order paragraph	Rule paragraph	Rule description	Additional conditions and partial exclusions
(d)(1)(i)(A)	(b)(1)	Trade blotters	SEC Format Condition.
(d)(1)(i)(B)	(b)(2)	Account ledgers	SEC Format Condition.
(d)(1)(i)(C)	(b)(3)	Stock record	SEC Format Condition.
(d)(1)(i)(D)	(b)(4)	Memoranda of brokerage orders	N/A.
(d)(1)(i)(E)	(b)(5)	Memoranda of proprietary orders	N/A.
(d)(1)(i)(F)	(b)(6)	Confirmations, trade verification	Rule 15Fi-2 Condition.
	(b)(11)		
(d)(1)(i)(G)	(b)(7)	Accountholder information	SEC Format Condition.
(d)(1)(i)(H)	(b)(8)	Associated person's employment application	N/A.
(d)(1)(i)(I)	(b)(13)	Compliance with business conduct requirements.	(1) Rule 15Fh-3(h) Condition. (2) Rule 15Fk-1 Condition. (3) Rule 15Fh-1 Exclusion. (4) Rule 15Fh-2 Exclusion. (5) Rule 15Fh-4 Exclusion. (6) Rule 15Fh-5 Exclusion.
(d)(1)(i)(J)	(b)(14)(i)	Portfolio reconciliation	Rule 15Fi-3 Condition.
	(b)(14)(ii)		

⁸⁷ A positive preliminary substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-5 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rules 18a-5(b)(9) and (10) are fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (2) Exchange Act rule 18a-5(b)(12) is fully linked to Exchange Act rule 15Fh-6 and, therefore, would be subject to the Rule 15Fh-6 Exclusion; (3) the portions of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-4 would be subject to the Rule 15Fh-4 Exclusion; (4) the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion; (5) the portion of Exchange Act rule 18a-

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

⁸⁸ Substituted compliance with the following requirements of Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a-5(b)(6) and (b)(11) are linked to Exchange Act rule 15Fi-2 and, therefore, would be subject to the Rule 15Fi-2 Condition; (2) Exchange Act rule 18a-5(b)(13) is linked to Exchange Act rule 15Fh-3 and, therefore, would be subject to the Rule 15Fh-3(h) Condition; (3) Exchange Act rule 18a-5(b)(13) is linked to Exchange Act rule 15Fk-1, and therefore, would be subject to the Rule 15Fk-1 Condition; (4)

Exchange Act rules 18a-5(b)(14)(i) and (ii) are linked to Exchange Act rule 15Fi-3 and, therefore, would be subject to the Rule 15Fi-3 Condition; and (5) Exchange Act rule 18a-5(b)(14)(iii) is linked to Exchange Act rule 15Fi-4 and, therefore, would be subject to the Rule 15Fi-4 Condition.

⁸⁹ See para. (d)(1)(ii)(B) of the proposed Order.

⁹⁰ See para. (d)(1)(ii)(A) of the proposed Order.

⁹¹ The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-5; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) as discussed below, must promptly furnish to a representative of the Commission upon request an English translation of a record. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

EXCHANGE ACT RULE 18a-5—Continued
[Record making]

Order paragraph	Rule paragraph	Rule description	Additional conditions and partial exclusions
(d)(1)(i)(K)	(b)(14)(iii)	Portfolio compression	Rule 15Fi-4 Condition.

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a-5 for which a positive substituted compliance determination would not be made because they are fully linked to

substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-5 to which the

determination applies; (3) a brief description of the records required by the paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a-5
[Record making]

Order paragraph	Rule paragraph	Rule description	Exclusion
(d)(1)(ii)(C)	(b)(9)	Possession or control records	Rule 18a-4 Exclusion.
(d)(1)(ii)(C)	(b)(10)	Reserve computations	Rule 18a-4 Exclusion.
(d)(1)(ii)(C)	(b)(12)	Political contribution records	Rule 15Fh-6 Exclusion.

3. Exchange Act Rule 18a-6

Exchange Act rule 18a-6 requires an SBS Entity to preserve certain types of records if it makes or receives them (in addition to the records the SBS Entity is required to make and keep current pursuant to Exchange Act rule 18a-5).⁹² Exchange Act rule 18a-6 also prescribes the time period that these additional records and the records required to be made and kept current pursuant to Exchange Act rule 18a-5 must be preserved and the manner in which they must be preserved.

Paragraphs (a) through (d) of Exchange Act rule 18a-6 identify the records that an SBS Entity must retain if it makes or receives them and prescribes the retention periods for these records as well as for the records that must be made and kept current pursuant to Exchange Act rule 18a-5. Certain of these paragraphs prescribe requirements separately for SBS Entities without a prudential regulator and SBS Entities with a prudential regulator.⁹³ The proposed Order would make substituted compliance available for the requirements of these paragraphs applicable to SBS Entities with a prudential regulator. As discussed below, the Commission is making a

preliminary positive substituted compliance determination for many of the requirements of these paragraphs applicable to SBS Entities with a prudential regulator.

However, certain of these requirements are fully or partially linked to substantive Exchange Act requirements for which a preliminary positive substituted compliance determination would not be made under the proposed Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a-6.⁹⁴

⁹⁴ A positive substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-6 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rule 18a-6(b)(2)(vi) is fully linked to Regulation SBSR and, therefore, would be subject to the Regulation SBSR Exclusion; (2) Exchange Act rule 18a-6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh-4 and, therefore, would be subject to the Rule 15Fh-4 Exclusion; (3) Exchange Act rule 18a-6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh-5 and, therefore, would be subject to the Rule 15Fh-5 Exclusion; (4) Exchange Act rule 18a-6(b)(2)(v) is fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (5) the portion of Exchange Act rule 18a-6(c) relating to Form SBSE and its variations would be subject to the Form SBSE Exclusion; (6) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-1 would be subject to the 15Fh-1 Exclusion; (7) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-2 would be subject to the 15Fh-2 Exclusion; (8) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-4 would be subject to the 15Fh-4 Exclusion; (9) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion; (10)

In addition, certain of the requirements in Exchange Act rule 18a-6 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.⁹⁵

Paragraph (e) of Exchange Act rule 18a-6 sets forth the requirements for preserving records electronically. Paragraph (f) sets forth requirements for when records are prepared or maintained by a third party. The Order would make substituted compliance available for the requirements of paragraphs (e) and (f) of Exchange Act

the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-6 would be subject to the 15Fh-6 Exclusion; and (11) the portion of Exchange Act rules 18a-6(d)(4) and (d)(5) that relates to Exchange Act rule 15Fi-5 would be subject to the Rule 15Fi-5 Exclusion.

