May 4, 2021

Chris Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: **Substituted Compliance Application for UK Swap Dealers from CEA Sections 4s(e)–(f) and Rules 23.101 and 23.105(d)–(e), (p)(2)**

Dear Mr. Kirkpatrick:

The Institute of International Bankers ("IIB"), International Swaps and Derivatives Association ("ISDA") and Securities Industry and Financial Markets Association ("SIFMA", and together with IIB and ISDA, the "Associations")[1] are submitting this application to request that the Commodity Futures Trading Commission ("Commission") make a determination with respect to the capital, financial reporting and related requirements of the United Kingdom ("UK") specified herein (the "UK Capital & Reporting Framework") and that compliance with the UK Capital & Reporting Framework by a nonbank swap dealer ("SD") licensed under the UK Financial Services and Markets Act 2000 ("FSMA") as an investment firm by the Prudential Regulation Authority ("PRA") or the Financial Conduct Authority ("FCA")[2] (a "UK SD") may satisfy the capital and financial reporting requirements applicable to a nonbank SD under Section 4s(e)–(f) of the Commodity Exchange (the "CEA") and Rules 23.101 and 23.105(d)–(e) thereunder (the "Commission Capital & Reporting Requirements").[3, 4] As we describe in more detail below, the UK Capital & Reporting Framework is designed to ensure the safety and soundness of UK SDs in a manner comparable to the Commission Capital & Reporting Requirements.

We also are requesting that the Commission make a determination with respect to the capital, financial reporting and related requirements of the UK that are currently applicable to

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[1] Please see the Appendix for more information on the Associations.

[2] Depending on the nature of their activities, some UK investment firms are authorised and regulated by the FCA alone whereas more systemic investment firms are "designated" and authorised by the PRA and regulated by the FCA and PRA.

[3] As used herein, a "nonbank" SD refers to an SD that does not have a Prudential Regulator as defined in Section 1a(39) of the CEA.

[4] We understand that there may be developments in the UK that may necessitate updates to this letter before a final determination is made. We further understand there are direct discussions between the CFTC, FCA and PRA on the full range of post-Brexit substituted compliance for the UK, which may ultimately include the determination regarding the Commission Capital and Reporting Framework Requirements requested in this letter.

UK SDs that are “IFPRU limited activity firms” specified herein[5] (the “UK Limited Activity Investment Firms Capital & Reporting Framework”) that compliance with the UK Limited Activity Investment Firms Capital & Reporting Framework by an IFPRU limited activity firm may satisfy the capital and financial reporting requirements applicable to a nonbank SD under the Commission Capital & Reporting Requirements. The UK Limited Activity Investment Firms Capital & Reporting Framework provides for largely the same requirements as the requirements as the UK Capital & Reporting Framework, and so accordingly it is designed to ensure the safety and soundness of UK SDs that are IFPRU limited activity firms in a manner comparable to the Commission Capital & Reporting Requirements.

I. Introduction

In making a substituted compliance determination pursuant to Rule 23.106 in regards to the Commission Capital & Reporting Requirements, the Commission will consider whether the capital and financial reporting requirements of the foreign regulatory system “are comparable to the Commission’s corresponding capital adequacy and financial . . . reporting requirements.”[6] The Commission has explained that its “approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objective of ensuring overall safety and soundness” in a manner that is comparable with the Commission’s capital and financial reporting requirements, rather than a “line-by-line assessment or comparison” of the foreign jurisdiction’s and the Commission’s regulatory requirements.[7]

Rule 23.106 requires an applicant for substituted compliance to provide:

- “A description of the objectives of the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements”;
- “A description (including specific legal and regulatory provisions) of how the relevant foreign jurisdiction’s capital adequacy and financial reporting requirements address the elements of the [Commission Capital & Reporting Requirements] . . . including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with any international standards, including Basel-based capital requirements”; and

[5] For the purposes of this application, an “IFPRU limited activity firm” is a nonbank SD licensed under the UK Financial Services and Markets Act 2000 as an investment firm by the FCA whose permission to carry on the regulated activity of “dealing as principal” is subject to the limitation that the SD may only deal on own account in financial instruments for the purpose of fulfilling or executing a client order or gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order.

[6] 17 C.F.R. § 23.106(a)(3).

[7] Capital Requirements of Swap Dealers and Major Swap Participants, 85 Fed. Reg. 57462, 57521 (Sept. 15, 2020) (“CFTC Capital Final Rule Release”).

- "A description of the ability of the relevant foreign regulatory authority . . . to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements."[8]

In accordance with the requirements set forth in Rule 23.106, this application is organised as follows: In Section II, we provide an overview addressing general comparability of the UK Capital & Reporting Framework's requirements and the Commission Capital & Reporting Requirements, including any general differences between the two sets of requirements and the consistency of the sets' objectives. In Section III, we address the specific information that Rule 23.106 requires. In Section IV, we address the UK Limited Activity Investment Firms Capital & Reporting Framework.

For the reasons set forth below, the UK Capital & Reporting Framework and the UK Limited Activity Investment Firms Capital & Reporting Framework are designed to ensure the safety and soundness of UK SDs in a manner comparable to the Commission Capital & Reporting Requirements.

II. Overview

Under the Commission Capital & Reporting Requirements, a standalone, nonbank SD may elect the "Bank-Based Approach" or the "Net Liquid Assets Approach" for establishing its minimum capital requirements and computing its regulatory capital under Section 4s(e) of the CEA and Rule 23.101 thereunder (the "Commission Capital Requirements").[9] The Commission sought to provide this flexibility to SDs in order to allow an SD to choose the capital approach that best fits its business model and to mitigate competitive disparities that might otherwise arise were each SD required to follow the same capital approach.[10]

Bank-Based Approach. The "Bank-Based Approach" is based on the capital requirements established by the Federal Reserve Board ("FRB") for bank holding companies, which are codified in the FRB's Part 217 regulations.[11] Under the Bank-Based Approach, an SD must maintain:

- Common equity tier one capital ("Common Equity Tier 1") of at least $20 million;

- Common Equity Tier 1 equal to at least 6.5 percent of the SD's risk-weighted assets ("RWAs");

[8] 17 C.F.R. § 23.106(a)(2).

[9] Rule 23.101(a)(2) permits a standalone SD that is "predominantly engaged in non-financial activities" to elect a third approach to comply with the Commission's capital requirements based on the tangible net worth of the SD. Because no UK SD would be eligible for this approach, we do not address it.

[10] See CFTC Capital Final Rule Release, 85 Fed. Reg. at 57480.

[11] See 17 C.F.R. § 23.101(a)(1)(i); 12 C.F.R. Part 217.

- Common Equity Tier 1, additional tier one capital ("Additional Tier 1"), and tier 2 capital ("Tier 2" and collectively, "total capital") equal to at least 8 percent of the SD's RWAs; or

- Total capital equal to 8 percent of the SD's uncleared swap margin.

An SD that follows the Bank-Based Approach will calculate its Common Equity Tier 1, Additional Tier 1, Tier 2 and RWAs in accordance with the FRB's Part 217 requirements. An SD's "uncleared swap margin" is the aggregate amount of initial margin ("IM") that the SD would be required to collect pursuant to the Commission's uncleared swap margin rules from each counterparty for each outstanding uncleared swap position (including exempt and excluded swaps) calculated on a counterparty-by-counterparty basis.

Net Liquid Assets Approach. The "Net Liquid Assets Approach" is based on the capital requirements adopted by the Securities and Exchange Commission ("SEC") for a security-based swap dealer ("SBSD") that does not have a Prudential Regulator. These requirements, which are codified in SEC Rule 18a-1 ("Rule 18a-1"), mirror the net liquid assets approach that Rule 15c3-1 of the Securities Exchange Act of 1934 applies to securities broker-dealers, requiring a nonbank SD to compute its "net capital" requirement by determining its net worth according to U.S. generally accepted accounting principles ("GAAP") and then subtracting certain illiquid assets, adding certain subordinated liabilities and making specified additional adjustments. These additional adjustments include certain standardised or model-based market and credit risk deductions, as well as penalty charges for operational risks. An SD that elects the Net Liquid Assets Approach must maintain net capital at the greater of $20 million or 2 per cent. of its uncleared swap margin amount. An SD permitted to use models to compute market or credit risk deductions is also required to maintain tentative net capital, as defined in SEC Rule 18a-1, of $100 million.

The Commission Financial Reporting Requirements. Pursuant to Rule 23.105(d), a nonbank SD must file with the Commission and a registered futures association of which it is a member monthly, unaudited financial reports as of the close of business each month. Rule 23.105(e) requires a nonbank SD to file with the Commission and a registered futures association of which it is a member annual, audited financial reports no later than 60 days after the close of the nonbank SD's fiscal year-end. These reports must include statements of financial condition, income/loss, changes in liabilities subordinated to the claims of general creditors, changes in ownership equity and compliance with and calculation of the required net capital. In addition, the annual, audited financial report must include a reconciliation of any material differences between the year-end unaudited financial report and the audited financial report.

