Comparability Determinations, including their work to thoroughly and thoughtfully analyze and address comments.

Importantly, while the Final Comparability Determinations permit foreign nonbank SDs in the relevant jurisdictions to comply with home country regulations in lieu of compliance with Commission regulations, there are numerous protections in place to ensure the Commission's ability to supervise on an ongoing basis the adequacy of the foreign nonbank SDs' compliance. The Final Comparability Determinations all include key conditions with which the foreign nonbank SDs must comply. For example, each of the Final Comparability Determinations requires that the foreign nonbank SDs provide monthly and annual financial reports to the Commission—and the Commission can request additional information as required to facilitate ongoing supervision. Each Final Comparability Determination also requires the foreign nonbank SDs to notify the Commission if adverse events occur, such as a significant decrease in excess regulatory capital, a significant failure of a counterparty to post required margin, or non-compliance with certain capital or financial reporting requirements. Finally, in recognition of the fact that a country's capital standards and financial reporting requirements may change over time, the Final Comparability Determinations require the foreign nonbank SDs to provide notice of material changes to the home country capital or financial reporting frameworks.

Moreover, the foreign nonbank SDs subject to these determinations are registered with the Commission and are members of the National Futures Association (NFA). Therefore, these entities are subject to the CEA, Commission regulations, and NFA membership rules, and each entity remains subject to Commission supervisory, examination and enforcement authority. As noted in the Final Comparability Determinations, if a foreign SD fails to comply with its home country's capital and financial reporting requirements, the Commission may initiate an action for a violation of the Commission's Capital and Financial Reporting Rules.

As I have previously noted,[7] it is important to recognize foreign market participants' compliance with the laws and regulations of their regulators when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Respect for partner regulators in foreign jurisdictions advances the Commission as a global standard setter for sound derivatives regulation and enhances market stability.

I thank the staff in the Market Participants Division for their hard work on these matters, particularly Amanda Olear, Tom Smith, and Lily Bozhanova.

Appendix 4—Statement of Commissioner Caroline D. Pham

I am pleased to support the order granting conditional substituted compliance in connection with certain capital and financial reporting requirements applicable to nonbank swap dealers subject to regulation by the Mexico Comision Nacional Bancaria y de Valores (CNBV) and Banco de Mexico (Mexico Final Order). The Mexico Final Order, on balance, reflects an appropriate approach by the CFTC to collaboration with non-U.S. regulators that is consistent with IOSCO's 2020 report on *Good Practices on Processes for Deference.*[1]

I would like to thank Amanda Olear, Thomas Smith, Rafael Martinez, Warren Gorlick, Lilya Bozhanova, and Justin McPhee from the CFTC's Market Participants Division for their truly hard work on the Mexico Final Order and for addressing my concerns regarding the conditions for notice requirements.[2] I also thank the CNBV and Banco de Mexico for their assistance and support.

The CFTC's capital comparability determinations are the result of tireless efforts spanning over a decade since the global financial crisis. I commend the staff for working together with our regulatory counterparts around the world to promote regulatory cohesion and financial stability, and mitigate market fragmentation and systemic risk.

[FR Doc. 2024–15093 Filed 7–17–24; 8:45 am]

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[7] Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424;* Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Notice and Order on EU Capital Comparability Determination (June 7, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c;* Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination (Nov. 10, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c;* Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order on Japanese Capital Comparability Determination (July 27, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c.*

[1] IOSCO Report, ''Good Practices on Processes for Deference'' (June 2020), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf.*

[2] Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Order and Request for Comment on an Application for a Capital Comparability Determination (Nov. 10, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement111022.*

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the United Kingdom Prudential Regulation Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On February 5, 2024, the Commodity Futures Trading Commission issued a notice and request for comment on an application submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requesting that the Commission determine that registered nonbank swap dealers organized and domiciled in the United Kingdom may comply with certain capital and financial reporting requirements under the Commodity Exchange Act and Commission regulations by being subject to, and complying with, corresponding capital and financial reporting requirements of the United Kingdom Prudential Regulation Authority. The Commission also solicited public comment on a proposed comparability determination and related order providing for the conditional availability of substituted compliance in connection with the application.

The Commission is adopting the proposed order with certain modifications and clarifications to address comments. The final order provides that a nonbank swap dealer organized and domiciled in the United Kingdom may satisfy the capital requirements under the Commodity Exchange Act and Commission applicable Commission regulations and the financial reporting rules under the Commodity Exchange Act and applicable Commission regulations by complying with certain specified United Kingdom laws and regulations and conditions set forth in the order.

DATES: This determination was made by the Commission on June 24, 2024.

FOR FURTHER INFORMATION CONTACT: Amanda L. Olear, Director, 202–418–5283, *aolear@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Rafael Martinez, Associate Director, 202–418–5462, *rmartinez@cftc.gov;* Liliya Bozhanova, Special Counsel, 202–418–6232, *lbozhanova@cftc.gov;* Joo Hong, Risk Analyst, 202–418–6221, *jhong@cftc.gov;* Justin McPhee, Risk Analyst, 202–418–6223; *jmchpee@cftc.gov,* Market Participants Division; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing an order providing that registered nonbank swap dealers (''SDs'') organized and domiciled in the

United Kingdom (''UK'') may satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (''CEA'') [1] and Commission regulations [2] by being subject to, and complying with, comparable capital and financial reporting requirements under relevant UK laws and regulations, subject to certain conditions set forth in the order below. The order is based on the proposed comparability determination and related proposed order published by the Commission on February 5, 2024,[3] as modified in certain aspects to address comments and to clarify its terms.

I. Introduction

A. Regulatory Background—CFTC Capital, Margin, and Financial Reporting Requirements for Swap Dealers and Major Swap Participants

Section 4s(e) of the CEA [4] directs the Commission and ''prudential regulators'' [5] to impose capital requirements on SDs and major swap participants (''MSPs'') registered with the Commission.[6] Section 4s(e) also directs the Commission and prudential regulators to adopt regulations imposing initial and variation margin requirements on swaps entered into by SDs and MSPs that are not cleared by a registered derivatives clearing organization (''uncleared swaps'').

Section 4s(e) applies a bifurcated approach with respect to the above Congressional directives, requiring each SD and MSP that is subject to the regulation of a prudential regulator (''bank SD'' and ''bank MSP,'' respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the applicable prudential regulator, and requiring each SD and MSP that is not subject to the regulation of a prudential regulator (''nonbank SD'' and ''nonbank MSP,'' respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.[7] Therefore, the Commission's authority to impose capital requirements and margin requirements for uncleared swap transactions extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.[8]

The prudential regulators implemented section 4s(e) in 2015 by amending existing capital requirements applicable to bank SDs and bank MSPs to incorporate swap transactions into their respective bank capital frameworks, and by adopting rules imposing initial and variation margin requirements on bank SDs and bank MSPs that engage in uncleared swap transactions.[9] The Commission adopted final rules imposing initial and variation margin obligations on nonbank SDs and nonbank MSPs for uncleared swap transactions on January 6, 2016.[10] The Commission also approved final capital requirements for nonbank SDs and nonbank MSPs on July 24, 2020, which were published in the **Federal Register** on September 15, 2020 with a compliance date of October 6, 2021 (''CFTC Capital Rules'').[11]

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.[12] Section 4s(f) authorizes the Commission to adopt rules imposing financial condition reporting obligations on all SDs and MSPs (*i.e.,* nonbank SDs, nonbank MSPs, bank SDs, and bank MSPs). Specifically, section 4s(f)(1)(A) provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.[13] The Commission's financial reporting obligations were adopted with the Commission's nonbank SD and nonbank MSP capital requirements, and also had a compliance date of October 6, 2021 (''CFTC Financial Reporting Rules'').[14]

B. Commission Capital Comparability Determinations for Non-U.S. Nonbank Swap Dealers and Non-U.S. Nonbank Major Swap Participants

Commission Regulation 23.106 establishes a substituted compliance framework whereby the Commission may determine that compliance by a non-U.S. domiciled nonbank SD or non-U.S. domiciled nonbank MSP with its home country's capital and financial reporting requirements will satisfy all or parts of the CFTC Capital Rules and all or parts of the CFTC Financial Reporting Rules (such a determination referred to as a ''Comparability Determination'').[15] The Commission's capital adequacy and financial reporting requirements are designed to address and manage risks

[1] 7 U.S.C. 1 *et seq.* The CEA may be accessed through the Commission's website, *www.cftc.gov.*

[2] 17 CFR Chapter I. Commission regulations may be accessed through the Commission's website, *www.cftc.gov.*

[3] *Notice of Proposed Order and Request for Comment on an Application for Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority,* 89 FR 8026 (Feb. 5, 2024) (''2024 Proposal'').

[4] 7 U.S.C. 6s(e).