⁹⁵ Substituted compliance with the following requirements of Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a-6(b)(2)(vii) is linked to Exchange Act rule 15Fh-3 and, therefore, would be subject to the Rule 15Fh-3(h) Condition; (2) Exchange Act rule 18a-6(b)(2)(vii) is linked to Exchange Act rule 15Fk-1 and, therefore, would be subject to the Rule 15Fk-1 Condition; (3) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-3 and, therefore, would be subject to the Rule 15Fi-3 Condition; and (4) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-4 and, therefore, would be subject to the Rule 15Fi-4 Condition.

⁹² See 17 CFR 240.18a-6.

⁹³ Paras. (a)(1), (b)(1), (d)(2)(i), and (d)(3)(i) of Exchange Act rule 18a-6 apply to SBS Entities without a prudential regulator. Paras. (a)(2), (b)(2), (d)(2)(ii), and (d)(3)(ii) of Exchange Act rule 18a-6 apply to SBS Entities with a prudential regulator. Paras. (c), (d)(1), (d)(4), and (d)(5) of Exchange Act rule 18a-6 apply to SBS Entities irrespective of whether they have a prudential regulator.

rule 18a-6 with respect to Covered Entities with a prudential regulator.⁹⁶

Paragraph (g) of Exchange Act rule 18a-6 requires an SBS Entity to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the SBS Entity that are subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act that are requested by a

representative of the Commission. The proposed Order would not make substituted compliance available for the requirements of paragraph (g) of Exchange Act rule 18a-6 because there is no comparable requirement in Switzerland to produce these records to a representative of the Commission.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-6 by listing in each row: (1) The paragraph of the

proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-6 to which the determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.⁹⁷

EXCHANGE ACT RULE 18a-6
[Record preservation]

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

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-6 for which a positive substituted compliance determination would not be made because they are fully linked to

substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-6 to which the

determination applies; (3) a brief description of the records required by those paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a-6
[Preservation]

Order paragraph	Rule paragraph	Rule description	Exclusion
(d)(2)(ii)	(b)(2)(v)	Information supporting financial reports	Rule 18a-4 Exclusion.
(d)(2)(ii)	(b)(2)(vi)	Regulation SBSR information	Regulation SBSR Exclusion.
(d)(2)(ii)	(b)(2)(viii)	Special entity documents	(1) Rule 15Fh-4 Exclusion. (2) Rule 15Fh-5 Exclusion.

4. Exchange Act Rule 18a-7

Exchange Act rule 18a-7 requires SBS Entities, on a monthly basis (if not

prudentially regulated) or on a quarterly basis (if prudentially regulated), to file an unaudited financial and operational

report on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The

⁹⁶ See paras. (d)(2)(i)(L) and (M) of the proposed Order.

⁹⁷ The chart below does not include the proposed conditions for applying substituted compliance to

Exchange Act rule 18a-6; namely that the Covered Entity: (1) must be subject to and complies with the requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon

request an English translation of a record. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

Commission will use the FOCUS Reports filed by the SBS Entities to both monitor the financial and operational condition of individual SBS Entities and to perform comparisons across SBS Entities. The FOCUS Report Part IIC elicits less information than the FOCUS Report Part II because the Commission does not have responsibility for overseeing the capital and margin requirements applicable to these entities.

The FOCUS Report Parts II and IIC are standardized forms that elicit specific information through numbered line items. This facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. Further, the Commission has designated the Financial Industry Regulatory Authority, Inc. (“FINRA”) to receive the FOCUS Reports from SBS Entities.⁹⁸ Broker-dealers registered with the Commission currently file their FOCUS Reports with FINRA through the eFOCUS system it administers. Using FINRA’s eFOCUS system will enable broker-dealers, security-based swap dealers, and major security-based swap

participants to file FOCUS Reports on the same platform using the same preexisting templates, software, and procedures.

Paragraph (a)(2) of Exchange Act rule 18a-7 requires SBS Entities with a prudential regulator to file the FOCUS Report Part IIC on a quarterly basis. The proposed Order would provide substituted compliance for this requirement subject to the condition that the Covered Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule (“Manner and Format Condition”) and present the financial information in accordance with generally accepted accounting principles (“GAAP”) that the firms use to prepare general purpose publicly available or available to be issued financial statements in Switzerland (“Swiss GAAP Condition”).⁹⁹ The Commission believes that it would be appropriate to condition substituted compliance with respect to Exchange Act rule 18a-7 on the Covered Entity filing unaudited financial and

operational information in a manner and format that facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission.¹⁰⁰ For example, the Commission could by order or rule require Covered Entities with a prudential regulator to file the financial and operational information with FINRA using the FOCUS Report Part IIC but permit the information input into the form to be the same information the SBS Entity reports to FINMA.

The following table summarizes the Commission’s proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-7 by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-7 to which the determination applies; (3) a brief description of the report required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.¹⁰¹

EXCHANGE ACT RULE 18A-7
[Reporting]

Order paragraph	Rule paragraph	Rule description	Conditions
(d)(3)(i)	(a)(2)	File FOCUS Reports	(1) Manner and Format Condition. (2) Swiss GAAP Condition.

5. Exchange Act Rule 18a-8

Exchange Act rule 18a-8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.¹⁰² The proposed Order would provide substituted compliance for the requirements of Exchange Act rule 18a-8 applicable to SBS Entities with a prudential regulator (subject to conditions and limitations). In particular, the requirements of: (1) Paragraph (c) of Exchange Act Rule 18a-8 that an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator must transmit a copy of the notice to the Commission; (2) paragraph

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

Under the proposed Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a-8 would be subject to the condition that the Covered Entity: (1) Simultaneously sends a copy of any notice required to be sent by Swiss notification laws to the Commission in the manner specified on

the Commission’s website (*i.e.*, the “SEC Filing Condition”); and (2) includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice (*i.e.*, the “Contact Information Condition”). The purpose of this condition is to alert the Commission to financial or operational problems that could adversely affect the firm—the objective of Exchange Act rule 18a-8.