The UK Capital & Reporting Framework. During its membership of the European Union ("EU"), the UK implemented the EU Capital Requirements Regulation (575/2013) ("CRR") and its related legislation, the Capital Requirements Directive (2013/36/EU) ("CRD"), which include the prudential capital and financial reporting requirements applicable to

both banks and "investment firms,"[12] such as UK SDs,[13] and impose mandatory capital and liquidity requirements that address market, credit, counterparty and liquidity risks.

The UK ceased to be a member of the EU on 31 January 2020 ("Brexit"). However, pursuant to its withdrawal agreement with the EU, the UK remained subject to EU law, including CRR and CRD, during an implementation period that ended on 11 pm GMT on 31 December 2020 ("IP completion day"). On IP completion day, EU laws which were in effect and applicable as at IP completion day, were "on-shored" (retained) in UK law[14] with amendments that remedied, mitigated, or prevented "deficiencies" in the on-shored EU law arising from the withdrawal of the UK from the EU.[15] EU law which applies after IP completion day will not automatically apply in the UK.

On 20 May 2019, the EU passed the Capital Requirements Regulation II (2019/876) ("CRR II") and the Capital Requirements Directive V (2019/878/EU) ("CRD V"), which further refine and implement Basel III standards by amending sections of CRR and CRD related to liquidity, large exposures, market and counterparty credit risk and reporting, amongst others.[16]

In addition, on 25 December 2019, the Investment Firms Regulation (2019/2033) ("IFR") and Investment Firms Directive (2019/2034/EU) ("IFD") entered into effect. This set of legislation will tailor the existing prudential rules under the EU capital framework to investment

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[12] "Investment firm" is defined under CRR, Article 4(1)(2), broadly speaking as any person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis, and which is subject to the requirements imposed under the Markets in Financial Instruments Directive (2014/65/EU). For completeness, certain firms are expressly excluded from this definition (and are referred to in the UK Capital Framework as "BIPRU firms" or "exempt-CAD firms"), but such exclusions do not include UK SDs. Some investment firms are exempted from certain CRR and CRD requirements (including "IFPRU limited activity firms" and "IFPRU limited licence firms") but these categories do not include UK SDs. Accordingly, as referred to herein, "investment firm" includes only UK SDs and other investment firms which are fully subject to CRR and CRD.

[13] CRR is directly applicable in EU member states. CRD was mainly transposed through the respective rules of the PRA and FCA.

[14] Directly applicable EU law such as CRR converted into UK domestic law and UK legislation implementing EU directives, such as CRD was preserved.

[15] As a general matter, the on-shoring process was not intended to make policy changes, other than to reflect the UK's new position outside the EU.

[16] The majority of the amendments contained in the CRR II will apply from June 2021 (which is after the end of the Brexit transition period and therefore these amendments will not automatically apply in the UK), although certain measures (including total loss-absorbing capacity ("TLAC") requirements for global systemically important institutions ("G-SIIs"), the European equivalent for global systemically important banks ("GSIBs")) began to apply on 27 June 2019 when the legislation entered into force. Other measures began to apply on 28 December 2020 (including changes to the rules on prudential consolidation). EU member states, and the UK, were required to adopt and publish measures to implement CRD V by 28 December 2020 (the UK was subject to this transposition deadline because of the Brexit transitional period).

firms based on their size and complexity, although large investment firms will continue to be subject to the capital requirements under CRR and CRD (as amended by CRR II and CRD V).[17]

For the purposes of this application, we address the currently applicable UK Capital & Reporting Framework — *i.e.*, based on CRR (as amended by the on-shored elements of CRR II) and CRD.[18] However, we note that the UK Government has stated its intention to update the UK Capital & Reporting Framework to enable the implementation of Basel III and a UK version of EU CRR II "in line with the intended outcomes" of the EU regime. Except as otherwise set forth herein, the amendments contained in EU CRR II would not materially affect the discussion in this application of the UK Capital & Reporting Framework. The Government also proposed legislation to enable the UK to introduce a new prudential regime for investment firms, the intended outcomes of which would also be aligned to the stated outcomes of EU IFD and EU IFR.[19]

The UK Capital Framework. Whilst the capital and related requirements of the UK (the "UK Capital Framework") are primarily based on CRR and CRD, they also comprise UK-specific requirements in respect of certain matters.

The UK Capital Framework requires an investment firm to hold equity and loss-absorbing liabilities, composed primarily of Common Equity Tier 1, Additional Tier 1 and Tier 2 capital, equal to at least 8 per cent. of the sum of its RWAs.[20] In addition, an investment firm must maintain certain capital buffers above the minimum 8 per cent. capital level composed of Common Equity Tier 1 capital instruments.[21] The Bank of England, as "resolution authority", also requires certain investment firms[22] to satisfy a minimum requirement for own funds and

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[17] See FCA Discussion Paper | DP20/2, *A new UK prudential regime for MiFID investment firms*. The IFR will apply from 26 June 2021. Likewise, the IFD must be transposed by EU member states by, and will apply from, 26 June 2021. Therefore, neither will automatically apply in the UK. The FCA and HM Treasury have also announced a target implementation date of 1 January 2022 for the UK's investment firm prudential regime. The IFD would require systemic EU investment firms to be re-authorised as credit institutions. The UK Government has ruled out adopting this specific measure on the basis that UK systemic investment firms are already prudentially regulated and supervised by the PRA through the designation procedure, which will remain the case after the implementation of the UK's new prudential regime for investment firms.

We understand that the FCA and PRA have continued work on their approach to a prudential regime for UK investment firms, and we will update the relevant information and references in this letter as needed once finalized.

[18] For convenience, we hereafter refer to provisions of CRR as amended by CRR II, IFD, and IFR, which apply after IP completion day as "EU CRR II", "EU IFD", and "EU IFR", respectively.

[19] See Financial Services Bill 2019-21, introduced in Parliament on 21 October 2020. Under the new prudential framework for investment firms, FCA-authorised investment firms would be subject to the new prudential rules for investment firms, whereas PRA-designated investment firms would be subject to the CRD V/CRR II-based rules. The PRA, FCA and HM Treasury have announced a target date of 1 January 2022, for the implementation of those Basel III reforms which make up the UK equivalent to the outstanding elements of the CRR II.

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

[21] See the Capital Buffers Part of the PRA rulebook ("PRA rulebook"), Chapter 10 of the IFPRU sourcebook of the FCA handbook of rules and guidance ("FCA handbook") and the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

[22] Investment firms that are subject to the initial capital requirement laid down in Article 28(2) of CRD IV (referred to as "730k investment firms" in the UK Capital Framework) would include UK SDs.

eligible liabilities[23] ("MREL") under the Banking Act 2009 ("Banking Act") and related secondary legislation, through which the UK transposed the Bank Recovery and Resolution Directive (2014/59/EU) ("BRRD").[24] Separately, CRR imposes liquidity requirements designed to ensure that investment firms can meet both short- and long-term obligations.

The UK Financial Reporting Framework. The financial reporting and related requirements of the UK (the "UK Financial Reporting Framework") are also based on CRR, whilst comprising UK-specific requirements in respect of certain matters.

The UK Financial Reporting Framework requires a UK SD to submit regular reports containing information on its financial condition and capital position.[25] The timing and format of these reports may differ slightly depending on whether the UK SD is a consolidated subsidiary of a company that uses the international financial reporting standards ("IFRS") and on whether the UK SD is regulated by the FCA or PRA. This serves to ensure that the timing and content of the statements are appropriately tailored to a UK SD's overall systems and activities. In all instances, however, a UK SD's annual financial statements must be audited and accompanied by an opinion of an independent auditor.[26]

General Comparability. Like the Commission Capital & Reporting Requirements, the UK Capital & Reporting Framework is designed to ensure the safety, soundness and financial strength of nonbank SDs.

Capital Requirements. In accordance with the capital framework issued by the Basel Committee on Banking Supervision ("BCBS"), the Bank-Based Approach and the UK

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[23] Eligible liabilities include, among others, instruments that are issued and fully paid up with remaining maturities of at least a year. Part 9 Bank Recovery and Resolution (No 2) Order 2014. In addition, the instruments cannot arise from a derivative, be owed to, secured, or guaranteed by the UK SD itself, and the UK SD cannot have either directly or indirectly funded its purchase. Id. In June 2018, the Bank of England published a statement of policy on its approach to setting MREL. On 7 June 2019, the EU published the Bank Recovery and Resolution Directive II (2019/879/EU) ("BRRD II"), amending BRRD. The respective changes had to be implemented into the national laws of the member states, and the UK, by 28 December 2020. The UK did not transpose the requirements that do not need to be complied with by firms until after the end of the Brexit transition period, in particular the revisions to the MREL framework under Article 1(17) of BRRD II. However, the UK already has in place an MREL framework in line with TLAC standards under the Banking Act. In addition, certain implementing provisions which the Government did not consider to be suitable for the UK resolution regime after leaving the EU ceased to have effect at the end of the transition period.

[24] CRR II imposes an additional supplemental standard of TLAC and requires the G-SIIs to maintain a risk-based ratio of capital and MREL of 18 per cent. and a non-risk-based ratio of capital and MREL of 6.75 per cent. against the firm's total calculated risk exposure (until 31 December 2021, 16 per cent. of total risk exposure and 6 per cent. of the leverage ratio exposure measure). CRR II, Article 92a(1). In addition, the Bank of England has the ability to impose MREL requirements on G-SIIs that exceed the statutory minimum requirements. UK SDs that are subsidiaries of U.S. GSIBs are required to maintain MREL equal to 90 per cent. of the foregoing. Id. Article 92b(1).