[5] The term ''prudential regulators'' is defined in the CEA to mean the Board of Governors of the Federal Reserve System (''Federal Reserve Board''); the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency. 7 U.S.C. 1a(39).

[6] Subject to certain exceptions, the term ''swap dealer'' is generally defined as any person that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. 7 U.S.C. 1a(49).

The term ''major swap participant'' is generally defined as any person who is not an SD, and: (i) subject to certain exclusions, maintains a substantial position in swaps for any of the major swap categories as determined by the Commission; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (iii) is a financial entity that: (a) is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and (b) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission. 7 U.S.C. 1a(33).

[7] 7 U.S.C. 6s(e)(2).

[8] 7 U.S.C. 6s(e)(1) and (2).

[9] *Margin and Capital Requirements for Covered Swap Entities,* 80 FR 74840 (Nov. 30, 2015).

[10] *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants,* 81 FR 636 (Jan. 6, 2016).

[11] *Capital Requirements of Swap Dealers and Major Swap Participants,* 85 FR 57462 (Sept. 15, 2020). On April 30, 2024, the Commission amended the capital and financial reporting requirements to revise certain financial reporting obligations, among other changes. *See Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants,* 89 FR 45569 (May 23, 2024). The amendments have limited impact on nonbank SDs covered by this order.

[12] 7 U.S.C. 6s(f).

[13] 7 U.S.C. 6s(f)(1)(A).

[14] 85 FR 57462.

[15] 17 CFR 23.106. Commission Regulation 23.106(a)(1) provides that a request for a Comparability Determination may be submitted by a non-U.S. nonbank SD or non-US nonbank MSP, a trade association or other similar group on behalf of its SD or MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-US nonbank SDs or non-U.S. nonbank MSPs. However, Commission regulations also provide that any non-U.S. nonbank SD or non-U.S. nonbank MSP that is dually-registered with the Commission as a futures commission merchant (''FCM'') is subject to the capital requirements of Commission Regulation 1.17 (17 CFR 1.17) and may not petition the Commission for a Comparability Determination. 17 CFR 23.101(a)(5) and (b)(4), respectively. Furthermore, substituted compliance is not available to non-U.S. bank SDs and non-U.S. bank MSPs with respect to their respective financial reporting requirements under Commission Regulation 23.105(p). Commission Regulation 23.105(p), however, permits non-U.S. bank SDs and non-U.S. bank MSPs that do not submit financial reports to a U.S. prudential regulator to file with the Commission a statement of financial condition, certain regulatory capital information, and Schedule 1 of Appendix C to Subpart E of Part 23 of the Commission's regulations prepared and presented in accordance with the accounting standards permitted by the non-U.S. bank SD's or non-U.S. bank MSP's home country regulatory authorities. 17 CFR 23.105(p)(2).

that arise from a firm's operation as an SD or MSP. Given their functions, both sets of requirements and rules must be applied on an entity-level basis (meaning that the rules apply on a firm-wide basis, irrespective of the type of transactions involved) to effectively address risk to the firm as a whole. The availability of such substituted compliance is conditioned upon the Commission issuing a Comparability Determination finding that the relevant foreign jurisdiction's capital adequacy and financial reporting requirements for non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs are comparable to the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules. The Commission would issue a Comparability Determination in the form of an order (''Comparability Order'').[16]

The Commission's approach for conducting a Comparability Determination with respect to the CFTC Capital Rules and the CFTC Financial Reporting Rules is a principles-based, holistic approach that focuses on assessing whether the applicable foreign jurisdiction's capital and financial reporting requirements have comparable objectives with, and achieve comparable outcomes to, corresponding CFTC requirements.[17] The Commission's assessment is not a line-by-line evaluation or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.[18] In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving regulatory objectives and outcomes, and the Commission will focus on whether the foreign jurisdiction's capital and financial reporting requirements are based on regulatory objectives, and produce regulatory outcomes, that are comparable to the Commission's in purpose and effect, and not whether they are comparable in every aspect or contain identical elements.

A person requesting a Comparability Determination is required to submit an application to the Commission containing: (i) a description of the objectives of the relevant foreign jurisdiction's capital adequacy and financial reporting requirements applicable to entities that are subject to the CFTC Capital Rules and the CFTC Financial Reporting Rules; (ii) 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 CFTC Capital Rules and CFTC Financial Reporting Rules, including, at a minimum, the methodologies for establishing and calculating capital adequacy requirements and whether such methodologies comport with international standards; and (iii) 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. The applicant must also submit, upon request, such other information and documentation as the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.[19]

The Commission will consider an application for a Comparability Determination to be a representation by the applicant that the laws and regulations of the foreign jurisdiction that are submitted in support of the application are finalized and in force, that the description of such laws and regulations is accurate and complete, and that, unless otherwise noted, the scope of such laws and regulations encompasses the relevant non-U.S. nonbank SDs and/or non-U.S. nonbank MSPs domiciled in the foreign jurisdiction.[20] Each non-U.S. nonbank SD or non-U.S. nonbank MSP that seeks to rely on a Comparability Order is responsible for determining whether it is subject to the foreign laws and regulations found comparable in the Comparability Order. A non-U.S. nonbank SD or non-U.S. nonbank MSP that is not legally required to comply with a foreign jurisdiction's laws and/or regulations determined to be comparable in a Comparability Order may not voluntarily comply with such laws and/or regulations in lieu of compliance with the CFTC Capital Rules or the CFTC Financial Reporting Rules.

The Commission may consider all relevant factors in making a Comparability Determination, including: (i) the scope and objectives of the relevant foreign jurisdiction's capital and financial reporting requirements; (ii) whether the relevant foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital requirements and financial reporting requirements; (iii) the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's capital adequacy and financial reporting requirements; and (iv) any other facts or circumstances the Commission deems relevant, including whether the Commission and foreign regulatory authority or authorities have a memorandum of understanding (''MOU'') or similar arrangement that would facilitate supervisory cooperation.[21]

In performing the comparability assessment for foreign nonbank SDs, the Commission's review will include the extent to which the foreign jurisdiction's requirements address: (i) the process of establishing minimum capital requirements for nonbank SDs and how such process addresses risk, including market risk and credit risk of the nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting minimum requirements; (iii) the financial reports and other financial information submitted by a nonbank SD to its relevant regulatory authority and whether such information provides the regulatory authority with the means necessary to effectively monitor the financial condition of the nonbank SD; and (iv) the regulatory notices and other communications between a nonbank SD and its foreign regulatory authority that address potential adverse financial or operational issues that may impact the firm. With respect to the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the foreign jurisdiction's capital adequacy and financial reporting requirements, the Commission's review will include an assessment of the foreign jurisdiction's surveillance program for monitoring nonbank SDs' compliance with such capital adequacy and financial reporting requirements, and the disciplinary process imposed on firms that fail to comply with such requirements.[22]

[16] 17 CFR 23.106(a)(3).

[17] 17 CFR 23.106(a)(3)(ii). *See also* 85 FR 57462 at 57521.

[18] 85 FR 57462 at 57521.

[19] 17 CFR 23.106(a)(2).

[20] The Commission provides the applicant with an opportunity to review for accuracy and completeness the Commission's description of relevant home country laws and regulations on which a proposed Comparability Determination and a proposed Comparability Order are based. The Commission relies on this review, and any corrections or feedback received, as part of the comparability assessment. A Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

[21] 17 CFR 23.106(a)(3) and 85 FR 57462 at 57520–57522.

[22] The Commission would conduct a similar analysis, adjusted as appropriate to account for

Continued

Commission Regulation 23.106 further provides that the Commission may impose any terms or conditions that it deems appropriate in issuing a Comparability Determination.[23] Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Comparability Order. As a general condition to all Comparability Orders, the Commission will require notification from the applicants of any material changes to information submitted by the applicants in support of a comparability finding, including, but not limited to, changes in the foreign jurisdiction's relevant laws and regulations, as well as changes to the relevant supervisory or regulatory regime.