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

⁹⁸ See Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X-17A-5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Release No. 88866 (May 14, 2020).

⁹⁹ Under the proposed Order, Covered Entities with a prudential regulator would need to present the information reported in the FOCUS Report in accordance with GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home

jurisdiction instead of U.S. GAAP if other GAAP, such as International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), is used by the Covered Entity in preparing publicly available or available to be issued general purpose financial statements in Switzerland.

¹⁰⁰ The Manner and Format condition is included in the French and UK Substituted Compliance Orders. See French Substituted Compliance Order, 86 FR at 41651; UK Substituted Compliance Order, 86 FR at 43361-62.

¹⁰¹ The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-7; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a report. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

¹⁰² See 17 CFR 240.18a-8.

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

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

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

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-8 by listing in each row: (1) The

paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.¹⁰³

EXCHANGE ACT RULE 18a-8
[Notification]

Order paragraph	Rule paragraph	Rule description	Conditions
(d)(4)(i)(B)	(c)	Prudential regulator capital category adjustment notices.	(1) SEC Filing Condition. (2) Contact Information Condition.
(d)(4)(i)(C)	(d)	Books and records notices	(1) SEC Filing Condition. (2) Contact Information Condition.

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-8 for which a positive substituted compliance determination would not be

made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the

determination; (2) the paragraph of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) the exclusion from substituted compliance.

EXCHANGE ACT RULE 18a-8
[Notification]

Order paragraph	Rule paragraph	Rule description	Exclusion
(d)(4)(ii)(C)	(g)	Reserve account notices	Rule 18a-4 Exclusion.

6. Exchange Act Section 15F(g)

Exchange Act Section 15F(g) requires SBS Entities, including SBS Entities with a prudential regulator, to maintain daily trading records.¹⁰⁴ The Commission preliminarily believes Swiss laws produce a comparable result in terms of its daily trading recordkeeping requirements.¹⁰⁵ Accordingly, the Commission preliminarily is making a positive substituted compliance determination for the self-executing requirements in this paragraph.¹⁰⁶

7. Examination and Production of Records

The proposed Order would not extend to, and Covered Entities would remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and

the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.¹⁰⁷

Consequently, every Covered Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, would be required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act. Covered Entities would be able to make, keep, and preserve

records, subject to the proposed conditions described above, in a manner prescribed by applicable Swiss requirements. As an element of its substituted compliance application, the Swiss Firms have provided the Commission with adequate assurances that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission. Consistent with those assurances and the requirements that apply to all Covered Entities under the Exchange Act, Covered Entities operating under the proposed Order would need to keep books and records open to inspection by any representative of the Commission and to furnish promptly to a

¹⁰³ The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-8; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English

translation of a notification. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

¹⁰⁴ See 15 U.S.C. 78o-10(g).

¹⁰⁵ See CO article 958f; FMIO article 36; FMIO-FINMA article 1; FinMIA articles 38, 104, and 106; FINMA Circular 2013/8 marg. 60 and marg. 61.

¹⁰⁶ See para. (d)(5) of the proposed Order.

¹⁰⁷ See Exchange Act section 15F(f); Exchange Act rule 18a-6(g). French and UK Substituted Compliance Orders do not extend substituted compliance to these requirements. See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

representative of the Commission legible, true, complete, and current copies of those records of the firm that these entities are required to preserve under Exchange Act rule 18a-6 (which would include records for which a positive substituted compliance determination is being made with respect to Exchange Act rule 18a-6 under the Order), or any other records of the firm that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

8. English Translations

The proposed Order provides that to the extent documents are not prepared in the English language, Covered Entities would need to furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F or the proposed Order.¹⁰⁸ This condition would be designed to address difficulties that Commission examinations staff would have examining Covered Entities that furnish documents in a foreign language. The English translations would need to be provided promptly. This condition is included in the French and UK Substituted Compliance Orders.¹⁰⁹

VIII. Additional Considerations Regarding Supervisory and Enforcement Effectiveness in Switzerland

A. General Considerations

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

the supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.¹¹⁰

In connection with these considerations, the Swiss Application includes information regarding the Swiss supervisory and enforcement framework applicable to derivatives markets and market participants. This includes information regarding the supervisory and enforcement authority afforded to FINMA to promote compliance with applicable requirements, applicable supervisory and enforcement tools and capabilities, consequences of non-compliance, and the application of FINMA's supervisory and enforcement practices in the cross-border context.¹¹¹ After review of this information, the Commission preliminarily believes that the framework is reasonably designed to promote compliance with the laws where substituted compliance has been requested.

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

B. Supervisory Framework in Switzerland

FINMA is the supervisor for the Swiss Firms, and all Covered Entities that will register as security-based swap dealers in the United States. FINMA has the ability to request records needed for supervision from firms through the supervisory process. Every four years, FINMA's Board of Directors publishes strategic goals that serve as guidelines for FINMA's operational management. Each year, FINMA's Board of Directors uses the strategic goals to define the annual supervisory priorities, which are incorporated into the annual objectives for individual organizational units and employees.

FINMA assigns prudentially supervised banks to five supervisory categories. Category 1 firms receive the most supervisory attention and the staff has been told that the Swiss Firms are Category 1 firms. FINMA has multiple supervisors dedicated to each Category 1 firm who are in constant dialogue with the firms, including weekly contact (phone calls, emails) and quarterly meetings with senior management. Supervisors review the various reports filed by the firms, including monthly

reports related to AML and risk as well as daily liquidity reports. The supervisors also work with cross-divisional teams, who add expertise to the supervision team covering specific aspects of the Covered Entity such as risk management, AML, and compliance/conduct.