[25] CRR, Article 99.

[26] Companies Act 2006, Parts 15 and 16.

This audit requirement does not apply to small companies. A company qualifies as a small company if it meets two of the following criteria: (1) balance sheet not more than £5.1m; (2) net turnover of not more than £10.2m; or (3) not more than fifty employees during the financial year. Companies Act 2006, Sections 382 and 477. No UK SD would fall within this exception.

Capital Framework both require a nonbank SD to maintain a quantity of high quality capital that is sufficient, based on the SD's activities, to absorb potential losses the SD may incur. Both the Net Liquid Assets Approach and the UK Capital Framework require that a nonbank SD maintains sufficiently liquid and high quality assets to meet its obligations to customers, counterparties and other creditors if the firm were to experience financial distress.

Market and Credit Risk Charges. Especially for larger UK SDs with approval to calculate market and credit risk using internal models, both the Commission Capital Requirements and the UK Capital Framework permit firms to apply risk-based market charges that are consistent with the value-at-risk ("VaR") specifications set forth in Basel II standards.[27] In addition, the Commission Capital Requirements and the UK Capital Framework permit firms with model approval to apply model-based credit risk charges to their derivatives counterparties.[28] For firms without model approval, both the Commission Capital Requirements and the UK Capital Framework provide for standardised approaches for market and credit risk charges and deductions, depending on the asset or exposure. Both rule sets also impose operational risk capital requirements.

Minimum Required Capital. The minimum capital levels required by the UK Capital Framework are robust and comparable to the minimum levels required by the Commission Capital Requirements. In particular, taking into account applicable capital buffer requirements, UK SDs generally must hold own funds equal to at least 10.5 per cent. of their total risk exposure amounts (composed of market, credit, settlement, credit valuation adjustment, and operational risk requirements)[29], which is comparable to, and indeed substantially larger

[27] Compare 17 C.F.R. § 23.100 (providing for an SD that is approved to use internal models to calculate market and credit risk to calculate its RWAs using Subparts E and F of 12 C.F.R. Part 217), 12 C.F.R. § 217.205(b), 17 C.F.R. § 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a-1), 17 C.F.R. § 23.102a(a), (i) and 17 C.F.R. § 240.18a-1(e)(1) with CRR, Articles 143(1) and 363.

[28] Compare 17 C.F.R. § 23.100 (providing for an SD to use internal models to calculate market and credit risk to calculate its RWAs using Subparts E and F of 12 C.F.R. Part 217), Subpart E of 12 C.F.R. part 217, 17 C.F.R. § 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a-1) and 17 C.F.R. § 240.18a-1(e)(2) with CRR, Article 283(1). For OTC derivatives, credit valuation adjustment requirements also apply under the UK Capital Framework and the Bank-Based Approach, but not the Net Liquid Assets Approach. EU CRR II will remove the option that an investment firm with model approval may calculate counterparty credit risk using internal models when calculating large exposures. CRR II, Article 1(93) amending CRR, Article 390(4). Rather, EU CRR II replaces the existing standardised approaches and models approaches with the standardised approach to counterparty credit risk ("SA-CCR") in line with the Basel framework. SA-CCR is intended to be a more risk sensitive measure of counterparty risk as opposed to the existing standardised approaches by reflecting netting, hedging and collateral benefits, but it generally is a more conservative measurement of credit risk than internal models-based approaches. Under the Bank-Based Approach, an SD that is not approved to use internal models to calculate credit risk may use SA-CCR or the current exposure methodology to calculate its RWAs. An SD approved to use internal models to calculate credit risk may use SA-CCR or the internal models method to calculate its RWAs.

[29] In December 2015, the Bank of England's Financial Policy Committee ("FPC") determined the appropriate Tier 1 capital requirement for the UK banking system, in aggregate, to be 13.5 per cent. of RWAs. See Record of the Financial Policy Committee Meeting, 13 May 2016 (see https://www.bankofengland.co.uk/-/media/boe/files/record/2016/financial-policy-committee-meeting-may-2016.pdf). In December 2019, the FPC reviewed the judgements underpinning this assessment and confirmed that its 2015 benchmark remained appropriate.

than, the regulatory capital requirement of 8 per cent. of an SD's RWAs under the Bank-Based Approach. Moreover, the UK Capital Requirements require that an SD calculate RWAs and capital in a manner that is similar to that required under the FRB's Part 217 regulations. Indeed, the FRB has effectively validated that the UK Capital Framework is comparable to its implementation of the Basel capital framework.[30]

Also, the minimum capital levels required by the UK Capital Framework may be compared in some respects to the 8 per cent. of the uncleared swap margin requirement under the Bank-Based Approach. As the Commission has noted, the uncleared swap margin requirement "provides a floor based on a measure of the risk of the positions, the volume of the positions, the number of counterparties and the complexity of the operations of the" SD.[31] The Commission further explained that the requirement covers "potential operational risk, legal risk, and liquidity risk."[32] As noted above, in calculating its RWAs for purposes of the UK Capital Framework's risk-based ratios, a UK SD must incorporate risk exposure amounts composed of market, credit, settlement, credit valuation adjustment, and operational risk. Because they cover the full range of a firm's exposures, not just those related to swaps, these exposures amounts will generally yield capital requirements that substantially exceed 8 percent of the SD's uncleared swap margin amount, even before application of the 2.5 percent Common Equity Tier 1 buffer.[33] In addition, the FPC has certain "powers of discretion" that allow it to set maximum ratios of total unweighted liabilities to capital and to vary those over time.[34] Lastly, UK SDs are subject to comprehensive liquidity requirements, discussed below, that are designed to ensure that an SD has sufficient liquid assets to meet its ongoing obligations. As a result, although the UK Capital Framework does not have a direct analogue to the 8 percent uncleared swap margin requirement, it has various other measures that achieve the same regulatory objective of ensuring that an SD maintains an amount of capital that both is sufficient to cover the risks it may face and increases with the volume of the SD's positions, number of counterparties, and complexity of operations.

Considering that all UK SDs would be eligible to elect the Bank-Based Approach, we think that the foregoing comparison to that approach should suffice to establish the comparability of the UK Capital Framework to the Commission Capital Requirements. But in addition, for the reasons discussed above, the minimum capital levels required by the UK Capital Framework may be compared in some respects to the sum of the 2 percent uncleared swap margin amount requirement and market and credit risk charges applicable under the Net Liquid Assets Approach. We note in this regard that the SEC has effectively recognized that the UK Capital Framework is comparable to the SEC's capital rules applicable to non-prudentially regulated SBSDs for purposes of substituted compliance.[35] The Commission has recognized that

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[30] See, e.g., Federal Reserve System, Order Approving Establishment of a Branch for Nordea Bank Abp (Aug. 3, 2018) (stating that the risk-based capital standards under CRR and CRD "are consistent with those established by the Basel Capital Accord").

[31] CFTC Capital Final Rule Release, 85 Fed. Reg. at 57485.

[32] Id.

[33] Informal quantitative analysis by industry participants generally confirms this conclusion.

[34] Under the Bank of England Act of 1998 (Macro-prudential Measures) (no 2) Order 2015.

[35] See Notice of Substituted Compliance Application Submitted by the French Autorité des Marchés Financiers and the Autorité de Contrôle Prudential et de Résolution in Connection With Certain Requirements Applicable to Non-

the Net Liquid Assets Approach is "consistent with the SEC's final capital requirements for SBSDs."[36]

Liquidity Requirements. The UK Capital Framework also imposes liquidity requirements on UK SDs. This approach differs from the Net Liquid Assets Approach, which, in lieu of a specific liquidity requirements, requires nonbank SDs to deduct from their net capital 100 per cent. of the carrying value for unsecured receivables (except that an SD with credit risk model approval may instead apply a credit risk weighted charge for receivables to certain derivatives counterparties) and other assets that cannot readily be converted into cash, as well as securities that have no ready market.[37] Conversely, the UK Capital Framework imposes on UK SDs which are PRA-designated investment firms, the liquidity coverage requirement applied under CRR to banks.[38] This requires that the ratio of the UK SD's buffer of "liquid assets" to its "net liquidity outflows" over a 30-calendar-day stress period be equal to at least 100 per cent. The PRA is required to apply a liquidity supervisory review and evaluation process. For FCA-authorised UK SDs, the FCA has maintained its pre-CRR domestic liquidity regime requirements for large full scope investment firms. In-scope investment firms, including UK SDs, must carry out an individual liquidity adequacy assessment or an individual liquidity systems assessment (as applicable). The FCA also carries out a supervisory liquidity review process for relevant firms.[39] In addition, CRR, Article 413, establishes a general requirement that firms ensure that long-term obligations are adequately met with stable funding requirements.

In addition, liquidity risks are generally less significant to UK SDs than standalone U.S. SDs because UK SDs and other large investment firms are subject to a bank-style resolution regime under the Banking Act that focuses on preserving the continuity of critical services and reducing the impact of an investment firm's failure on financial stability, rather than liquidation. Also, a UK SD will not be subject to liquidation as a commodity broker under the U.S. Bankruptcy Code.