To rely on a Comparability Order, a nonbank SD or nonbank MSP domiciled in the foreign jurisdiction and subject to supervision by the relevant regulatory authority (or authorities) in the foreign jurisdiction must file a notice with the Commission of its intent to comply with the applicable capital adequacy and financial reporting requirements of the foreign jurisdiction set forth in the Comparability Order in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.[24] Notices must be filed electronically with the Commission's Market Participants Division (''MPD'').[25] The filing of a notice by a non-U.S. nonbank SD or non-U.S. nonbank MSP provides MPD staff with the opportunity to engage with the firm and to obtain representations that it is subject to, and complies with, the laws and regulations cited in the Comparability Order and that it will comply with any listed conditions. MPD will issue a letter under delegated authority from the Commission confirming that the non-U.S. nonbank SD or non-U.S. nonbank MSP may comply with the foreign laws and regulations cited in the Comparability Order in lieu of complying with the CFTC Capital Rules and CFTC Financial Reporting Rules upon MPD's confirmation through discussions with the non-U.S. nonbank SD or non-U.S. nonbank MSP that the firm is subject to, and complies with, such foreign laws and regulations, is subject to the jurisdiction of the applicable foreign regulatory authority (or authorities), and can meet the conditions in the Comparability Order.[26]

Each non-U.S. nonbank SD and each non-U.S. nonbank MSP that receives confirmation from the Commission that it may comply with a foreign jurisdiction's capital adequacy and financial reporting requirements will be deemed by the Commission to be in compliance with the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.[27] A non-U.S. nonbank SD or non-U.S. nonbank MSP that receives confirmation of substituted compliance remains subject, however, to the Commission's examination and enforcement authority.[28] Accordingly, if a nonbank SD or nonbank MSP fails to comply with the foreign jurisdiction's capital adequacy and/or financial reporting requirements, the Commission may initiate an action for a violation of the corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.[29] In addition, a finding of a violation by a foreign jurisdiction's regulatory authority is not a prerequisite for the exercise of such examination and enforcement authority by the Commission.

C. Application for a Comparability Determination for Nonbank Swap Dealers Domiciled in the United Kingdom and Subject to Regulation by the Prudential Regulation Authority

On May 4, 2021, the Institute of International Bankers (''IIB''), International Swaps and Derivatives Association (''ISDA''), and Securities Industry and Financial Markets Association (''SIFMA'') (together, the ''Applicants'') submitted an application (the ''UK Application'') requesting that the Commission conduct a Comparability Determination and issue a Comparability Order finding that compliance with certain designated capital and financial reporting requirements of the United Kingdom satisfy certain Commission capital rules and financial reporting rules for nonbank SDs.[30] Specifically, the Applicants requested that the Commission determine that registered nonbank SDs[31] organized and domiciled within the UK, licensed as investment firms, and designated for prudential supervision by the UK Prudential Regulation Authority (''PRA-designated UK nonbank SDs''), may satisfy corresponding CFTC Capital Rules and CFTC Financial Reporting Rules applicable to a nonbank SD under sections 4s(e) and (f) of the CEA and Commission Regulations 23.101 and 23.105.[32]

To be designated for prudential supervision by the UK Prudential Regulation Authority (''PRA''), a UK-domiciled investment firm must be authorized, or have requested authorization, to deal in investments as principal.[33] For an investment firm that is authorized, or has requested authorization, to deal in investments as principal, the PRA may designate the firm for prudential supervision if the PRA determines that the dealing activities of the firm should be a PRA-regulated activity. The PRA considers the following in determining whether an investment firm should be subject to PRA supervision: (i) the assets of the investment firm; and (ii) where the investment firm is a member of a group, (a) the assets of other firms within the group that are authorized, or have sought authorization, to deal in investments as principal, (b) whether any other member of the group is subject to prudential supervision by the PRA, and (c) whether the investment firm's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to a PRA-authorized person in its group.[34] The PRA also must consult

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regulatory distinctions, in performing a comparability assessment for foreign nonbank MSPs. Commission Regulation 23.101(b) requires a nonbank MSP to maintain positive tangible net worth. There are no MSPs currently registered with the Commission. 17 CFR 23.101(b).

[23] 17 CFR 23.106(a)(5).

[24] 17 CFR 23.106(a)(4)(i).

[25] Notices must be filed in electronic form to the following email address: *MPDFinancialRequirements@cftc.gov.*

[26] 17 CFR 23.106(a)(4)(ii) and 17 CFR 140.91(a)(11).

[27] 17 CFR 23.106(a)(4)(ii). Confirmation will be issued by MPD under authority delegated by the Commission. Commission Regulation 140.91(a)(11). 17 CFR 140.91(a)(11).

[28] 17 CFR 23.106(a)(4)(ii).

[29] *Id.*

[30] Letter dated May 4, 2021 from Stephanie Webster, General Counsel, IIB, Steven Kennedy, Global Head of Public Policy, ISDA, and Kyle Brandon, Managing Director, Head of Derivatives Policy, SIFMA. The UK Application is available on the Commission's website at: *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm.*

[31] As discussed in Section I.A. immediately below, the Commission has the authority to impose capital requirements on registered SDs that are not subject to regulation by a U.S. prudential regulator (*i.e.,* nonbank SDs).

[32] The Applicants also requested that the Commission determine that nonbank SDs licensed as investment firms and prudentially regulated by the UK Financial Conduct Authority (''FCA'') (''FCA-regulated UK nonbank SDs'') may satisfy certain capital and financial reporting requirements under the CEA by being subject to, and complying with, comparable capital and financial reporting requirements under UK laws and regulations. Due to the differences between the capital and financial reporting regimes applicable to PRA-designated UK nonbank SD and FCA-regulated UK nonbank SDs, the Commission anticipates assessing the comparability of the rules applicable to FCA-regulated UK nonbank SDs through a separate comparability determination.

[33] Article 3(1) and (2) of *The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013.*

[34] *Id.,* Article 3(4).

with the FCA before designating a person for prudential supervision.[35]

The PRA also has issued a Statement of Policy providing further detail regarding the factors that are considered in assessing an investment firm for prudential supervision.[36] The factors include: (i) whether the firm's balance sheet exceeds an average of GBP 15 billion total gross assets over four quarters; (ii) where the investment firm is part of a group, whether the sum of the balance sheets of all firms within the group that are authorized, or have requested authorization, to deal in investments as principals exceeds an average of GBP 15 billion over four quarters; and/or (iii) where the firm is part of a group subject to PRA supervision, whether the investment firm's revenues, balance sheet and risk taking is significant relative to the group's revenues, balance sheet, and risk-taking.[37] There are currently six PRA-designated UK nonbank SDs registered with the Commission: Citigroup Global Markets Limited, Goldman Sachs International, Merrill Lynch International, Morgan Stanley & Co. International Plc, MUFG Securities EMEA Plc, and Nomura International Plc.

The Applicants represented that the capital and financial reporting framework applicable to PRA-designated UK nonbank SDs is primarily based on the framework established by the European Union's (''EU'') Capital Requirements Regulation [38] and Capital Requirements Directive,[39] which set forth capital and financial reporting requirements applicable to ''credit institutions'' [40] and ''investment firms.'' [41] CRR, as a regulation, is directly applicable in all member states of the EU (''EU Member States'') and was, therefore, binding law in the UK during the UK's membership in the EU.[42] CRD, as a directive, was required to be transposed into EU Member States' national law, including UK law.[43] With regard to PRA-designated UK nonbank SDs, the UK implemented CRD primarily through a series of regulations, including the Capital Requirements Regulations 2013 [44] and the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014,[45] and the rules of the PRA.[46]

Following the UK's withdrawal from EU membership (''Brexit''), EU laws that were in effect and applicable as of December 31, 2020, were retained in UK law subject to certain non-substantive amendments seeking to reflect the UK's new position outside of the EU.[47] As such, directly applicable EU law, such as CRR, was converted into domestic UK law and UK legislation implementing EU directives, such as CRD, was preserved. The UK subsequently adopted additional changes, generally consistent with amendments introduced by the EU to CRR, CRD and other relevant EU provisions,[48] and incorporated certain CRR provisions in the PRA Rulebook.[49] The CRR provisions as applicable in the UK are referred hereafter as ''UK CRR.'' [50] The UK capital and financial reporting framework also comprises UK-specific requirements in respect of certain matters. Requirements applicable to PRA-designated UK nonbank SDs are included in the PRA Rulebook. In addition, Commission Delegated Regulation (EU) 2015/61,[51] which supplements UK CRR with regard to liquidity coverage requirement for credit institutions, applies to PRA-designated UK nonbank SDs and imposes separate liquidity requirements to these firms.[52]

The Applicants also represented that in addition to UK CRR and the PRA Rulebook, the Banking Act 2009 and its related secondary legislation, through which the UK transposed the Bank Recovery and Resolution Directive (''BRRD''), include relevant UK capital requirements.[53] Specifically, pursuant to the Banking Act 2009 and its secondary legislation, the Bank of

[35] *Id.,* Article 3(6).

[36] PRA, *Statement of Policy, Designation of Investment Firms for Prudential Supervision by the Prudential Regulation Authority, December 2021,* available here: *https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/statement-of-policy/2021/designation-of-investment-firms-for-prudential-supervision-by-the-pra-december-2021.pdf?la=en&hash=007EB17EDF2FA84714D372095F9E03627355776F.*

[37] *Id.,* at p. 5.

[38] *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012* (''Capital Requirements Regulation'' or ''CRR'').

[39] *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* (''Capital Requirements Directive'' or ''CRD'').

[40] The term ''credit institution'' is defined as an entity whose business consists of taking deposits and other repayable funds from the public and granting credits. CRR, Article 4(1), as applicable in the UK. For a reference to CRR provisions applicable in the UK, *see infra* note 50.