Audit firms play an important role in FINMA's supervisory activities, primarily by conducting regulatory audits to assess firms' compliance with supervisory requirements, and whether they can continue to adhere to these requirements in the future. For Category 1 firms, FINMA defines the audit strategy for each firm and audit firms are engaged by the bank to conduct the regulatory audit annually in line with FINMA's specifications. The audit reports are submitted directly to FINMA, and include a risk analysis of each firm. FINMA can also appoint mandataries (mandated auditors appointed to assist in ongoing supervision by conducting audits at supervised institutions) to assist it in performing its supervisory duties. Mandataries, which may be deployed for urgent matters, focus on a specific situation or circumstances at an individual firm.

On an annual basis, FINMA conducts a formal assessment of the Swiss Firms (including assigning a risk rating) taking into account internal audit reports, external audit reports, annual reports, and FINMA's view of regulatory, economic, and business developments. FINMA sends the firms an annual assessment letter detailing the risk rating, any weaknesses that have been identified (with actions for the firms to take), and the supervisory priorities for the year. Firms are typically required to submit regular progress reports of corrective action for any issues identified and provide evidence of closure.

FINMA conducts multiple onsite reviews of Category 1 firms each year, some of which relate to the derivatives business. FINMA conducts two types of reviews: (1) Supervisory reviews during which FINMA obtains information on conceptual issues but also reviews and assesses implementation; and (2) deep dives, which are narrower in scope. When FINMA identifies findings during an onsite examination, FINMA provides the firm a summary report or feedback letter that contains key findings. FINMA may direct the firm to develop a mitigation plan, reviews the plan for adequacy, and tracks the progress of the plan until FINMA is satisfied with the corrective action taken. In general, firms are given a certain period of time within which they have to mitigate the

¹⁰⁸ See para. (d)(7) of the proposed Order.

¹⁰⁹ See French Substituted Compliance Order, 86 FR at 41651; UK Substituted Compliance Order, 86 FR at 43361.

¹¹⁰ See generally Business Conduct Adopting Release, 81 FR at 30079.

¹¹¹ Staff also spoke with FINMA supervisors and reviewed information on FINMA's website.

identified issues and restore compliance with the law. FINRA's review and evaluation of corrective action undertaken by the firms is performed on a case-by-case basis, depending on the severity of the deficiency and the risks to be addressed. While minor issues may be addressed through correspondence, material issues are reviewed and evaluated through interviews or desk reviews of the appropriate material. FINMA can also appoint an audit mandatory to confirm that corrective action has been taken. For more significant issues, FINMA supervisory staff can refer the matter to FINMA enforcement staff.

C. Enforcement Authority in Switzerland

As the financial market supervisory authority, FINMA is empowered to enforce all financial law requirements relevant to the Swiss Application. Informal investigations may be launched whenever FINMA receives information about potential regulatory irregularities or violations of law. Sources of information include, among others, referrals from FINMA's supervisory staff, reports by other domestic or foreign authorities, or complaints from investors and clients. Absent a legal obligation to disclose, FINMA treats complaints confidentially. However, there are no incentives provided for whistleblowers, and they receive no specific statutory protection. At the conclusion of an informal investigation, a determination is made whether the initial indications of violations have been confirmed and are sufficiently important, and if other relevant factors support opening a formal investigation. If a formal investigation is launched, the Administrative Procedure Act ("APA") is implicated and provides for certain rights and obligations of the involved parties.

FINMA has a broad range of investigative tools at its disposal, and is empowered with unrestricted access to certain books, records and recordings. In particular, Article 29 of FINMASA stipulates that supervised persons and certain associates (including their auditors and audit firms) must provide FINMA with all information and documents FINMA requires to carry out its tasks. In addition, other provisions of FINMASA and the APA empower FINMA to compel witnesses, subject to certain statutory prerequisites, and hire experts to assist in conducting investigations. FINMA is also permitted to inspect documents and premises, and may investigate trading records from securities dealers and trade reports from

trade venues and repositories. In general however, FINMA does not have jurisdiction over third parties and cannot obtain electronic communications held by third parties absent a contractual obligation to do so between the Covered Firm and the third party provider. As needed to fulfill its supervisory duties, FINMA may seek to obtain the information from public prosecutors who are authorized to obtain electronic communications.

After evidence has been gathered, it is summarized in a statement of facts regarding which the parties are permitted to comment. Ultimately, the matter is concluded with an order by FINMA. The span of time from the commencement of an informal investigation through the issuance of an order varies. As an example, FINMA noted that the average length for 2019 was 14.4 months. FINMASA provides a statute of limitations of seven years for confiscation and the criminal prosecution of minor offenses; there is no general statute of limitations applicable to the rules related to the application for substituted compliance.

FINMA may order a variety of sanctions to enforce the law. The primary goal of Swiss financial market supervision relevant to the application is to maintain and, if necessary, restore compliance with the law by Covered Entities. In that regard, FINMA is not empowered to issue penalties. FINMA does have authority to: Issue declaratory rulings, order substitution of performance by FINMA, publish supervisory rulings, impose cease-and-desist orders, require disgorgement of illegal profits, issue activity bans against individuals, impose industry bans, order liquidation or bankruptcy procedures, or revoke the license of a Covered Firm, among other sanctions. FINMA does not return confiscated ill-gotten gains to harmed investors; however, it takes into account remedial payments to investors made by the Covered Firm when establishing the amount to be confiscated. Additionally, FINMA has the right and obligation to refer conduct to prosecuting authorities if it suspects a criminal act by a Covered Firm. For example, insider trading and price manipulation fall within the remit of the public prosecutor. Swiss public prosecutors are empowered to take coercive measures, such as an asset freeze, and seek imposition of fines and other criminal law sanctions from competent criminal courts. FINMA is not empowered to take coercive measures.

FINMA annually publishes its enforcement results in the aggregate. As a general principle, it does not publish

individual proceedings unless necessary (i) for the protection of the market participants or the supervised persons and entities, (ii) to correct false or misleading information, or (iii) to safeguard the reputation of the Swiss financial market. Article 34 of FINMASA permits FINMA to publish the supervisory ruling in an individual matter in the case of a serious violation of supervisory law. FINMA also maintains and publishes on its website a warning list of companies and individuals who may be carrying out unauthorized services and are not supervised by FINMA.