Moreover, U.S. customer property should be at minimal risk if a UK SD were to experience financial distress, as a UK SD is required to segregate IM from its assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[40]

U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic; Proposed Order, 85 Fed. Reg. 85720 (Dec. 29, 2020) (finding the EU capital requirements, as implemented in France and applicable to non-prudentially regulated French SBSDs, to be comparable to the SEC's capital requirements applicable to non-prudentially regulated SBSDs).

[36] CFTC Capital Final Rule Release, 85 Fed. Reg. at 57467.

[37] 17 C.F.R. § 23.101(a)(ii)(A); 17 C.F.R. § 240.18a-1(a)(1)(iv).

[38] Specified in Commission Delegated Regulation (EU) 2015/61 supplementing CRR with regard to liquidity coverage requirement for credit institutions. See the Liquidity Coverage Requirement — UK Designated Investment Firms Part of the PRA rulebook.

[39] See Chapter 12 of the BIPRU sourcebook and Chapter 7 of the IFPRU sourcebook of the FCA's handbook.

[40] European Market Infrastructure Regulation Margin RTS (EU) (2016/2251) ("EMIR Margin RTS"), Articles 19(1)(d)–(e), (3) & (8). While not specifically required to be segregated from the investment firm's assets, counterparties may elect for variation margin ("VM") to also be segregated and placed with a third-party custodian.

Financial Reporting Requirements. The Commission's financial reporting requirements under Section 4s(f) of the CEA and Rule 23.105(d)–(e) thereunder (the "Commission Financial Reporting Requirements") and the UK Financial Reporting Framework provide the relevant regulatory authorities with audited information at regular intervals about the financial and capital positions of an SD in order to ensure the safety and soundness of the SD. Both the UK Financial Reporting Framework and the Commission Financial Reporting Requirements require a firm to disclose financial statements containing information on the firm's financial condition and compliance with capital requirements. In many instances, the UK Financial Reporting Framework also requires that a UK SD disclose additional information with respect to its financial condition and activities beyond that required under the Commission Financial Reporting Requirements. For example, in addition to annual and interim financial statements, a PRA-designated UK SD may be required to submit asset encumbrance reports and forecast information. In each case, the reporting requirements under the regimes provide a comprehensive view of the financial condition of a firm, including the firm's compliance with applicable capital requirements and overall financial health. We note in this regard that the SEC has recognized that the UK Financial Reporting Framework is comparable to the SEC's financial reporting rules applicable to prudentially regulated and non-prudentially regulated SBSDs for purposes of substituted compliance.[41] The Commission has recognized that its "financial reporting . . . approach . . . was modelled after the existing reporting regimes followed by [futures commission merchants] and [broker dealers], and that was proposed by the SEC for SBSDs."[42]

III. Comparability Analysis

A. Comparability of the UK Capital Framework and the Commission Capital Requirements

1. Comparability of Objectives

The Commission Capital Requirements and the UK Capital Framework have the same regulatory objectives. Both are aimed at ensuring the safety and soundness of SDs in order

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See EMIR Margin RTS, Article 3(b) (stating that the "exchange of collateral agreement" must address "segregation arrangements").

[41] See Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants, Subject to Regulation in the Federal Republic of German, 85 Fed. Reg. 85686 (Dec. 29, 2020); Notice of Substituted Compliance Application Submitted by the French Autorité des Marchés Financiers and the Autorité de Contrôle Prudential et de Résolution in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the French Republic; Proposed Order, 85 Fed. Reg. 85720 (Dec. 29, 2020) (finding the EU financial reporting requirements, as implemented in France and applicable to non-prudentially regulated French SBSDs, to be comparable to the SEC's financial reporting requirements applicable to non-prudentially regulated SBSDs).

[42] CFTC Capital Final Rule Release, 85 Fed. Reg. at 57512. The SEC has conditioned substituted compliance with respect to its financial reporting requirements on the provision of certain financial and operational information to the SEC or its designee in the manner and format required by SEC rule or order. To the extent the Commission similarly conditions substituted compliance for the Commission Financial Reporting Framework on the provision of certain information, we request that the Commission align such information with that required by the SEC.

to protect counterparties and customers and the derivatives and financial markets more generally. The Bank-Based Approach, consistent with the Basel capital framework, achieves this goal by requiring a nonbank SD to maintain a sufficient cushion against losses. The Net Liquid Assets Approach, meanwhile, furthers safety and soundness by requiring an SD to maintain enough liquid assets to satisfy customer and counterparty claims in the event of a distress scenario.

The UK Capital Framework seeks to achieve both of the objectives of the Bank-Based Approach and the Net Liquid Assets Approach. Consistent with the Bank-Based Approach, the UK Capital Framework looks to ensure that a UK SD has sufficient own funds in order to withstand losses. And consistent with the Net Liquid Assets Approach, the UK Capital Framework seeks to ensure that a UK SD has sufficient liquidity in order to meet its obligations in a distress scenario.

2. Comparability of Methodologies and Outcomes

i. Measurement of Assets and Total Risk Exposure

UK SDs are subject to bank-like capital requirements that, consistent with the Basel framework, require a firm to hold sufficient amounts of own funds, composed of Common Equity Tier 1, Tier 1 and Tier 2 capital instruments subject to certain capital deductions (referred to as Pillar I of the Basel framework).[43] The amount of own funds required to be held is determined by calculating the firm's total risk exposure, which requires the firm to risk weight its assets and exposures using specified standardised weights or approved internal model-based methodologies.[44] The categories of risk charges include:[45]

- credit and dilution risk, excluding risk-weighted exposure amounts from the trading book business of the firm;
- position risk and certain large exposures;
- foreign-exchange risk, settlement risk and commodities risk;
- credit valuation adjustment risk of OTC derivative instruments, other than credit derivatives recognised to reduce risk-weighted exposure amounts for credit risk;
- operational risk; and
- counterparty risk arising from the trading book business of the investment firm for certain derivative transactions, repurchase transactions, securities or commodities lending or borrowing transactions, margin lending or long settlement transactions.

This approach is comparable to the Bank-Based Approach, which similarly subjects a nonbank SD to bank-like capital requirements that require the SD to hold sufficient

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

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

[45] Id. Article 92(3).

regulatory capital, composed of Common Equity Tier 1, Additional Tier 1 and Tier 2, based on the risk of its activities and positions.[46]

The Bank-Based Approach under the Commission Capital Requirements and the UK Capital Framework are both implementations of the Basel capital framework. The FRB has recognized the comparability of its capital requirements and the UK Capital Framework on a number of occasions. For example, in a recent approval allowing a bank subject to EU capital regulations to establish a U.S. branch, the FRB stated generally that the risk-based capital standards under CRR and CRD "are consistent with those established by the Basel Capital Accord."[47]

Additionally, considering the scope of exposures that must be taken into account, the way those exposures are calculated, the minimum capital levels required by the UK Capital Framework may be compared in some respects to the sum of the 2 per cent. uncleared swap margin amount requirement and market and credit risk charges applicable under the Net Liquid Assets Approach, as well as the 8 per cent. of the uncleared swap margin requirement under the Bank-Based Approach.

a. Derivative Instruments and Marketable Securities

Under the UK Capital Framework, as under the Commission Capital Requirements, derivative instruments and marketable securities are subject to charges for market and credit risk. As under the Bank-Based Approach and the Basel capital framework more generally, these charges are added to the SD's risk exposure calculation. Although the Net Liquid Assets Approach incorporates market and credit risk by providing for deductions from net capital, the ultimate objective, which is to require greater capital to account for market and credit risk, is the same as under the Bank-Based Approach and the Basel framework.

The comparability between the risk-weighted approach under the UK Capital Framework and the Commission Capital Requirements can be illustrated by comparing their respective approaches to market and credit risk.

1. Market Risk

In terms of market risk, the Bank-Based Approach similarly requires an SD to calculate additions to its RWAs for derivatives positions and marketable securities using either the Commission's standardised haircuts, multiplied by 12.5, or if approved to use models, market-risk models. The Net Liquid Assets Approach similarly requires a nonbank SD to take certain net capital deductions for its derivatives positions and marketable securities using either standardised haircuts or, if approved to use internal models, market risk models.

The Bank-Based Approach requires that a nonbank SD that is approved to use models to calculate market risk do so in accordance with Subpart F of the FRB's Part 217 regulations ("Subpart F"), while Appendix A to Rule 23.102 specifies the model requirements

[46] 17 C.F.R. § 23.101(a)(1)(i).