[41] The term ''investment firm'' is defined as an entity authorized under *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU* (''Markets in Financial Instruments Directive'' or ''MiFID''), and whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment-related activities on a professional basis, which includes dealing in derivatives for its own account. CRR, Article 4(1)(2) cross-referencing Article 4(1)(1) of MiFID.

[42] *Consolidated Version of the Treaty on the Functioning of the European Union,* OJ (C 326) 171, Oct. 26, 2012 (''TFEU''), Article 288.

[43] *Id.,* Article 288 (stating that a directive is binding as to the result to be achieved upon each EU Member State to which the directive is addressed, and further provides, however, that each EU Member State elects the form and method of implementing the directive). In this connection, EU Member States were required to implement and start applying amendments to CRD, introduced by *Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures* (''CRD V'') by December 29, 2020. Some CRD V provisions were subject to delayed implementation deadlines of June 28, 2021 and January 1, 2022. CRD V, Article 2.

[44] *Capital Requirements Regulations 2013,* Statutory Instrument 2013 No. 3115 (''Capital Requirements Regulations 2013'').

[45] *Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014,* Statutory Instrument 2014 No. 894 (''Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014'').

[46] The PRA's rules (''PRA Rulebook'') are available here: *https://www.prarulebook.co.uk/.*

[47] *See, An Act to Repeal the European Communities Act 1972 and make other provisions in connection with the withdrawal of the United Kingdom from the EU* (2018 c.16) (''European Union (Withdrawal) Act 2018'').

[48] PRA, *Policy Statement 21/21—The UK Leverage Framework, October 2021,* available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/2021/june/changes-to-the-uk-leverage-ratio-framework,* and *Policy Statement 22/21—Implementation of Basel standards: Final rules, October 2021,* available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/2021/october/implementation-of-basel-standards.*

[49] Pursuant to the Financial Services and Markets Act 2023 (''FSMA 2023''), the UK revoked CRR and replaced it with: (i) PRA rules adopted under Section 144 of the Financial Services and Markets Act 2000 (''FSMA'') and (ii) UK regulations, adopted under Section 4 of FSMA 2023, restating CRR provisions.

[50] The UK CRR is available here: *https://www.legislation.gov.uk/eur/2013/575/contents.* The provisions that were incorporated in the PRA Rulebook are no longer part of UK CRR and appear instead in the PRA Rulebook.

[51] *Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions* (''Liquidity Coverage Delegated Regulation'').

[52] PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part.

[53] *Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.* UK Application, p. 7.

England, in its role as resolution authority, requires certain investment firms, including PRA-designated UK nonbank SDs, to satisfy a firm-specific minimum requirement for own funds and eligible liabilities (''MREL'').[54]

UK CRR, Capital Requirements Regulations 2013, Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Liquidity Coverage Delegated Regulation, relevant provisions of Banking Act 2009 and its secondary legislation, and relevant parts of the PRA Rulebook are referred to hereafter as the ''UK PRA Capital Rules.''

The Applicants further represented that with respect to supervisory financial reporting, the framework applicable to PRA-designated UK nonbank SDs is also based on the EU requirements. In addition, the framework comprises PRA-specific rules for matters not addressed by the EU-based requirements. Specifically, Commission Implementing Regulation (EU) 680/2014,[55] which was initially retained in UK law following Brexit, supplemented CRR with implementing technical standards (''CRR Reporting ITS'') specifying, among other things, uniform formats and frequencies for the financial and capital requirements reporting required under CRR.[56] CRR Reporting ITS included templates for the common reporting (''COREP'') and the financial reporting (''FINREP'') that specify the contents of the EU-based supervisory reporting requirements. As part of the regulatory reforms that followed Brexit and sought to implement Basel standards, the PRA incorporated the entire body of the UK version of COREP and FINREP requirements into the PRA Rulebook to create a single source for reporting requirements for firms.[57] For PRA-designated UK nonbank SDs that are not subject to the EU-based FINREP requirements, the PRA Rulebook includes PRA-specific requirements.[58]

The Applicants also represented that the Companies Act 2006 contains provisions related to financial reporting, including a mandate that entities of a certain size be required to prepare annual audited financial statements and a strategic report.[59] UK CRR, relevant provisions of the PRA Rulebook, and relevant provisions of the Companies Act 2006, are collectively referred to hereafter as the ''UK PRA Financial Reporting Rules.''

The Applicants also noted that the U.S. Securities and Exchange Commission (''SEC'') has issued orders permitting an SEC-registered nonbank security-based swap dealer domiciled in the UK (''UK nonbank SBSD'')[60] to satisfy SEC capital[61] and financial reporting requirements via substituted compliance with applicable UK capital and financial reporting.[62] The UK Order conditioned substituted compliance for capital requirements on a UK nonbank SBSD complying with specified laws and regulations, including relevant parts of UK CRR and the PRA Rulebook, and also maintaining total liquid assets in an amount that exceeds the UK nonbank SBSD's total liabilities by at least $100 million and by at least $20 million after applying certain deductions to the value of the liquid assets to reflect market, credit, and other potential risks to the value of the assets.[63]

D. Proposed Comparability Determination and Proposed Comparability Order for PRA-Designated UK Nonbank Swap Dealers

On February 5, 2024, the Commission published the 2024 Proposal, seeking comment on the Application and the Commission's proposed Comparability Determination and related Comparability Order.[64] The 2024 Proposal set forth the Commission's preliminary Comparability Determination and proposed Comparability Order providing that, based on its review of the UK Application and applicable UK laws and/or rules, the Commission preliminarily found that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, subject to the conditions set forth in the proposed Comparability Order, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules.[65] The Commission, however, noted that there were certain differences between the UK PRA Capital Rules and CFTC Capital Rules and certain differences between the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules. As such, the Commission proposed certain conditions to the Comparability Order.[66] The proposed conditions were designed to promote consistency in regulatory outcomes, to reflect the scope of substituted compliance that would be available notwithstanding the differences, and to ensure that the Commission and National Futures Association (''NFA'') receive information to monitor PRA-designated UK nonbank SDs for ongoing compliance with the Comparability

[54] Banking Act 2009, Section 3A (4) and (4B); *Bank Recovery and Resolution (No 2) Order 2014,* Statutory Instrument No. 3348 (''Bank Recovery and Resolution (No 2) Order 2014''), Part 9.

[55] *Commission Implementing Regulation (EU) 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.*

[56] UK Application, p. 24 and Responses to Staff Questions dated October 5, 2023.

[57] PRA Rulebook, CRR Firms, Reporting (CRR) Part.

[58] PRA Rulebook, CRR Firms, Regulatory Reporting Part.

[59] UK Application, p.7. Companies Act 2006, Part 15 and 16. The Companies Act 2006 is available here: *https://www.legislation.gov.uk/ukpga/2006/46/contents.*

[60] All six of the PRA-designated UK nonbank SDs currently registered with the Commission are also UK nonbank SBSDs.

[61] Section 15F(e)(1)(B) of the Exchange Act (15 U.S.C. 78o–10) directs the SEC to adopt capital rules for security-based swap dealers (''SBSDs'') that do not have a prudential regulator.

[62] *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 United Kingdom,* 86 FR 43318 (July 30, 2021) (''Final UK Order''); *Amended and Restated 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 Germany; Amended Orders Addressing Non-U.S. Security-Based Swap Entities Subject to Regulation in the French Republic or the United Kingdom; and Order Extending the Time to Meet Certain Conditions Relating to Capital and Margin,* 86 FR 59797 (Oct. 28, 2021) (''Amended UK Order,'' together with the Final UK Order, ''UK Order''); *and Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7,* 86 FR 59208 (Oct. 26, 2021) (''SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information'').

[63] The conditioning of the UK substituted compliance order on UK nonbank SBSDs maintaining liquid assets in an amount that exceeds the UK nonbank SBSD's total liabilities by at least $100 million and by at least $20 million after applying certain deductions to the value of the liquid assets reflects that the SEC's capital rule for nonbank SBSDs is a liquidity-based requirement and that the SEC capital requirements are not based on the Basel standards. 17 CFR 240.18a–1(a)(1) (requiring a SBSD to maintain, in relevant part, net capital of $20 million or, if approved to use capital models, $100 million of tentative net capital and $20 million of net capital).

[64] 2024 Proposal, 89 FR 8026 (Feb. 5, 2024).

[65] *Id.* Consistent with the process specified in Section I.B. above for conducting Comparability Determinations, the Commission provided the Applicants with an opportunity to review for factual accuracy and completeness the Commission's description of relevant UK laws and regulations on which the proposed Comparability Determination and proposed Comparability Order were based. The Commission has relied on the Applicants' review, and has incorporated feedback and corrections received from the Applicants. As previously noted, a Comparability Determination and Comparability Order based on an inaccurate description of foreign laws and regulations may not be valid.

[66] *See* 2024 Proposal at 8058–8061.