IX. Request for Comment

A. General Aspects of the Comparability Assessments and Proposed Order

The Commission requests comment regarding the preliminary views and proposed Order in connection with each of the general "regulatory outcome" categories addressed above. Commenters particularly are invited to address, among other issues, whether the relevant Swiss provisions generally are sufficient to produce regulatory outcomes that are comparable to the outcomes associated with requirements under the Exchange Act, and whether the conditions and limitations of the proposed Order would adequately address potential gaps in the relevant regulatory outcomes or would otherwise result in any implementation or other practical issues. The Commission also requests comment upon whether there are additional conditions that should be added to those in the proposed Order to produce comparable regulatory outcomes.

Further, the Commission requests comment regarding whether the proposed conditions and limitations guard against comparability gaps arising from the cross-border application of Swiss requirements (including when SBSs conduct security-based swap business through branches located in the United States or in third countries).

With respect to the proposed conditions and limitations, commenters also are invited to address any differences between Swiss regulatory requirements and frameworks and either the German, French or UK requirements and frameworks that formed the basis for the Commission's conditional and proposed conditional grants of substituted compliance in those countries.¹¹² Would the responses to

¹¹² See generally German Substituted Compliance Order, 85 FR 85686; French Substituted Compliance Order, 86 FR 41612; UK Substituted Compliance Order, 86 FR 43318. See also German

any of the questions that the Commission asked in connection with the German Notice and Proposed Order,¹¹³ the French Notice and Proposed Order,¹¹⁴ the French Reopening Order,¹¹⁵ or the UK Notice and Proposed Order¹¹⁶ differ if those questions applied to Swiss regulatory requirements and frameworks?

B. Risk Control Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal risk management systems, trade acknowledgement and verification, portfolio reconciliation, and portfolio compression. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

The Commission further requests comment regarding the initial determination to not grant substituted compliance in connection with dispute reporting and trading relationship documentation. Commenters particularly are invited to address the basis for not providing a grant of substituted compliance in connection with those risk control requirements.

With respect to all risk control requirements, commenters also are invited to address any differences between Swiss regulatory requirements and frameworks and either the German or French requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for those countries, or the UK requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for the UK.¹¹⁷ Would the responses to any of the questions about risk control requirements that the Commission asked in connection with the German

Notice and Proposed Order,¹¹⁸ the French Notice and Proposed Order,¹¹⁹ the French Reopener,¹²⁰ or the UK Notice and Proposed Order¹²¹ differ if those questions applied to Swiss regulatory requirements and frameworks?

C. Internal Supervision, Chief Compliance Officer and Additional Exchange Act Section 15F(j) Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal supervision and chief compliance officers, as well as additional Exchange Act section 15F(j) requirements. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

With respect to internal supervision and chief compliance officer requirements, as well as additional Exchange Act section 15F(j) requirements, commenters also are invited to address any differences between Swiss regulatory requirements and frameworks and either the German or French requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for those countries, or the UK requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for the UK.¹²² In addition, would the responses to any of the questions about internal supervision or chief compliance officer requirements, or the additional Exchange Act section 15F(j) requirements, that the Commission asked in connection with the German Notice and Proposed Order,¹²³ the French Notice and Proposed Order,¹²⁴

the French Reopener,¹²⁵ or the UK Notice and Proposed Order¹²⁶ differ if those questions applied to Swiss regulatory requirements and frameworks?

D. Recordkeeping, Reporting, and Notification

The Commission requests comment regarding the proposed grants of substituted compliance in connection with requirements under the Exchange Act related to recordkeeping, reporting, and notification, as well as the requirement of Exchange Act section 15F(g). Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Does Swiss law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8? In this regard, commenters are invited to address Swiss laws cited for each substituted compliance determination with respect to the distinct requirements within the recordkeeping, reporting, and notification rules (*i.e.*, the rules for which a more granular approach to substituted compliance is being taken). With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the Swiss laws cited for the determination result in a comparable regulatory outcome; (2) are there additional or alternative Swiss laws that should be cited to achieve a comparable regulatory outcome; and (3) are any of the Swiss laws cited for the determination unnecessary to achieve a comparable regulatory outcome?

Commenters particularly are invited to address the proposed condition with respect to Exchange Act rule 18a-5 that the Covered Entity: (1) Preserve all of the data elements necessary to create the records required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7); and (2) upon request furnish promptly to representatives of the Commission the records required by those rules. Do the relevant Swiss laws require Covered Entities to retain the data elements necessary to create the records required by these rules? If not, please identify which data elements are not preserved pursuant to the relevant Swiss laws. Further, how burdensome would it be for a Covered Entity to format the data

Notice and Proposed Order, 85 FR 72726; French Notice and Proposed Order, 85 FR 85720; UK Notice and Proposed Order, 86 FR 18378.

¹¹³ German Notice and Proposed Order, 85 FR at 72740.

¹¹⁴ French Notice and Proposed Order, 85 FR 85720 at 85734.

¹¹⁵ French Reopening Release, 86 FR 18341.

¹¹⁶ UK Notice and Proposed Order, 86 FR at 18406.

¹¹⁷ See German Substituted Compliance Order, 85 FR at 85689-91; French Substituted Compliance Order, 86 FR at 41622-29; UK Substituted Compliance Order, 86 FR at 43331-37. See also German Notice and Proposed Order, 85 FR at 72730-32; French Notice and Proposed Order, 85 FR at 85724-25; UK Notice and Proposed Order, 85 FR at 18383-85.

¹¹⁸ German Notice and Proposed Order, 85 FR at 72740.

¹¹⁹ French Notice and Proposed Order, 85 FR at 85734.

¹²⁰ French Reopening Release, 86 FR 18341.

¹²¹ UK Notice and Proposed Order, 86 FR at 18406.

¹²² See German Substituted Compliance Order, 85 FR at 85691-92; French Substituted Compliance Order, 86 FR at 41639-43; UK Substituted Compliance Order, 86 FR at 43347-43353. See also German Notice and Proposed Order, 85 FR at 72732-34; French Notice and Proposed Order, 85 FR at 85726-28; UK Notice and Proposed Order, 85 FR at 18389-90.

¹²³ German Notice and Proposed Order, 85 FR at 72740.

¹²⁴ French Notice and Proposed Order, 85 FR at 85734.

¹²⁵ French Reopening Release, 86 FR 18341.