[47] Federal Reserve System, Order Approving Establishment of a Branch for Nordea Bank Abp (Aug. 3, 2018).

for an SD that elects the Net Liquid Assets Approach. Both Subpart F and Appendix A to Rule 23.102 are based on the internal model approach under Basel 2.5.[48] The Commission will provisionally permit the use of models approved by a foreign regulator whose capital requirements are consistent with the Basel framework.[49]

Similarly, the UK Capital Framework's model-based methodology is based on the Basel 2.5 standard.[50] The UK Capital Framework, Subpart F and Appendix A to Rule 23.102 all incorporate relevant aspects of Basel II in terms of requiring firms with model approval to use a VaR model with a 99 per cent, one-tailed confidence level with (i) price changes equivalent to a ten business-day movement in rates and prices, (ii) effective historical observation periods of at least one year and (iii) at least monthly data set updates.[51] All three also implement aspects of Basel 2.5, such as requirements to calculate a "stressed" VaR.[52]

2. Credit Risk

In terms of credit risk, the Bank-Based Approach provides for the credit risk of a nonbank SD's positions to be incorporated into the calculation of its RWAs. Under the Bank-Based Approach, a nonbank SD that is not approved to use internal models to calculate credit risk will compute its RWA in accordance with Subpart D of the FRB's Part 217 regulations, which sets forth a standardized methodology for calculating the risk weights applicable to a bank holding company's assets. A nonbank SD approved to use internal models will calculate its RWA in accordance with Subpart E of the FRB's Part 217 regulations, which sets forth a models-based methodology for calculating risk weights applicable to a bank holding company's assets. The Net Liquid Assets Approach, in turn, requires a nonbank SD to take a net capital deduction for unsecured current exposure and uncollected IM, but a firm with model approval may instead multiply that deduction by 8 per cent. and further by a credit risk weight.

Under the UK Capital Framework, an investment firm calculates its credit risk exposure by taking the accounting value of each of its on- and off-balance sheet exposures,

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[48] Compare 17 C.F.R. § 23.100 (providing for an SD that is approved to use internal models to calculate market and credit risk to calculate its RWAs using Subparts E and F of 12 C.F.R. Part 217), Subpart F of 12 C.F.R., § 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a-1) and 17 C.F.R. § 23.102a, with Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), https://www.bis.org/publ/bcbs193.pdf (describing the revised internal model approach under Basel 2.5).

[49] 17 C.F.R. § 23.102(f).

[50] Compare CRR, Article 362–377, with Revisions to the Basel II Market Risk Framework, supra note 23.

[51] Compare 17 C.F.R. § 23.100 (providing for an SD that is approved to use internal models to calculate market and credit risk to calculate its RWAs using Subparts E and F of 12 C.F.R. Part 217), 12 C.F.R. § 217.205(b), 17 C.F.R. § 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a-1), 17 C.F.R. § 23.102a(a), (i) and 17 C.F.R. § 240.18a-1(e)(1) with CRR, Article 365(1).

[52] 17 C.F.R. § 23.100 (providing for an SD that is approved to use internal models to calculate market and credit risk to calculate its RWAs using Subparts E and F of 12 C.F.R. Part 217); 12 C.F.R. § 217.206, 17 C.F.R. § 23.101(a)(1)(ii) (providing for an SD that elects the Net Liquid Assets Approach to calculate its net capital in accordance with Rule 18a-1); 17 C.F.R. § 23.102a(j); CRR, Article 365(2). See also CFTC Capital Final Rule Release, 85 Fed. Reg. at n.332 (citing the BCBS' Revisions to the Basel II Market Risk Framework for an explanation of the implementation of the stressed VaR requirement).

making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset's credit quality.[53] For instance, high quality credit exposures, such as exposures to the Bank of England and EU member states' central banks, carry a 0 per cent. risk weight, whereas exposures to UK and EU banks, other investment firms or to other businesses may carry risk weights between 20–150 per cent. depending on the credit ratings available for the entity or (for exposures to banks and investment firms) for its central government.[54] If no credit rating is available, the investment firm must generally apply a 100 per cent. risk weight, meaning the total accounting value of the exposure is used.[55] If an investment firm is permitted to use models for determining credit risk, any positions in a basket for which the investment firm cannot determine the risk-weight using its models are assigned a risk weight of 1,250 per cent (which is equivalent to a full capital deduction for the 8 per cent. minimum capital requirement).[56] This approach is closely aligned with the Basel framework and with the provisions of Subparts D and E of the FRB's Part 217 regulations.

Accordingly, for firms with model approval the approaches are largely similar, with the UK Capital Framework imposing potentially larger risk charges due to the additional capital buffers that it requires UK SDs to maintain.[57]

3. *Additional Measures and Supervision*

In addition, the internal and external supervisory process provided in Pillar II of the UK Capital Framework further helps ensure investment firms do not take on excessive uncollateralised credit risk.[58] Specifically, investment firms are required to maintain adequate internal capital to cover the nature and level of risks, including credit and counterparty risks, to which they may be exposed.[59] At least annually, PRA or FCA (as applicable) must review the investment firm's strategies and processes to manage these risks and evaluate the risks that the investment firm is or might be exposed to, and the risks revealed by the investment firm's stress testing (taking into account the nature, scale and complexity of the investment firm's

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[53] CRR Article 111 & 113(1).

[54] Id. Articles 114–122.

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

[56] Id. Article 153(8).

[57] For example, $100 million of exposure to a counterparty with a 100 per cent. risk weight would result in an $8 million capital requirement under the Net Liquid Assets Approach versus at least a $10.5 million capital requirement under the UK Capital Framework, taking into account the capital conservation buffer. Additional capital would then be required for credit valuation risk.

[58] Pillar II obligations require additional own funds to be held above the minimum levels set by the Pillar I capital obligations. Broadly, the Pillar II regime requires an assessment of an investment firm's capital needs by reference to its risks to be conducted by the investment firm itself and, separately, the PRA or FCA (as applicable). Critically, this Pillar II assessment enables the regulator to exercise supervisory powers to increase an investment firm's capital requirements above the Pillar I minimum capital requirements and capital buffers.

[59] See, in particular, the Internal Capital Adequacy Assessment Part of the PRA rulebook, Chapter 2 of IFPRU sourcebook of the FCA handbook and the Capital Requirements Regulations 2013.

activities).[60] The internal and external assessments of risks often result in investment firms holding own funds in excess of the minimum capital requirements.[61]

We consider these requirements to be an effective backstop, especially for firms that do not have market or credit risk model approval. For these firms, the Net Liquid Assets Approach is arguably stricter than the UK Capital Framework, at least in regards to applying 100 per cent. capital charges to unsecured current exposure to OTC derivatives counterparties, without risk-weighting of these exposures. However, under the UK Capital Framework, an investment firm with such exposures that create risks that are not covered or not fully covered by the minimum own funds requirements under CRR would be expected to address those exposures as part of its Pillar II capital requirements.[62]

b. Other Types of Assets and Exposures

Under the Net Liquid Assets Approach, other types of proprietary assets and exposures are generally subject to a 100 per cent. deduction to net capital in order to address liquidity risk. Conversely, the UK Capital Framework and the Bank-Based Approach subject each asset to the risk weight approach described above.

As noted above, considering that all UK SDs would be eligible to elect the Bank-Based Approach, we think that a comparison to that approach should suffice to establish the comparability of the UK Capital Framework to the Commission Capital Requirements. But, to the extent that a comparison to the Net Liquid Assets Approach is relevant, the UK Capital Framework addresses liquidity risk by imposing separate liquidity requirements on investment firms composed of three main obligations. First, an investment firm is required to hold an amount of sufficiently liquid assets to meet its expected payment obligations under gravely stressed conditions for thirty days and maintain a prudent funding profile.[63] Second, an investment firm is subject to a stable funding requirement whereby it must hold a diversity of stable funding instruments[64] sufficient to meet long-term obligations under both normal and stressed conditions.[65] Third, to ensure that an investment firm continues to meet its liquidity needs, it is required to maintain robust strategies, policies, processes, and systems for the

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[60] Id.

[61] See Parts 4A and 12A of FSMA and the Capital Requirements Regulations 2013.

[62] See, in particular, PRA Supervisory Statement | SS31/15, *The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP)* and Statement of Policy, *The PRA's methodologies for setting Pillar 2 capital*.

[63] CRR, Article 412(1), Commission Delegated Regulation (EU) 2015/61 and Chapter 12 of the BIPRU sourcebook of the FCA handbook. Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. Id. Article 416(1).

[64] Stable funding instruments include Tier 1 and Tier 2 capital instruments and other preferred shares and capital instruments in excess of the Tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1). Under EU CRR II, as of 28 June 2021, the Basel III NSFR requirements will become applicable, as specified in CRR, Articles 428a to 428az (CRR II, Article 1(116)).