Order.[67] The Commission further stated that, in its preliminary view, the identified differences would not be inconsistent with providing a substituted compliance framework for PRA-designated UK nonbank SDs subject to the conditions specified in the proposed Comparability Order.[68]

The proposed Comparability Order was limited to the comparison of the UK PRA Capital Rules to the CFTC Capital Rules' Bank-Based Capital Approach (''Bank-Based Approach'') for computing regulatory capital for nonbank SDs, which is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.[69] As noted by the Commission in the 2024 Proposal, the Applicants have not requested, nor has the Commission performed, a comparison of the UK PRA Capital Rules to the Commission's TNW Approach or NLA Approach.[70]

E. General Comments on the UK Application and the Commission's Proposed Finding of Comparability Between the CFTC Capital Rules and CFTC Financial Reporting Rules and the UK PRA Capital Rules and the UK PRA Financial Reporting Rules

The public comment period on the UK Application, the proposed Comparability Determination, and the proposed Comparability Order ended on March 24, 2024. The Commission received comments from the following four interested parties: Michael Ravnitzky (''Ravnitzky''); William J. Harrington (''Harrington''); Better Markets, Inc. (''Better Markets''); and the Applicants.[71]

The Applicants filed a comment letter generally expressing support for the proposed Comparability Determination and Comparability Order, agreeing with the Commission's overall analysis and determination of comparability of the CFTC Capital Rules and CFTC Financial Reporting Rules and the UK PRA Capital Rules and UK PRA Financial Reporting Rules.[72] The Applicants also included several technical comments, further discussed in section II. below, on the proposed conditions requiring PRA-designated UK nonbank SDs to file a notice with the Commission and NFA upon the occurrence of certain events. Finally, the Applicants recommended that the Commission refine the condition defining the scope of the UK PRA Capital Rules to specify that only the MREL-related provisions of the Banking Act 2009 would be considered part of UK PRA Capital Rules.[73] In support of their request, the Applicants stated that the reference to the Banking Act 2009 is included only because it imposes MREL on PRA-designated UK nonbank SDs.[74] The Commission notes that in the process leading to this Comparability Determination, the Commission has considered the Banking Act 2009 more broadly, including as it relates to the powers conferred to the PRA in its role as resolution authority. With respect to the definition of the UK PRA Capital Rules with which a PRA-designated UK nonbank SD must comply, however, the Commission believes that referring to the Banking Act 2009 only to the extent it imposes MREL on PRA-designated UK nonbank SDs is appropriate. Accordingly, the Commission has adjusted the language in final Condition 4 consistent with the Applicants' recommendation.

Conversely, two commenters disagreed with the CFTC's proposed Comparability Determination and proposed Comparability Order.[75] Better Markets asserted that the principles-based, holistic approach applied by the Commission, which assesses whether the applicable foreign jurisdiction's capital and financial requirements achieve comparable outcomes to the corresponding Commission requirements, ''is insufficiently rigorous, leaving far too much room for inaccurate and unwarranted comparability determinations.'' [76] Better Markets further asserted that in an attempt to restore London to its status of a global financial center in the post-Brexit environment, both major political parties in the UK are promising ''light touch'' regulation and incentivizing regulatory arbitrage.[77]

The Commission does not believe that the principles-based, holistic assessment that it conducted on the comparability of the UK PRA Capital Rules and UK PRA Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules was ''insufficiently rigorous,'' nor does the Commission believe that it left ''room for inaccurate and unwarranted comparability determinations.'' The principles-based, holistic approach employed in the Comparability Determination was performed in accordance with the substituted compliance assessment framework adopted by the Commission for capital and financial reporting requirements for foreign nonbank SDs and set out in Commission Regulation 23.106. Consistent with this assessment framework, the Commission focused on whether the UK PRA Capital Rules and UK PRA Financial Reporting Rules are designed with the objective of ensuring overall safety and soundness of the PRA-designated UK nonbank SDs in a

[67] NFA is a registered futures association (''RFA'') under Section 17 of the CEA (7 U.S.C. 21). Each SD registered with the Commission is required to be an NFA member. 17 CFR 170.16. NFA, as an RFA, is also required by the CEA to adopt rules imposing minimum capital, segregation, and other financial requirements, as applicable, to its members, including SDs, that are at least as stringent as the Commission's minimum capital, segregation, and other financial requirements for such registrants, and to implement a program to audit and enforce such requirements. 7 U.S.C. 21(p). Therefore, the Commission's proposed Comparability Order required PRA-designated UK nonbank SDs to file certain financial reports and notices with NFA so that it may perform oversight of such firms as required under Section 17 of the CEA. The Commission will refer to NFA in this Comparability Determination when referring to the requirements or obligations of an RFA.

[68] *Id.*

[69] *Id.* As described in the 2024 Proposal, the CFTC Capital Rules provide nonbank SDs with three alternative capital approaches: (i) the Tangible Net Worth Capital Approach (''TNW Approach''); (ii) the Net Liquid Assets Capital Approach (''NLA Approach''); and (iii) the Bank-Based Approach. *See* 2024 Proposal at 8031–8033, and 17 CFR 23.101. The Bank-Based Approach is consistent with the Basel Committee on Banking Supervision's (''BCBS'') international framework for bank capital requirements (''BCBS framework'' or ''Basel standards''). The BCBS is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Institutions represented on the BCBS include the Federal Reserve Board, the European Central Bank, Deutsche Bundesbank, Bank of England, Bank of France, Bank of Japan, Banco de Mexico, and Bank of Canada. The BCBS framework is available at *https://www.bis.org/basel_framework/index.htm.*

[70] *See* 2024 Proposal at 8035–8036.

[71] Letters from: Michael Ravnitzky (''Ravnitzky Letter''); Dennis M. Kelleher, Co-founder, President and CEO, and Cantrell Dumas, Director of Derivatives Policy, Better Markets (March 24, 2024) (''Better Markets Letter''); and Stephanie Webster, General Counsel, IIB, Steven Kennedy, Global Head of Public Policy, ISDA, and Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA (March 24, 2024) (''Applicants' Letter''); Letter from William J. Harrington dated March 24, 2024 (''Harrington 03/24/2024 Letter'') and supporting material. The comment letters and related documents for the 2024 Proposal are available at: *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7478.*

[72] Applicants' Letter at p. 2.

[73] *Id.* at p. 4.

[74] *Id.*

[75] Better Markets Letter at p. 3–5; Harrington 03/24/2024 Letter at p. 4 (asserting, as further discussed below, that the Commission should condition the Comparability Determination on a prohibition against PRA-designated UK nonbank SDs' entering into swap contracts with certain specified features).

[76] Better Markets Letter at p. 5.

[77] *Id.*

manner that is comparable with the Commission's overall objective of ensuring the safety and soundness of nonbank SDs.

As stated in the 2024 Proposal, due to the detailed and complex nature of the capital frameworks, differences in how jurisdictions approach and implement the requirements are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.[78] Furthermore, as discussed in section I.B. above, when adopting Commission Regulation 23.106, the Commission stated that ''its approach to substituted compliance is a principles-based, holistic approach that focuses on whether the foreign regulations are designed with the objectives of ensuring the overall safety and soundness of the [non-US nonbank SD] in a manner that is comparable with the Commission's overall capital and financial reporting requirements, and is not based on a line-by-line assessment or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements.'' [79]

The approach and standards set forth in Commission Regulation 23.106, with the focus on ''comparable outcomes,'' are also consistent with the Commission's precedents of undertaking a principles-based, holistic assessment of the comparability of foreign regulatory regimes for purposes of substituted compliance for cross-border swap transactions. The Commission first outlined its approach to substituted compliance with respect to swaps requirements in 2013, when it issued an Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations.[80] In the Guidance, the Commission stated that ''[i]n evaluating whether a particular category of foreign regulatory requirement(s) is comparable and comprehensive to the applicable requirement(s) under the CEA and Commission regulations, the Commission will take into consideration all relevant factors, including but not limited to, the comprehensiveness of those requirement(s), the scope and objectives of the relevant regulatory requirement(s), the comprehensiveness of the foreign regulator's supervisory compliance program, as well as the home jurisdiction's authority to support and enforce its oversight of the registrant.'' [81] The Commission emphasized that in this context, ''comparable does not necessarily mean identical.'' [82] Rather, the Commission stated that it would evaluate whether the home jurisdiction's regulatory requirement is comparable to, and as comprehensive as, the corresponding U.S. regulatory requirement(s).[83] In conducting comparability determinations based on the policy set forth in the Guidance, the Commission noted that the ''outcome-based'' approach recognizes that ''foreign regulatory systems differ and their approaches vary and may differ from how the Commission chose to address an issue, but that the foreign jurisdiction's regulatory requirements nonetheless achieve the regulatory outcome sought to be achieved by a certain provision of the CEA or Commission regulation.'' [84]

The Commission further elaborated on the required elements of comparability in 2016, when it issued final rules to address the cross-border application of the Commission's margin requirements for uncleared swap transactions. Specifically, the Commission stated that its substituted compliance approach reflects an outcome-based assessment of the comparability of a foreign jurisdiction's margin requirements with the Commission's corresponding requirements.[85] The Commission further stated that it would evaluate the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority.[86] Consistent with its previously stated position, the Commission recognized that jurisdictions may adopt different approaches to achieving the same outcome and, therefore, the assessment would focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.[87] The Commission's policy thus reflects an understanding that a line-by-line evaluation of a foreign jurisdiction's regulatory regime is not the optimum approach to assessing the comparability of complex structures whose individual components may differ based on jurisdiction-specific considerations, but which achieve the objective and outcomes set forth in the Commission's framework.