¹²⁶ UK Notice and Proposed Order, 86 FR at 18406.

elements into the records required by these rules (e.g., a blotter, ledger, or securities record, as applicable) if the firm was requested to do so? In what formats do Covered Entities in Switzerland produce this information to FINMA or other Swiss authorities? How do those formats differ from the formats required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7)?

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

Certain of the Commission's recordkeeping and notification requirements are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination preliminarily would not be made under the proposed Order. In these cases, should the Commission not make a positive substituted compliance determination for the fully linked requirement in the recordkeeping or notification rules or to the portion of the requirement that is linked to a substantive Exchange Act requirement? In particular, should the Commission not make a positive substituted compliance determination for recordkeeping or notification requirements linked to the following Exchange Act rules for which a positive substituted compliance determination is preliminarily not being made: (1) Exchange Act rule 15Fh-4; (2) Exchange Act rule 15Fh-5; (3) Exchange Act rule 15Fh-6; (4) Exchange Act rule 18a-4; (5) Regulation SBSR; (6) Form SBSE and its

variations; (7) Exchange Act rule 15Fh-1; (8) Exchange Act rule 15Fh-2; and (9) Exchange Act rule 15Fi-5? If not, explain why.

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

Commenters also are invited to address the preliminary positive substituted compliance determination with respect to Exchange Act rule 18a-7, which would be conditioned on the Covered Entity filing financial and operational information with the Commission in the manner and format specified by the Commission by order or rule. Should the Commission require Covered Entities with a prudential regulator to file the financial and operational information using the FOCUS Report Part IIC? Are there line items on the FOCUS Report Part IIC that elicit information that is not included in the reports Covered Entities with a prudential regulator file with FINMA or other Swiss authorities? If so, do Covered Entities with a prudential regulator record that information in their required books and records? Please identify any information that is elicited in the FOCUS Report Part IIC that is not: (1) Included in the financial reports filed by Covered Entities with a prudential regulator with FINMA or other Swiss authorities; or (2) recorded in the books and records required of Covered Entities with a prudential regulator. Would the answer to these questions change if references to FFIEC Form 031 were not included in the FOCUS Report Part IIC? If so, how? As a preliminary matter, as a condition of

substituted compliance should Covered Entities with a prudential regulator file a limited amount of financial and operational information on the FOCUS Report Part IIC for a period of two years to further evaluate the burden of requiring all applicable line items to be filled out? If so, which line items should be required? To the extent that Covered Entities with a prudential regulator otherwise report or record information that is responsive to the FOCUS Report Part IIC, how could the information on this report be integrated into a database of filings the Commission or its designee will maintain for filers of the FOCUS Report Parts IIC (e.g., the eFOCUS system) to achieve the objective of being able to perform cross-form analysis of information entered into the uniquely numbered line items on the forms?

Commenters further are invited to address any differences between Swiss regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for recordkeeping, reporting, and notification requirements in those countries.¹²⁷ Would the responses to any of the questions about those requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Swiss regulatory requirements and frameworks?

E. Supervisory and Enforcement Issues

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

- Swiss supervisory and enforcement authority, supervisory inspection practices and the use of alternative supervisory tools, and enforcement tools and practices;
- Swiss supervisory and enforcement effectiveness with respect to derivatives such as security-based swaps; and
- Swiss supervision and enforcement in the cross-border context (e.g., any differences between the oversight of firms' businesses within Switzerland

¹²⁷ See German Substituted Compliance Order, 85 FR at 85695-97; French Substituted Compliance Order, 86 FR at 41648-57; UK Substituted Compliance Order, 86 FR at 43359-69.

and the oversight of activities and branches outside of Switzerland, including within the United States).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

Attachment A

It is hereby determined and ordered, pursuant to rule 3a71-6 under the Exchange Act, that a Covered Entity (as defined in paragraph (e)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (d) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the Swiss Confederation and with the conditions to this Order, as amended or superseded from time to time.

(a) General conditions.

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

(1) *Security-based swaps and transactions as “derivatives” or “derivative transactions.”* For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FinMIA and FMIO, the relevant security-based swaps and security-based swap transactions are “derivatives” and/or “derivative transactions” for purposes of FinMIA article 2(c), or otherwise are described by the relevant language of that provision.

(2) *“Counterparty” status.* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FinMIA and FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of the Covered Entity’s counterparty is a “counterparty” for purposes of FinMIA article 93, or otherwise is described by the relevant language of that provision.

(3) *Counterparty’s status as “company.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of whether a Covered Entity’s counterparty is a “company” for purposes of FMIO article 77, or otherwise is described by the relevant language of that provision.

(4) *Covered Entity as “bank.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the BA and BO and/or other Swiss requirements adopted pursuant to those provisions, the Covered Entity is a “bank” for purposes of BA article 1a, or otherwise is described by the relevant language of that provision.

(5) *Covered Entity as “systemically important.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the FINMA Circular 2017/1, the Covered Entity is “systemically important” for purposes of BA article 8(3) and article 9, or otherwise are described by the relevant language of that provision.

(6) *Covered Entity as “category 1.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2017/1, the Covered Entity is supervised as “category 1,” as defined in BO articles 2(2) and 2(3) and BO Annex 3, or otherwise are described by the relevant language of those provisions.

(7) *“Institution-specific approach” to operational risk quantification.* For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2008/21 margins 45–107, the Covered Entity applies the institution-specific approach, as defined in CAO article 94, to quantifying capital requirements for operational risk, as approved by FINMA.

(8) *Memorandum of Understanding with FINMA.* The Commission and FINMA 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.

(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 (d) 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.

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

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

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

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and relevant 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: BO article 12; FINMA Circular 2017/1 margins 9–14, 31–49, 52–76, 82–97; and FINMA Circular 2008/21 margins 45, 54–63, 65–68, 117–138.

(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 FinMIA articles 108(a) and (c); and FMIO articles 95, 97, and 113(1).

(3) *Portfolio reconciliation.* The requirements of Exchange Act rule 15Fi-3, other than paragraph (c) to that rule, provided that:

(i) The Covered Entity is subject to and complies with the requirements of FINMASA article 29; FinMIA article 108(b) and (c); and FMIO articles 96, 97 and 113(1)(d);

(ii) The Covered Entity does not apply FinMIA article 108(b)’s exception for “small non-financial counterparties” as defined in FinMIA article 98.