[65] CRR, Article 413(1). Under EU CRR II, as of 28 June 2021, the Basel III NSFR requirements will become applicable, as specified in CRR, Articles 428a to 428az (CRR II, Article 1(116)).

identification of liquidity risk over an appropriate set of time horizons, including intra-day.[66] Accordingly, the liquidity requirements under the UK Capital Framework, like the Net Liquid Assets Approach, help ensure that investment firms can continue to fund their operations over various time horizons, including timely making payments to customers and counterparties. Further, as part of the Pillar II supervisory requirements under the UK Capital Framework, regulators annually review the exposure, measurement and management of liquidity risk by investment firms (including the composition and quality of liquidity buffers).[67]

1. UK SD Resolution Framework

The UK Capital Framework's liquidity requirements are designed to work in tandem with the resolution regime that would apply in the event a UK SD faced financial distress, as well as the resources available to a UK SD to address a distress scenario. Specifically, UK SDs and other large investment firms organised in the UK are subject to similar resolution regimes as banks. The UK resolution regime does not focus on liquidation and a rapid distribution of assets to customers. Rather, it emphasises the continuity of critical services and reduction of the impact of an investment firm's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the investment firm's own funds where this, among other requirements, cannot be ascertained through normal insolvency proceedings. In addition, unlike U.S. nonbank SDs, PRA-designated UK SDs are generally eligible to access to short-term liquidity through the Bank of England's operations under the Sterling Monetary Framework.[68]

With that said, if liquidation does occur, UK regulations also protect counterparties and promote continued market liquidity through margin requirements. Investment firms are required to exchange IM and VM composed of highly liquid assets, which are not exposed to excessive credit, market or foreign exchange risk, such that a non-defaulting counterparty can liquidate the collateral in a sufficiently short time to protect against losses on non-centrally cleared OTC derivative contracts.[69] IM must be segregated from the investment firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[70] In addition, while not specifically required to be segregated from the investment firm's assets, counterparties may elect for VM to also be segregated and placed with a third-party custodian.[71]

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[66] See the Internal Liquidity Adequacy Assessment Part of the PRA rulebook and Chapter 12 the BIPRU sourcebook of the FCA handbook.

[67] See, in particular, by the Internal Capital Adequacy Assessment Part of the PRA rulebook, Chapter 2 of IFPRU sourcebook of the FCA handbook and the Capital Requirements Regulations 2013.

[68] See https://www.bankofengland.co.uk/markets/bank-of-england-market-operations-guide/information-for-applicants. The Bank of England may, in its absolute discretion, waive, add to, or vary any or all of the criteria in relation to any institution or institutions.

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

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

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

In addition, UK SDs must generally ensure the protection of customer assets.[72] UK SDs are subject to an overarching FCA principle for business, and strict client asset protection requirements[73], under the FCA's client asset sourcebook ("CASS"),[74] requiring the UK SD to ensure adequate protection for clients' assets when it is responsible for them. These requirements help to further protect customers and counterparties in the event that a UK SD experiences financial distress and liquidation.

Therefore, although the UK Capital Framework reflects a somewhat different approach to addressing liquidity risk than the Net Liquid Assets Approach, both approaches are ultimately designed to ensure that a firm has sufficient liquid assets to satisfy customer obligations in the event of a distress scenario.

ii. ***Qualifying Components of Capital***

The Net Liquid Assets Approach permits a nonbank SD to include both equity capital and satisfactory subordinated debt as net capital by permitting the SD to exclude subordinated liabilities from the net worth calculation, with satisfactory subordinated debt allowed to comprise up to 70 per cent. of the sum of the SD's subordinated debt and equity.[75]

Under the Bank-Based Approach, an SD must maintain the following components of regulatory capital:[76]

- Common Equity Tier 1, which is generally limited to retained earnings and common equity; and
- Additional Tier 1 and Tier 2 capital, which include certain preferred stock and subordinated debt instruments.[77]

Similar to the Bank-Based Approach, the UK Capital Framework imposes different ratios for the various capital components of own funds. The components of own funds align with the components of regulatory capital required under the Bank-Based Approach, as they include:

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[72] See FCA Principles for Businesses and CASS sourcebook.

[73] Including segregation (where applicable) and proper recordkeeping).

[74] CASS applies to a firm in relation to regulated activities carried on by it from an establishment in the UK.

[75] 17 C.F.R. § 240.18a-1(c)(1), (g).

[76] See 17 C.F.R. § 23.101(a)(1)(i); 12 C.F.R. §§ 217.20(b) (Common Equity Tier 1), 217.20(c) (Additional Tier 1), 217.20(d) (Tier 2).

[77] See generally 12 C.F.R. § 217.20. An SD that follows the Bank-Based Approach can only include subordinated debt in its regulatory capital if such subordinated debt would be eligible to be treated as net capital under the Net Liquid Assets Approach. 17 C.F.R. § 23.101(a)(1)(i)(B).

- Common Equity Tier 1 capital instruments, which are comprised of retained earnings and common equity;[78]

- Additional Tier 1 capital instruments, which include other capital instruments and certain long-term convertible debt instruments;[79] and

- Tier 2 capital instruments, which provide an additional layer of supplementary capital that includes other reserves, hybrid capital instruments, and certain subordinated term debt.[80]

The UK Capital Framework also requires investment firms to make certain capital deductions from Common Equity Tier 1, Additional Tier 1 and Tier 2 capital instruments that further help ensure that any assets held as capital have a positive realisable value in periods of stress. Due to the Common Equity Tier 1 ratio and capital buffers, an investment firm must hold, at a minimum, 66.67 per cent. of the firm's total capital requirements as Common Equity Tier 1 instruments (e.g., shareholder's equity, retained earnings, and other immediately available reserves).[81]

In addition, investment firms are also required to maintain MREL, which includes certain subordinated debt, in an amount set by the Bank of England under the Banking Act and the Bank Recovery and Resolution (No. 2) Order 2014.[82] In effect, MREL serves as a less subordinated tier of contingent capital. The required amount of MREL varies by firm depending on its size, funding model, and risk profile, among other considerations, and is designed to absorb losses in the case that a bail-in tool were applied so that the Common Equity Tier 1 ratio of the investment firm could be restored to a level necessary to enable it to continue to comply with its capital requirements.[83]

Accordingly, each approach permits firms to count both equity and certain subordinated debt towards their capital requirements, with the UK Capital Framework and the Bank-Based Approach requiring investment firms to make additional capital deductions from their capital instruments and maintain a larger portion of their required capital as retained earnings and common equity, as compared to the Net Liquid Assets Approach.

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[78] CRR, Article 28.

[79] Id. Article 52.

[80] Id. Article 63.

[81] The Common Equity Tier 1 ratio and capital conservation buffer require an investment firm to hold, at a minimum, 66.67 per cent. of total capital amount in shareholder's equity, retained earnings and other reserves available for immediate use. At most, 14.3 per cent. of the total capital could be made up of Additional Tier 1 capital instruments and 23.8 per cent. could be composed of Tier 2 instruments.

[82] In June 2018, the Bank of England issued a statement of policy setting out its approach to setting firms' MREL.

[83] Id.

iii. Required Minimum Amounts of Capital

1. Minimum Capital Requirements

As noted above, the Bank-Based Approach requires nonbank SDs to maintain:

- Common Equity Tier 1 of at least $20 million;
- Common Equity Tier 1 equal to at least 6.5 per cent. of the SD's RWAs;
- Total capital equal to at least 8 per cent. of the nonbank SD's RWAs; or
- Total capital equal to 8 per cent. of its uncleared swap margin.[84]

The Net Liquid Assets Approach requires a nonbank SD without model approval to maintain net capital, subject to the adjustments described above, at the higher of $20 million or 2 per cent. of its uncleared swap margin amount.[85] Under the Net Liquid Assets Approach, a nonbank SD with model approval is also required to maintain tentative net capital, which is the net capital *before* taking certain market and credit risk deductions, of at least $100 million.[86]

The UK Capital Framework takes a somewhat analogous approach to the Bank-Based Approach, setting out minimum capital ratios for each component of own funds. Specifically, investment firms must maintain sufficient levels of Common Equity Tier 1 capital, Tier 1 (Common Equity Tier 1 and Additional Tier 1) capital and Tier 2 capital, after making required capital deductions, to satisfy the following capital ratios, expressed as a percentage of the firm's total risk exposure amount:

- Common Equity Tier 1 capital ratio of 4.5 per cent,[87]
- Tier 1 capital ratio of 6 per cent,[88]
- Total capital ratio of 8 per cent,[89]
- Additional buffers that must be met with Common Equity Tier 1 capital (in addition to the Common Equity Tier 1 capital used to meet the capital ratios above):[90]

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[84] 17 C.F.R. § 23.101(a)(1)(i).

[85] 17 C.F.R. § 23.101(a)(1)(ii).

[86] Id.

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

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

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

[90] See the Capital Buffers Part of the PRA rulebook, Chapter 10 of the IFPRU sourcebook of the FCA handbook and the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

- Capital conservation buffer of 2.5 per cent,[91]
- Countercyclical buffer of up to 2.5 per cent. which provides a mechanism for the FPC to increase firms' capital requirements in response to threats to financial stability,[92] and
- Systemic risk buffer, which is intended to prevent and to mitigate long-term, non-cyclical systemic, or macro-prudential risks not covered by the CRR. It is applied either to the whole financial sector, or one or more sub-sets of it.[93]

Relevant investment firms must also hold sufficient MREL, as determined by the Bank of England.

Accordingly, similarly to the Bank-Based Approach, the UK capital ratios are calibrated as a percentage of the investment firm's total risk exposure. However, the UK capital ratios are calibrated higher than the Bank-Based Approach's RWA ratios, as the former require, at a minimum, 10.5 per cent. of the investment firm's total risk exposure as compared to 8 per cent. of the SD's RWAs.