With respect to the UK Application, the process leading to the Commission's Comparability Determination involved Commission staff reviewing relevant UK laws, rules, and regulations cited in the UK Application. Staff verified the assertions and citations contained in the UK Application regarding the specific UK PRA Capital Rules and UK PRA Financial Reporting Rules to the relevant UK laws, rules, and regulations.[88]

Commission staff also evaluated the comparability of the UK PRA Capital Rules and UK PRA Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules with respect to the following areas: (i) the process of establishing minimum capital requirements for PRA-designated UK nonbank SDs and how such process addresses risk, including market risk and credit risk of the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures; (ii) the types of equity and debt instruments that qualify as regulatory capital in meeting a PRA-designated UK nonbank SD's minimum capital requirements; (iii) the financial reports and other financial information submitted by a PRA-designated UK nonbank SD to the PRA, and whether such information provides the PRA with the means necessary to effectively monitor the financial condition of the PRA-designated UK nonbank SD; and (iv) the regulatory notices and other communications between a PRA-designated UK nonbank SD and the PRA that address potential adverse financial or operational issues that may impact the firm.[89] With respect to the ability of the PRA to supervise and enforce compliance with the UK PRA Capital Rules and UK PRA Financial Reporting Rules, the Commission's assessment included a review of the PRA's surveillance program for monitoring compliance by PRA-designated UK nonbank SDs with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, and the disciplinary process imposed on firms that fail to comply with such requirements.[90] In conducting its assessment of the PRA's

[78] *See* 2024 Proposal at 8036.

[79] 85 FR 57462 at 57521.

[80] *Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations,* 78 FR 45292 (July 26, 2013) (''Guidance'').

[81] Guidance at 45343.

[82] *Id.*

[83] *Id.*

[84] *See e.g., Comparability Determination for the European Union: Certain Entity-Level Requirements,* 78 FR 78923 (December 27, 2013) at 78926.

[85] *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements,* 81 FR 34817, 34836–34837 (May 31, 2016).

[86] *Id.*

[87] *Id.*

[88] Staff also reviewed various documents relevant to the proposed Comparability Determination and proposed Comparability Order published by the PRA.

[89] 2024 Proposal at 8036–8058.

[90] *Id.* at 8057–8058.

regulatory and supervisory framework, the Commission did not identify elements supporting Better Markets' assertion that the framework is characterized by ''light touch'' regulation.[91]

Contrary to the position articulated by Better Markets regarding the nature of the comparability assessment, the Commission believes that the principles-based, holistic assessment of the UK PRA Capital Rules and UK PRA Financial Reporting Rules against the CFTC Capital Rules and CFTC Financial Reporting Rules, as outlined above and discussed in detail in section II below, was sufficiently rigorous for purposes of determining if the UK PRA regulations are comparable in purpose and effect to the CEA and Commission regulations. Better Markets further asserted that even under a principles-based, holistic approach, the UK PRA capital and financial reporting requirements for PRA-designated UK nonbank SDs do not satisfy the test for an order granting substituted compliance as the PRA's regulatory framework governing capital and financial reporting is not comparable to the corresponding CFTC requirements.[92] Better Markets cited the Commission's inclusion of conditions in the proposed Comparability Order as demonstrating the Commission's need ''to compensate for the acknowledged gaps in the UK PRA framework'' and as a ''de facto admission that the regulations are not comparable and that the [UK Application] should be denied.'' [93] Better Markets claimed that the Commission proposed 12 filing requirements that must be met as a condition for the comparability determination, and stated that the Commission was not issuing a comparability finding, but was engaging in a ''de facto rewriting'' of the PRA's laws and rules in the form of conditions.[94]

Conversely, another commenter, Ravnitzky, noted that the ''CFTC need not be limited to finding a binary yes or no answer to the comparability determination'' and ''has the flexibility to grant conditional substituted compliance.'' [95] In this regard, Ravnitzky recommended that the Commission exercise its authority ''to make a flexible and nuanced decision, and strive to impose only the necessary conditions for approving the UK PRA rules as substitutes, to minimize the regulatory burden while achieving the necessary risk reduction.'' [96]

The Commission disagrees that the inclusion of conditions in the Comparability Order precludes a finding of comparability with respect to the UK PRA Capital Rules and UK PRA Financial Reporting Rules. The Commission's comparability assessment process, consistent with the holistic approach, contemplates the potential need for a Comparability Order to contain conditions. Specifically, Commission Regulation 23.106(a)(5) states that the Commission may impose any terms and conditions it deems appropriate in issuing a Comparability Order, including conditions with respect to capital adequacy and financial reporting requirements of non-U.S. nonbank SDs.[97]

The process employed in this Comparability Determination is consistent with the Commission's established approach to conducting comparability assessments. Upon a finding of comparability, the Commission's policy generally is that eligible entities may comply with a substituted compliance regime subject to the conditions the Commission places on its finding, and subject to the Commission's retention of its examination authority and its enforcement authority.[98] In this regard, the Commission has stated that certain conditions included in a Comparability Order may be designed to ensure the Commission's direct access to books and records required to be maintained by an SD registered with the Commission.[99] Other conditions may address areas where the foreign jurisdiction lacks analogous requirements.[100] The inclusion of conditions in a Comparability Order was contemplated as an integral part of the Commission's holistic, principles-based approach to conducting comparability assessments and is not inconsistent with a grant of substituted compliance.

In particular, Commission Regulation 23.106(a)(5) states the Commission's authority to impose conditions in issuing a Comparability Determination in connection with the CFTC Capital Rules and the CFTC Financial Reporting Rules. As further discussed below, the conditions proposed in the 2024 Proposal are clearly of the nature contemplated by Commission Regulation 23.106(a)(5).

The Commission also does not believe that the inclusion of the conditions in the Comparability Order reflects a ''rewriting'' of the UK laws and regulations as asserted by Better Markets. Consistent with the Commission's policy described above, a majority of the conditions contained in the Comparability Order are designed to ensure that: (i) the PRA-designated UK nonbank SD is eligible for substituted compliance based on the UK laws and regulations that were reviewed by the Commission in performing the comparability assessment, and (ii) the Commission and NFA receive timely financial information and notices to effectively monitor a PRA-designated nonbank SD's compliance with relevant UK capital and financial reporting rules and to assess the ongoing safety and soundness of the PRA-designated UK nonbank SD. Specifically, there are 25 conditions in the final Comparability Order. Six conditions set forth criteria that a PRA-designated UK nonbank SD must meet to be eligible for substituted compliance pursuant to the Comparability Order.[101] The six

[91] For a further discussion of the Commission's assessment of the PRA's supervision and enforcement powers, *see* Section II.F. below. In addition, in its policy statement discussing the forthcoming implementation of Basel 3.1 standards, the PRA noted that despite some adjustments to the international standards, the PRA considers that its policy and rules proposals align with the international framework. In this regard, the PRA expressed the view that alignment with international standards in turn supports the UK's competitiveness, including relative standing of the UK as a global financial center, by ''strengthening key stakeholders' confidence in the UK banking system'' and ''assuring regulators in other jurisdictions of UK's authorities' commitment to robust standards.'' *See* PRA, PS17/23—Implementation of the Basel 3.1 Standards Near-Final Part 1, December 12, 2023, available here: *https://www.bankofengland.co.uk/news/2023/december/pra-publishes-first-of-two-policy-statements-for-basel-3-1-standards-implementation.*

[92] Better Markets Letter at p. 5.

[93] *Id.*

[94] *Id.* at p. 4.

[95] Ravnitzky Letter at p. 6.

[96] *Id.*

[97] 17 CFR 23.106(a)(5), which provides that in issuing a Capital Comparability Determination, the Commission may impose *any terms and conditions it deems appropriate,* including certain capital adequacy and financial reporting requirements on swap dealers . . . (Emphasis added). Commission Regulation 23.106(a)(3) establishes the Commission's standard of review for performing a Comparability Determination and provides that the Commission may consider all relevant factors, including whether the relevant foreign jurisdiction's capital adequacy and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital adequacy and financial reporting requirements for SDs. 17 CFR 23.106(a)(3)(ii).