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi-4, provided that:

(i) The Covered Entity is subject to and complies with the requirements of FinMIA article 108(d); and FMIO articles 98 and 113(1)(d); and

(ii) The Covered Entity does not apply the portion of FinMIA article 108(d) that excludes application of the requirement when there are fewer than 500 non-centrally cleared OTC derivatives transactions outstanding.

(c) Substituted compliance in connection with internal supervision and compliance requirements and

¹²⁸ 17 CFR 200.30-3(a)(89).

certain Exchange Act section 15F(j) requirements.

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

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

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

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

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

(i) The Covered Entity complies with the requirements identified in paragraph (c)(3) of this Order;

(ii) All reports required pursuant to FINMA Circular 2017/1 margins 78–81 must also:

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

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

(C) Address the firm's 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;

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

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

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

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

(3) *Applicable supervisory and compliance requirements.* Paragraphs (c)(1) and (c)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements: BA articles 3(2)(c), and 3f; BO articles 12, 14e, and 14g; FINMA Circular 2017/1 articles 9–97; FINMA Circular 2008/21 margins 54–62, 65–68, 121–122, and 128–136.5; FINMA Circular 2013/8 margins 45–61, 64; FINMA Circular 2010/1 margins 16–74; and FINMA Circular 2018/3 margins 14–35.

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

(i) Applicable requirements under the Exchange Act; and

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

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

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

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

(A) The requirements of Exchange Act rule 18a-5(b)(1), provided that the Covered Entity is subject to and complies with the requirements of FMIO-FINMA article 1; FinMIA articles 104 and 106; FMIO annex 2; CO article 958f;

(B) The requirements of Exchange Act rule 18a-5(b)(2), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; AccO article 1; FinMIA article 106;

(C) The requirements of Exchange Act rule 18a-5(b)(3), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FinMIA articles 104 and 106; FMIO annex 2;

(D) The requirements of Exchange Act rule 18a-5(b)(4), provided that the Covered Entity is subject to and complies with the requirements of FinMIA article 38; FMIO article 36;

FinIA article 50; FMIO-FINMA article 1; CO article 958f;

(E) The requirements of Exchange Act rule 18a-5(b)(5), provided that the Covered Entity is subject to and complies with the requirements of FMIO article 38; FinIA article 50; FMIO-FINMA article 1; CO article 958f;

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

(1) The Covered Entity is subject to and complies with the requirements of FinMIA articles 106 and 108(a); FMIO article 95; CO article 958f; and

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

(G) The requirements of Exchange Act rule 18a-5(b)(7), provided that the Covered Entity is subject to and complies with the requirements of FMIO article 38; FinIA article 50; FMIO-FINMA article 1; FMIO annex 2; FinMIA articles 104 and 106; AMLA article 3; CO article 958f;

(H) The requirements of Exchange Act rule 18a-5(b)(8), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12; CO article 330a; FINMA Circular 2008/21, Annex 3, margins 30–33;

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

(1) The Covered Entity is subject to and complies with the requirements of FINMA Circular 2017/1; BA article 3; CO article 958f, in each case with respect to the relevant security-based swap or activity;

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

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

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

(1) The Covered Entity is subject to and complies with the requirements of FinMIA articles 104 and 106; CO article 958f; and

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

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

(1) The Covered Entity is subject to and complies with the requirements of FinMIA articles 104 and 106; CO article 958f; and

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

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

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

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

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

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

(A) The requirements of Exchange Act rule 18a-6(a)(2), provided that the Covered Entity is subject to and complies with the requirements of FinMIA article 106; CO article 958f; FMIO-FINMA article 1(4); AccO article 3; FINMA Circular 2008/4 Marg. 16;

(B) The requirements of Exchange Act rule 18a-6(b)(2)(i), provided that the Covered Entity is subject to and complies with the requirements of FinMIA article 106; CO article 958f; FMIO-FINMA article 1(4); AccO article 3; FINMA Circular 2008/4 Marg. 16;

(C) The requirements of Exchange Act rule 18a-6(b)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FINMA Circular 2013/8 Marg. 60 and Marg. 61;

(D) The requirements of Exchange Act rule 18a-6(b)(2)(iii), provided that the

Covered Entity is subject to and complies with the requirements of CO article 958f; AMLA article 7(3); AMLO-FINMA article 5(1);

(E) The requirements of Exchange Act rule 18a-6(b)(2)(iv), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FINMA Circular 2013/8 Marg. 60 and Marg. 61;

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

(1) The Covered Entity is subject to and complies with the requirements of FINMA Circular 2017/1; BA article 3; CO article 958f, in each case with respect to the relevant security-based swap or activity;

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

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

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

(1) The Covered Entity is subject to and complies with the requirements of BA article 3; BO article 12; CO articles 686 and 958f; and

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

(H) The requirements of Exchange Act rule 18a-6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12; CO article 330a; FINMA Circular 2008/21, Annex 3, margins 30-33;

(I) The requirements of Exchange Act rule 18a-6(d)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of BA article 3; BO article 12; CO article 958f;

FINMA Circular 2008/21 margins 122, 128, 131, and Appendix 2;

(J) The requirements of Exchange Act rule 18a-6(d)(3)(ii), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12;

(K) The requirements of Exchange Act rule 18a-6(d)(4) and (d)(5), regarding one or more provisions of Exchange Act rules 15Fi-3 or 15Fi-4 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of CO article 958f; FinMIA article 106;

(2) With respect to the portion of Exchange Act rule 18a-6(d)(4) and (d)(5) that relates to Exchange Act rules 15Fi-3 or 15Fi-4, the Covered Entity applies substituted compliance for Exchange Act rules 15Fi-3 and 15Fi-4 pursuant to this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a-6(d)(4) and (d)(5) relating to Exchange Act rule 15Fi-5;

(L) The requirements of Exchange Act rule 18a-6(e), provided that the Covered Entity is subject to and complies with the requirements of AccO; and

(M) The requirements of Exchange Act rule 18a-6(f), provided that the Covered Entity is subject to and complies with the requirements of FINMA Circular 2018/3.