Although the UK Capital Framework does not contain a capital ratio that is expressly tied to the IM required for an SD's uncleared swap transactions, the risk-based ratios under the UK Capital Framework incorporate many of the same risks that the uncleared swap margin requirement is designed to address. For example, the exposure calculation incorporates the potential future exposure arising from the SD's OTC derivatives transactions. Although the methodology for calculating this potential future exposure may differ from the methodology for calculating the IM required under the Commission's margin rules, in many instances the former will lead to *greater* capital requirements, for example in instances where a UK SD does not have counterparty credit risk models for all OTC derivatives and accordingly must apply a standardized approach. Moreover, unlike the uncleared swap margin requirement, the risk exposure ratio incorporates market, operational and other risks. As a result, the risk-based capital ratio under the UK Capital Framework generally yield substantially higher capital requirements than the uncleared swap margin requirement, even before application of the capital buffer or the Pillar II additions.

2. Leverage Ratio and Stress Testing

In addition, investment firms are currently required to report their leverage ratio to the PRA or FCA (as applicable), which is calculated as a non-risk based "backstop" measure based on the amount of Tier 1 capital and gross exposures.[94] The leverage ratio calculation sits alongside the minimum risk-based capital requirement. Importantly, although this leverage ratio

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[91] Id.

[92] Id.

[93] Id.

[94] CRR, Article 430.

reporting does not automatically impose a binding capital requirement on investment firms, the regulators will take the leverage of an investment firm into account in their annual Pillar II supervisory requirements and can exercise their Pillar II powers to increase an investment firm's capital requirements in order to address any concerns regarding excessive leverage.[95] In addition, the FPC has certain powers of direction over leverage ratio requirements and buffers that may potentially apply to PRA-designated investment firms.[96]

Investment firms are also subject to annual stress testing requirements,[97] and those with model approval are subject to additional internal credit risk and counterparty credit risk stress testing requirements for testing capital adequacy.[98] Identified deficiencies in a firm's stress testing may lead to the firm holding additional own funds and act as a further check to ensure investment firms continue to hold sufficient own funds in response to evolving risks.

B. Comparability of the UK Financial Reporting Framework and the Commission Financial Reporting Requirements

1. Comparability of Objectives

The UK Financial Reporting Framework and the Commission Financial Reporting Requirements are intended to enable the relevant regulatory authorities to assess the financial condition and safety and soundness of firms subject to their respective regulation. Specifically, as discussed below, both regimes require firms to report their compliance with applicable capital requirements and their financial position. These disclosures serve to provide regulatory authorities with a comprehensive view of the financial health and activities of the firms.

2. Comparability of Methodologies and Outcomes

The Commission Financial Reporting Requirements require that a nonbank SD file with the Commission and with a registered futures association of which it is a member monthly, unaudited financial reports as of the close of business of each month and annual, audited financial reports as of the close of its fiscal year.[99] The monthly financial reports must be filed no later than 17 business days after the date for which the report is made, and the annual

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[95] See, in particular, by the Internal Capital Adequacy Assessment Part of the PRA rulebook, Chapter 2 of IFPRU sourcebook of the FCA handbook and the Capital Requirements Regulations 2013.

[96] The PRA currently applies the UK leverage ratio regime to banks and building societies with retail deposits equal to or greater than £50 billion.

[97] See, in particular, by the Internal Capital Adequacy Assessment Part of the PRA rulebook, Chapter 2 of IFPRU sourcebook of the FCA handbook and the Capital Requirements Regulations 2013. The Bank of England has developed a "concurrent stress-testing framework" following a recommendation from the FPC. The framework aims to provide a forward-looking, quantitative assessment of the capital adequacy of the UK banking system as a whole, and individual institutions within it. FCA-authorised investment firms are required to carry out — at least annually — stress tests that are appropriate to the nature, size, and complexity of the firm's business and of the risks it bears.

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

[99] 17 C.F.R. §§ 23.105(d), (e).

financial reports must be filed no later than 60 days after the close of the nonbank SD's fiscal year.[100] The annual financial report must be audited and accompanied by an opinion of an independent certified public accountant or independent licensed accountant in good standing.[101]

A nonbank SD must prepare its monthly and annual financial reports in the English language, denominated in U.S. dollars and in accordance with U.S. GAAP.[102] If the nonbank SD is not otherwise required to prepare financial statements in accordance with U.S. GAAP, it may prepare its monthly and annual financial reports in accordance with the International Financial Reporting Standards. The financial reports must include the following statements:

- Financial condition;
- Income/loss;
- Changes in liabilities subordinated to the claims of general creditors;
- Changes in ownership equity; and
- Compliance with and calculation of the nonbank SD's applicable regulatory capital requirements under Rule 23.101.[103]

In addition to the above elements, the annual financial report must also contain:

- A statement of cash flows;
- Appropriate footnote disclosures; and
- A reconciliation of any material differences from the SD's unaudited financial report prepared as of its year-end date and its annual financial report.

The UK Financial Reporting Framework, like the Commission Financial Reporting Requirements, is designed to provide the regulators with a comprehensive view of the financial information and capital position of a UK SD. Article 99 of the CRR requires a UK SD to provide the PRA and FCA on at least a semi-annual basis with information on the UK SD's own funds and financial information "necessary to obtain a comprehensive view of the risk profile of an institution's activities and a view on the systemic risks posed by institutions to the financial sector or the real economy."[104]

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[100] 17 C.F.R. §§ 23.105(d)(1), (e)(1) .

[101] 17 C.F.R. § 23.105(e)(2).

[102] 17 C.F.R. §§ 23.105(d)(2), (e)(3).

[103] 17 C.F.R. §§ 23.105(d)(2), (e)(4).

[104] CRR, Article 99. The CRR also establishes reporting requirements for large exposures (Article 394), liquid assets (Articles 415–416), stable funding (Articles 427–428) and leverage (Article 430). As noted above, EU CRR II will amend sections of CRR and move the content of Article 99 to a new part Seven A (Articles 430-430c) CRR.

In view of differing risk profiles across EU SDs due to their size and the types of activities they undertake, Article 99 does not itself dictate the specific statements that an SD is required to provide. Instead, it delegates to the competent authorities to provide such specificity. This delegation allows the competent authorities to adopt requirements that are appropriately tailored to a particular SD's organization and activities.

Prior to IP Completion Day, the European Banking Authority ("EBA") developed implementing technical standards ("ITS") under Article 99 of the CRR that specify the contents of the required financial reports ("FINREP") for EU SDs, including UK SDs, that are consolidated with parent entities that report using IFRS. Pursuant to these requirements, a UK SD is required to provide the following to the PRA and FCA, among other things:

- A balance sheet statement (or statement of financial position) that reflects the UK SD's financial condition (quarterly);[105]
- A statement of profit or loss (quarterly);[106]
- A breakdown of subordinated financial liabilities (quarterly);[107] and
- A statement of changes in equity (annually).[108]

In addition, a UK SD subject to the ITS is required to provide the PRA and FCA with FINREP financial information beyond that required by the Commission Financial Reporting Requirements. For example, such a UK SD must provide, quarterly, a breakdown of its loans and advances by product and type of counterparty,[109] as well as detailed information regarding its derivatives trading activities,[110] collateral and guarantees.[111]

The ITS also require a UK SD subject thereto to prepare and deliver common reporting ("COREP") on a quarterly basis. COREP requires, among other things, calculations in

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However, the amendments contained in EU CRR II would not materially affect the discussion of this application of the UK Financial Reporting Framework.

[105] CRR, Article 99; Annex III, 1.1, 1.2 and 1.3 of Commission Implementing Regulation (EU) 680/2014 with regard to supervisory reporting of institutions according to CRR ("CRR Reporting ITS").

[106] CRR, Article 99; Annex III, 2 CRR Reporting ITS.

[107] CRR, Article 99; Annex III, 8 CRR Reporting ITS.

[108] CRR, Article 99; Annex III, 46 CRR Reporting ITS.

[109] CRR, Article 99; Annex III, 5 and 6 CRR Reporting ITS.

[110] CRR, Article 99; Annex III, 10 CRR Reporting ITS.

[111] CRR, Article 99; Annex III, 13 CRR Reporting ITS.

relation to the UK SD's own funds and own funds requirements,[112] capital ratios and capital levels,[113] and market risk.[114]

A UK SD that is not subject to the ITS may be subject to slightly different requirements. For example, solo PRA-designated investment firms and PRA-designated investment firms that do not report according to FINREP are required to provide substantially the same information required under FINREP and COREP, but using the templates and timeframes dictated by the PRA, rather than the EBA.

However, in all instances, Article 99 requires a UK SD to provide comprehensive information regarding its financial condition and capital position. Moreover, unless the UK SD is very small, UK law requires independent auditors to audit and provide an opinion on the UK SD's annual financial statements.[115]

As a result, a UK SD will be required to provide substantially the same information as that required by the Commission Financial Reporting Requirements in addition, in many instances, to other detailed information that is not required by the Commission Financial Reporting Requirements.

C. Enforcement and Supervision of the UK Capital & Reporting Framework

In general, the FCA and the PRA have a wide range of disciplinary and enforcement tools at their disposal, deriving significant statutory powers from FSMA. These include significant powers under FSMA to obtain information and to conduct or order investigations[116] and the power to impose sanctions on investment firms that breach their regulatory obligations (including those deriving from the UK Capital & Reporting Framework), such as public censure, the imposition of financial penalties (the most frequent sanction) and ultimately the cancellation of an investment firm's permission to carry on regulated activities in the UK.[117] The regulators will aim to change the behavior of any person who is the subject of enforcement and deter future non-compliance by others.[118] However, the regulators place emphasis on proactive supervision and monitoring of firms, and an open and cooperative relationship between firms and their supervisors. This, in turn, emphasizes forward-looking and judgement-based supervision.[119] The nature and intensity of the regulators' supervision reflects

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[112] CRR, Article 99; Annex I, 1 and 2 CRR Reporting ITS.