[98] 85 FR 57462 at 57520. *See also* Guidance at 45342–45344 and *Comparability Determination for the European Union: Certain Transaction Level Requirements,* 78 FR 78878 (December 27, 2013) at 78880.

[99] *Comparability Determination for the European Union: Certain Transaction Level Requirements,* 78 FR 78878 (December 27, 2013) at 78880.

[100] Guidance at 45343.

[101] The six criteria provide that the PRA-designated UK nonbank SD: (i) is not subject to capital rules of a U.S. prudential regulator (Condition 1); (ii) is organized and domiciled in the UK (Condition 2); (iii) is licensed as an investment firm and designated for prudential supervision by

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conditions ensure that only PRA-designated UK nonbank SDs that are within the scope of, and comply with, the UK PRA Capital Rules and UK PRA Financial Reporting Rules that were part of the Commission's comparability assessment may apply for substituted compliance. Ten additional conditions require PRA-designated UK nonbank SDs within the scope of the Comparability Order to provide notice to the Commission and NFA of certain defined events,[102] and a further two conditions require PRA-designated nonbank SDs to file with the Commission and NFA copies of certain unaudited and audited financial reports that the firms provide to the PRA.[103] In addition, two additional conditions reflect administrative matters necessary to implement the substituted compliance framework.[104] Lastly, five conditions impose obligations on PRA-designated UK nonbank SDs that align with certain of the Commission's requirements for nonbank SDs. The five conditions require a PRA-designated UK nonbank SD to: (i) maintain common equity tier 1 capital denominated in GBP equal to or in excess of the equivalent of $20 million (Condition 7); (ii) prepare and keep current financial books and records (Condition 9); (iii) file a monthly schedule of the firm's financial positions on Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations (Condition 12); (iv) file a monthly report listing the custodians holding margin posted by, and collected by, the PRA-designated UK nonbank SD, the amount of margin held by each custodian, and the aggregate amount of margin required to be posted and collected by the PRA-designated UK nonbank SD (Condition 14); and (v) submit, with each filing of financial information, a statement by an authorized representative that, to the best knowledge and belief of the person making the representation, the information is true and correct (Condition 13).

As the substance of these conditions demonstrates, the primary objective of a majority of the conditions is not to compensate for regulatory gaps in the UK PRA capital and financial reporting framework, but rather to ensure that the Commission and NFA receive information to conduct ongoing monitoring of PRA-designated UK nonbank SDs for compliance with relevant capital and financial reporting requirements and to assess the firm's overall safety and soundness. As discussed above, in issuing the Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. The Comparability Order permits PRA-designated UK nonbank SDs to satisfy the Commission's capital and financial reporting requirements by complying with certain UK laws and/or regulations that have been found comparable to the Commission's laws and/or regulations in purpose and effect. The Commission and NFA, however, have a continuing obligation to conduct ongoing oversight, including potential examination, of PRA-designated UK nonbank SDs that operate under a Comparability Order to ensure compliance with the Comparability Order, including its conditions.[105] To that effect, the notice and financial reporting conditions set forth in the Comparability Order provide the Commission and NFA with information necessary to monitor for such compliance and to evaluate the operational condition and ongoing financial condition of PRA-designated UK nonbank SDs. The Commission may also initiate an enforcement action against a PRA-designated UK nonbank SD that fails to comply with the conditions of the Comparability Order.

Furthermore, to the extent that a condition imposes a new regulatory obligation on PRA-designated UK nonbank SDs, the imposition of such condition is also consistent with Commission Regulation 23.106 and the Commission's established policy with regard to comparability determinations. As discussed above, the Commission contemplated that even in circumstances where the Commission finds two regulatory regimes comparable, the Commission may impose requirements on entities relying on substituted compliance where the Commission determines that the home jurisdiction's regime lacks comparable and comprehensive regulation on a specific issue.[106] The Commission's authority to impose such conditions is set out in Commission Regulation 23.106(a)(5), which states that the Commission may impose ''any terms and conditions it deems appropriate, including certain capital adequacy and financial reporting requirements [on SDs].'' [107]

Better Markets further stated that, if the Commission grants substituted compliance with regard to materially

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the PRA (Condition 3); (iv) is subject to the UK CRR, CRD provisions as implemented in the UK, the Liquidity Coverage Delegated Regulation, the provisions of the Banking Act 2009 and its secondary legislation related to the MREL, and the rules of the PRA as reflected in the PRA Rulebook (Condition 4); (v) satisfies at all times applicable UK CRR and PRA Rulebook capital ratios, leverage ratios, and capital conservation buffer ratios, and maintains a liquidity risk management program as required under the PRA Rulebook (Condition 5); and (vi) is subject to and complies with the UK financial reporting requirements that are part of the Commission's comparability assessment (Condition 6).

[102] The ten conditions require a PRA-designated UK nonbank SD to provide notice to the Commission in the event that the firm: (i) is informed by the PRA that the firm has failed to comply with any component of the UK PRA Capital Rules or UK PRA Financial Reporting Rules (Condition 15); (ii) fails to maintain common equity tier 1 capital denominated in GBP in an equivalent amount of at least $20 million (Condition 16); (iii) breaches its combined capital buffer requirement and is required to file a capital conservation plan with the PRA (Condition 17); (iv) is required by the PRA to maintain additional capital or additional liquidity (Condition 18); (v) fails to meet the required MREL (Condition 19); (vi) experiences a 30 percent or more decrease in its excess regulatory capital (Condition 20); (vii) fails to make or keep current financial books and records (Condition 21); (viii) fails to post or collect margin for uncleared swaps and non-cleared security-based swaps with one or more counterparties in amounts that exceed defined limits (Condition 22); (ix) changes its fiscal year-end date (Condition 23); and (x) is subject to material changes to the UK PRA Capital Rules, UK PRA Financial Reporting Rules, or the supervisory authority of the PRA (Condition 24).

[103] The two conditions provide that a PRA-designated UK nonbank SD must file with the Commission and NFA: (i) a copy of SEC Form X–17A–5 (''FOCUS Report'') that the PRA-designated UK nonbank SD files with the SEC or copies of certain financial reporting templates that the PRA-designated UK nonbank SD is required to submit to the PRA pursuant to PRA Rulebook rules, as applicable (Condition 10), and (ii) copies of its annual audited accounts and strategic report that are required to be prepared and published pursuant to Parts 15 and 16 of Companies Act 2006 (Condition 11).

[104] One of the administrative conditions provides that a PRA-designated UK nonbank SD must provide a notice to the Commission of its intent to comply with the Comparability Order and the UK PRA Capital Rules and UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. The notice must include the PRA-designated UK nonbank SD's representation that the firm is organized and domiciled in the UK, is a licensed investment firm designated for prudential supervision by the PRA, and is subject to and complies with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules (Condition 8). The second administrative condition provides that a PRA-designated UK nonbank SD must file any documents with the Commission and NFA via electronic transmission (Condition 25).

[105] As the Commission stated in the 2024 Proposal, a non-U.S. nonbank SD that operates under a Comparability Order issued by the Commission remains subject to the Commission's examination and enforcement authority. Specifically, the Commission may initiate an enforcement action against a non-U.S. nonbank SD that fails to comply with its home-country capital adequacy and/or financial reporting requirements cited in a Comparability Order. *See* 2024 Proposal at 8029. *See also* 17 CFR 23.106(a)(4)(ii), which provides that the Commission may examine all nonbank SDs, regardless of whether the nonbank SDs rely on substituted compliance, and that the Commission may initiate an enforcement action under the Commission's capital and financial reporting regulations against a non-U.S. nonbank SD that fails to comply with a foreign jurisdiction's capital adequacy and financial reporting requirements.

[106] Guidance at 45343.