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

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

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

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

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

(A) The Covered Entity is subject to and complies with the requirements of BA article 6a; BO article 32; CAO article 16; FINMA Circular 2020/1; and FINMA Circular 2016/1; and

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order

and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Switzerland.

(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 (d)(4)(i) and with the applicable conditions in paragraph (d)(4)(ii):

(A) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(c), provided that the Covered Entity is subject to and complies with the requirements of FINMASA article 29(2); CAO articles 14, 42(3), 101, and 130(4); and Liquidity Ordinance articles 17b, and 26(2).

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

(1) The Covered Entity is subject to and complies with the requirements of FINMASA article 29(2); CAO articles 14, 42(3), 101, and 130(4); and Liquidity Ordinance articles 17b, and 26(2); and

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

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

(A) The Covered Entity:

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

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

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

(5) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FMIO article 36; FMIO–FINMA article 1; FinMIA articles 38, 104, and 106;

FINMA Circular 2013/8 marg. 60 and marg. 61.

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

(7) *English Translations.* Notwithstanding the forgoing provisions of paragraph (d) 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.

(e) *Definitions.*

(1) “Covered Entity” means an entity that:

(i) Is a security-based swap dealer 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;

(iii) Is a systemically important bank authorized by FINMA to conduct banking activities in the Swiss Confederation; and

(iv) Is supervised by FINMA under the intensive and continual supervision model as a Category 1 firm as that term is defined in BO Annex 3.

(2) “AccO” means the Ordinance on the Maintenance and Retention of Accounts (Accounts Ordinance), CC 221.431, as amended from time to time.

(3) “AMLA” means the Federal Act on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act), CC 955, as amended from time to time.

(4) “AMLO–FINMA” means the Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and the Financing of Terrorist Activities (FINMA Anti-Money Laundering Ordinance), CC 955.033.0, as amended from time to time.

(5) “BA” means the Federal Act on Banks and Savings Banks (Banking Act), CC 952, as amended from time to time.

(6) “BO” means the Ordinance on Banks and Savings Banks (Banking Ordinance), CC 952.02, as amended from time to time.

(7) “CAO” means the Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance), CC 952.03, as amended from time to time.

(8) “CO” means the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations, CC 220, as amended from time to time.

(9) “FinIA” means Federal Act on Financial Institutions (Financial Institutions Act), CC 954.1, as amended from time to time.

(10) “FINMA” means the Swiss Financial Market Supervisory Authority.

(11) “FINMA Circular 2008/4” means the FINMA Circular 2008/4, Securities Journals.

(12) “FINMA Circular 2008/21” means the FINMA Circular 2008/21, Operational Risk—Banks.

(13) “FINMA Circular 2010/1” means the FINMA Circular 2010/1, Remuneration schemes.

(14) “FINMA Circular 2013/8” means the FINMA Circular 2013/8, Market conduct rules, Supervisory rules on market conduct in securities trading.

(15) “FINMA Circular 2016/1” means the FINMA Circular 2016/1, Disclosure—Banks.

(16) “FINMA Circular 2017/1” means the FINMA Circular 2017/1, Corporate Governance—Banks.

(17) “FINMA Circular 2017/7” means the FINMA Circular 2017/7, Credit Risk—Banks.

(18) “FINMA Circular 2018/3” means the FINMA Circular 2018/3, Outsourcing—Banks and Insurers.

(19) “FINMA Circular 2020/1” means the FINMA Circular 2020/1, Accounting—Banks.

(20) “FINMASA” means the Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act), CC 956.1, as amended from time to time.

(21) “FinMIA” means the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act), CC 958.1, as amended from time to time.

(22) “FMIO” means the Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance), CC 958.11, as amended from time to time.

(23) “FMIO–FINMA” means the Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FINMA Financial Market Infrastructure Ordinance), CC 958.111, as amended from time to time.

(24) “Liquidity Ordinance” means the Ordinance on the Liquidity of Banks.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92626; File No. SR–CboeBZX–2021–053]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 14.11(m) (Tracking Fund Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Tracking Fund Shares

August 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 3, 2021, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend Rule 14.11(m) (Tracking Fund Shares) to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 (“Investment Company Act”) applicable to a series of Tracking Fund Shares. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary,

and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 14.11(m) (Tracking Fund Shares)³ to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act⁴ applicable to a series of Tracking Fund Shares.

To effectuate this change, the Exchange proposes the following amendments to Rule 14.11(m). First, the proposed rule change adopts new subparagraph (F) under Rule 14.11(m)(3) (Definitions), which defines “Custom Basket”, for the purposes of Rule 14.11(m), to mean a portfolio of securities that is different from the Tracking Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act applicable to a series of Tracking Fund Shares. The proposed rule change makes conforming amendments to the definition of Tracking Fund Shares in Rule 14.11(m)(3)(A) and Reporting Authority

in Rule 14.11(m)(3)(C). The proposed rule change amends the definition of “Tracking Fund Share” in Rule 14.11(m)(3)(A) to provide for creations of shares in return for a deposit by the purchaser of, and redemptions of shares at a holder’s request in return for, a Custom Basket rather than a Tracking Basket to the extent permitted by a fund’s exemptive relief. In addition, the proposed rule change amends the definition of “Reporting Authority” in respect of a particular series of Tracking Fund Shares in Rule 14.11(m)(3)(C) to provide for Custom Baskets to the extent permitted by a fund’s exemptive relief. Currently, “Reporting Authority” in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. Rule 14.11(m)(3)(C) further provides that a series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions. The proposed rule change adds “Custom Basket” to the non-exclusive list of information relating to Tracking Fund Shares that a Reporting Authority calculates and reports, *i.e.*, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares.

Second, the proposed rule change amends Rule 14.11(m)(4) (Initial and Continued Listing), which currently provides criteria that Tracking Fund Shares must satisfy for initial and continued listing on the Exchange, to incorporate specific initial and continued listing criteria for Custom Baskets. Specifically, Rule 14.11(m)(4)(A)(ii) currently provides that the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the

³ Rule 14.11(m)(3)(A) defines the term “Tracking Fund Share” as a security that: (i) Represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁴ 15 U.S.C. 80a *et seq.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.