[113] CRR, Article 99; Annex I, 3 CRR Reporting ITS.

[114] CRR, Article 99; Annex I, 18–25 (as applicable) CRR Reporting ITS.

[115] See supra note 26.

[116] FSMA, Part XI.

[117] FSMA, Parts 4A and XIV.

[118] See FCA Enforcement Guide 2.1.2.

[119] See FCA Enforcement Guide 2.1.4 and "The PRA's Approach to Enforcement" (speech given by Miles Bake, Head of Legal, Enforcement & Litigation Division).

the level of risk posed by individual firms in relation to each regulator's objectives, with resources focused on institutions and issues with the greatest impact.[120]

Specifically, the UK Capital Framework requires an investment firm to provide notice to the PRA or FCA (as applicable), if it breaches its capital buffers within five business days, along with a capital conservation plan that sets out how the firm will restore its capital levels.[121] In the event of such a breach, the UK regulators possess wide-ranging tools to deal with an investment firm's financial deterioration:

- *Liquidity requirements are breached.* The regulators may impose administrative penalties or other administrative measures, including prudential charges, if an investment firm's liquidity position falls below liquidity and stable funding requirements.[122]

- *MREL is breached.* Once the investment firm falls below its required MREL, the PRA, or FCA (as applicable) may take early measures to intervene, such as requiring management to take certain actions, order members of management to be removed or replaced, or require changes to the investment firm's business strategy or legal or operational structure, among others.[123] If additional requirements are met, it is also possible that resolution authorities may assess the investment firm as "failing or likely to fail," triggering a resolution action (which could occur even *before* the investment firm actually breached its minimum capital requirements).[124] In addition, the investment firm must notify the competent resolution authority if it considers the firm to be failing or likely to fail.[125]

- *Capital buffers are breached*. A breach of an investment firm's capital buffers automatically triggers restrictions on the firm's ability to make certain

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[120] See FCA, *FCA Mission: Approach to Supervision*, available at: https://www.fca.org.uk/publication/corporate/our-approach-supervision-final-report-feedback-statement.pdf and PRA, *The Prudential Regulation Authority's approach to banking supervision*, available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/banking-approach-2018.pdf?la=en&hash=3445FD6B39A2576ACCE8B4F9692B05EE04D0CFE3

[121] See the Capital Buffers Part of the PRA rulebook and Chapter 10 of the IFPRU sourcebook of the FCA handbook. The capital conservation plan includes estimates of income and expenditures and a plan to increase its own funds to meet its capital buffers. If the regulator does not approve the capital conservation plan, the regulator will impose requirements for the firm to increase its own funds to specified levels (or may impose more stringent restrictions on distributions).

[122] See Parts 4A and 12A of FSMA and the Capital Requirements Regulations 2013.

[123] See Part 8 of the Bank Recovery and Resolution (No. 2) Order 2014.

[124] See Part 1 of the Banking Act. Under BRRD II (Article 1(6), which inserted BRRD, Article 16a), a breach of the investment firm's MREL requirements may also trigger restrictions on the firm's ability to make certain distributions (e.g., paying certain dividends or employee bonuses).

[125] See Notifications Part of the PRA rulebook and Chapter 11 of the IFPRU sourcebook of the FCA handbook.

distributions (e.g., paying certain dividends or employee bonuses).[126] Investment firms also must prepare a capital conservation plan and submit it to the relevant regulator within five business days after breaching the capital buffers.[127] The restrictions increase in severity with the degree of the breach. The PRA or FCA (as applicable) may also impose other requirements in case of non-compliance with regulatory requirements, such as:[128]

- requiring the investment firm to have additional own funds in excess of any minimum requirements;
- requiring the investment firm to submit a plan to restore compliance with applicable capital and liquidity requirements and set a deadline for implementation;
- requiring the investment firm to restrict or limit its business or operations, or requiring the divestment of activities that pose excessive risks to the soundness of the investment firm;
- requiring the investment firm to use net profits to strengthen its own funds;
- restricting or prohibiting distributions or interest payments by an investment firm to its shareholders or holders of Additional Tier 1 instruments;
- imposing additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage; and
- imposing specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities.

Note that while the regulators generally have broad discretion as to what powers they may exercise, the UK Capital Framework specifically requires the regulators to require investment firms to hold increased capital when:

- risks or elements of risks are not covered by the capital requirements in the UK Capital Framework;
- the investment firm lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or

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[126] See the Capital Buffers Part of the PRA rulebook and Chapter 10 of the IFPRU sourcebook of the FCA handbook. See also CRD, Article 141b.

[127] Id. The capital conservation plan includes estimates of income and expenditures and a plan to increase its own funds to meet its capital buffers. If the PRA or FCA (as applicable) does not approve the capital conservation plan, it will impose requirements for the firm to increase its own funds to specified levels (or may impose more stringent restrictions on distributions).

[128] See Parts 4A and 12A of FSMA and the Capital Requirements Regulations 2013.

effective processes to maintain on an ongoing basis the amounts, types and distribution of internal capital needed to cover the nature and level of risks to which they might be exposed; or

  - o the sole application of other administrative measures would be unlikely to timely and sufficiently remedy the situation.

- *Minimum capital requirements are breached*. The PRA or FCA (as applicable) can also sanction an investment firm (or its management) if the firm either falls below the capital or liquidity thresholds under the UK Capital Framework or the regulator has evidence that the firm will breach such capital and liquidity thresholds in the next 12 months.[129] They may also withdraw an investment firm's authorization.[130]

IV. UK Limited Activity Investment Firms Capital & Reporting Framework

As set out above, UK SDs are, in general, currently subject to the capital and reporting requirements set out in the EU Capital Requirements Regulation (575/2013) as it has effect in the domestic law of the United Kingdom ("UK CRR") and PRA or FCA rules and other UK law which implemented the EU Capital Requirements Directive (2013/36/EU).[131] For FCA-authorised SDs, the main implementing UK law is the FCA's prudential sourcebook for investment firms ("IFPRU").

A. Differences relative to the UK Capital & Reporting Framework.

The UK Capital & Reporting Framework described above applies to UK IFPRU limited activity firms with the following differences:

1. The amount of own funds which a UK SD that is a IFPRU limited activity firm is required to hold is determined by calculating the firm's total risk exposure which is the sum of (i) charges related to the risk categories referred to in Section III. A. 2. i. of the Industry Application, excluding risk charges for operational risk and (ii) one quarter of the firm's "fixed overheads" of the preceding year multiplied by 12.5.[132] However, such firms are subject to all other provisions regarding operational risk provided in rules 2.2.32 and 2.2.33 of IFPRU.[133] These require that the SD:

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[129] Id.

[130] See Part 4A of FSMA.

[131] As set out in the First Supplemental Application, the FCA intends to introduce a new prudential regime for UK FCA-authorised SDs ("IFPR") pursuant to powers under the Financial Services Act 2021. The IFPR is expected to enter into effect from 1 January 2022, subject to certain transitional provisions.

[132] UK CRR, Article 96(2).

[133] Id. Article 96(3).

i. implement policies and processes to evaluate and manage the exposure to operational risk, including model risk and to cover low-frequency high severity events. Without prejudice to the definition of operational risk, a firm must articulate what constitutes operational risk for the purposes of those policies and procedures; and

ii. have adequate contingency and business continuity plans in place aimed at ensuring that, in the case of a severe business disruption, the firm is able to operate on an ongoing basis and that any losses are limited.

2. A UK SD that is a IFPRU limited activity firm is not required to calculate a leverage ratio.[134]

3. A UK SD that is a IFPRU limited activity firm is not subject to the large exposure requirements of UK CRR.[135]

B. Comparability of the UK Limited Activity Investment Firms Capital & Reporting Framework and the Commission Capital & Reporting Requirements

The differences in the requirements applicable to UK SDs that are IFPRU limited activity firms, as set out above, should not affect the comparability analysis set out in the rest of this application. Notably, as the Commission Capital & Reporting Requirements do not include leverage ratio or large exposure requirements, these matters should not be relevant to the Commission's assessment of comparability.

V. Conclusion

The UK Capital & Reporting Framework and UK Limited Activity Investment Firms Capital & Reporting Framework reflect similar regulatory concerns and leads to comparable regulatory outcomes as the Commission Capital & Reporting Requirements. Rather than require UK SDs to comply with two different approaches to capital and liquidity, the Commission should grant this application for the UK SDs to satisfy their requirements under the Commission Capital & Reporting Requirements by continuing to comply with the UK Capital & Reporting Framework or UK Limited Activity Investment Firms Capital & Reporting Framework, as applicable.

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[134] Id. Article 6(5).

[135] Id. Article 388.

Please feel free to reach out to the undersigned should you have any questions.

Sincerely,

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Appendix

The **IIB** is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax, and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 950 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

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