[107] 17 CFR 23.106(a)(5).

different regulatory requirements, it must make a well-supported, evidence-based determination that those different requirements nevertheless will, in fact, lead to comparable regulatory outcomes.[108] In this connection, Better Markets stated that if the Commission grants the Comparability Determination and Comparability Order, it must, at a minimum, clearly and specifically set forth the desired regulatory outcome and provide a detailed, evidence-based explanation as to how the jurisdiction's different legal requirements nonetheless lead to that regulatory outcome.[109] Better Markets further asserted that ''[a] determination that a foreign jurisdiction's nonbank SDs rules would produce comparable regulatory outcomes is the beginning, not the end, of the CFTC's obligation to ensure that the activities of the foreign nonbank SD entities do not pose risks to the U.S. financial system. As time goes on, regulatory requirements that, in theory, are expected to produce one regulatory outcome may, in practice, produce a different one. And, of course, the regulatory requirements may themselves be changed in a variety of ways. Finally, the effectiveness of an authority's supervision and enforcement program can become weakened for any number of reasons—the CFTC cannot assume that an enforcement program that it believes is presently effective will continue to be effective.'' [110] Better Markets further asserted that to fulfill its obligation to protect the U.S. financial system, the CFTC must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time by requiring, at a minimum, each order of substituted compliance, and each MOU with a foreign regulatory authority, to impose an obligation on the applicant, as appropriate, to: (i) periodically apprise the Commission of the activities and results of its supervision and enforcement programs, to ensure that they remain sufficiently robust to deter and address violations of the law; and (ii) immediately apprise the Commission of any material changes to the regulatory regime, including changes to rules or interpretations of rules.[111]

Although the Commission disagrees that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, as a whole, are materially different or do not achieve comparable regulatory outcomes, the Commission concurs that granting substituted compliance should be the result of a well-supported comparability assessment. Consistent with that view, the Commission believes that this final Comparability Determination clearly states the desired regulatory outcomes, articulates the Commission's analysis in sufficient detail, and provides an appropriate explanation of how the foreign jurisdiction's requirements are comparable in purpose and effect with the Commission's requirements, and lead to comparable regulatory outcomes with the Commission's requirements. Specifically, section III of the 2024 Proposal and section II of the final Comparability Determination reflect, among other observations, the Commission's detailed analysis with respect to each of the elements for consideration listed in Commission Regulation 23.106(a)(3).

The Commission also concurs that the availability of substituted compliance is conditioned upon a non-US nonbank SD's ongoing compliance with the terms and conditions of the final Comparability Order, and the Commission's ongoing assessment that the UK PRA Capital Rules and UK PRA Financial Reporting Rules remain comparable in purpose and effect with the CFTC Capital Rules and CFTC Financial Reporting Rules. As noted above, and discussed in more detail in sections II.D. and E. below, PRA-designated UK nonbank SDs are subject to notice and financial reporting requirements under the final Comparability Order that provide Commission and NFA staff with the ability to monitor the PRA-designated UK nonbank SDs' ongoing compliance with the conditions set forth in the final Comparability Order. In addition, the final Comparability Order requires a PRA-designated UK nonbank SD, or an entity acting on its behalf, to inform the Commission of changes to the relevant UK PRA Capital Rules and UK PRA Financial Reporting Rules so that the Commission may assess the continued effectiveness of the Comparability Order in ensuring that the relevant UK laws and regulations have the comparable regulatory objectives of the CEA and Commission regulations of ensuring the safety and soundness of nonbank SDs.[112] Commission staff will also monitor the PRA-designated UK nonbank SDs directly as part of its supervisory program and will discuss with the firms any proposed or pending revisions to specific rules cited in the final Comparability Order. Lastly, in addition to assessing the effectiveness of the Comparability Order as a result of revisions or proposed revisions to the UK laws, regulations, or supervisory regime administered by the PRA, the Commission further notes that future material changes to the CFTC Capital Rules or CFTC Financial Reporting Rules, or the Commission's or NFA's supervisory programs, may necessitate an amendment to the Comparability Determination and Comparability Order to reflect those changes.[113]

Another commenter, Harrington, stated that the Commission must condition the Comparability Order on an ''outright prohibition against regulated entities providing [swap contracts that include a ''flip clause'']. '' [114] Harrington has elsewhere referred to a description of a ''flip clause'' as a provision in swap contracts with structured debt issuers that reverses or ''flips'' the priority of payment obligations owed to the swap counterparty on the one hand and the noteholders on the other, following a specified event of default.[115] Based on Harrington's description, flip clauses present a risk to the SD in synthetic transactions where payments under a swap contract are secured with the same collateral that would serve to cover payments under the notes issued by a structured debt issuer. In such circumstances, an ''event of default'' by the SD would cause the SD's priority of

[108] Better Markets at p. 10.

[109] *Id.*

[110] *Id.*

[111] *Id.* at p. 11.

[112] Condition 24 of the final Comparability Order requires a PRA-designated UK nonbank SD, or an entity acting on its behalf, to notify the Commission of any material changes to the information submitted in its application, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules and proposed and final material changes to the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 24 as compared to proposed Condition 24.

[113] 2024 Proposal at 8036 (n. 128).

[114] Harrington 03/24/2024 Letter at p. 4. Harrington also referenced the following two separate submissions to the Commission and noted that these submissions support the Harrington 03/24/2024 Letter: a letter dated October 20, 2022 (''Harrington 10/20/2022 Letter''), submitted in connection with the Commission's *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination From the Financial Services Agency of Japan,* 87 FR 48092, (August 8, 2022) and a letter dated August 28, 2023 (''Harrington 08/28/2023 Letter''), submitted in connection with the Commission's *Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union,* 88 FR 41774 (June 27, 2023). Harrington 03/24/2024 Letter at p.7.

[115] William J. Harrington, Submission to the U.S. Securities and Exchange Commission Re: File No. S7–08–12 (Nov. 19, 2018) at p.8.

payment from the collateral under a swap to ''flip'' to a more junior priority position, including for mark-to-market gains on ''in the money'' swaps.[116] Harrington argued that swap contracts with a flip clause incentivize SDs to ''self-sabotage by under-sourcing themselves.'' [117] Harrington recognized, however, that the CFTC margin requirements for uncleared swap transactions address his concerns associated with the inclusion of a flip clause.[118] Nonetheless, according to Harrington, risks arise in circumstances when non-U.S. margin rules exempt SDs from margin obligations in connection with swaps with a structured debt issuer.[119]

The Commission recognizes that given some definitional differences and differences in the activity thresholds with respect to the scope of application of the CFTC margin requirements and non-U.S. margin requirements, some transactions that are subject to the CFTC margin requirements for uncleared swaps may not be subject to margin requirements in another jurisdiction. In connection with this Comparability Determination, however, the Commission notes that both under the CFTC Capital Rules and the UK PRA Capital Rules, uncollateralized exposures from uncleared swap transactions would generate a higher counterparty credit risk amount than the exposures resulting from transactions under which the counterparties have posted collateral.[120] Accordingly, the Commission does not believe that the respective sets of rules adopt a conflicting approach or lead to a disparate outcome with respect to the capital treatment of uncollateralized uncleared swap exposures that would warrant a finding of non-comparability of the CFTC Capital Rules and the UK PRA Capital Rules.

Finally, one commenter, Ravnitzky, noted that due to differences in how the respective jurisdictions define the regulatory categories of registrants involved in swap dealing activity (*i.e.,* differences between the term ''swap dealer'' as defined under the Commission's regulations and the term ''investment firm'' as defined under the PRA's framework), it may be ''unclear or inconsistent which entities can use substituted compliance under the [proposed Comparability Order].'' [121] The Commission notes, as discussed above, that the Comparability Order will apply with respect to UK-domiciled, PRA-designated investment firms that are registered with the Commission as SDs and not subject to regulation by a U.S. prudential regulator. In this regard, the Commission believes that proposed Conditions 1 through 4, which the Commission adopts without material changes, clearly define the scope of entities that may request to rely on the Comparability Order.

II. Final Capital and Financial Reporting Comparability Determination and Comparability Order

The following section provides the Commission's comparative analysis of the UK PRA Capital Rules and the UK PRA Financial Reporting Rules with the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules, as described in the 2024 Proposal, further modified to address comments received. As emphasized in the 2024 Proposal, the capital and financial reporting regimes are complex structures comprised of a number of interrelated regulatory components.[122] Differences in how jurisdictions approach and implement these regimes are expected, even among jurisdictions that base their requirements on the principles and standards set forth in the BCBS framework.

The Commission performed the analysis by assessing the comparability of the UK PRA Capital Rules for PRA-designated UK nonbank SDs as set forth in the UK Application and in certain applicable UK laws and regulations with the Commission's Bank-Based Approach for nonbank SDs. The Commission understands that all PRA-designated UK nonbank SDs addressed by the UK Application, as of the date of the final Comparability Determination, are subject to a bank-based capital approach under the UK PRA Capital Rules. Accordingly, when the Commission makes its final determination herein about the comparability of the UK PRA Capital Rules with the CFTC Capital Rules, the determination pertains to the comparability of the UK PRA Capital Rules with the Bank-Based Approach under the CFTC Capital Rules. The Commission notes that any material changes to the information submitted in the UK Application, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules, as well as any proposed and final material changes to the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs, will require notification to the Commission and NFA pursuant to Condition 24 of the final Comparability Order.[123] Therefore, if there are subsequent material changes to the UK PRA Capital Rules, UK PRA Financial Reporting Rules, or PRA's supervisory authority or regime, the Commission will review and assess the impact of such changes on the final Comparability Determination and Comparability Order as they are then in effect, and may amend or supplement the Comparability Order as appropriate.[124]

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[116] For additional information on the legal mechanics of a flip clause, *see* Lehman Brothers Special Financing Inc v. Bank of America N.A., No. 18–1079 (2nd Cir. 2020).

[117] Harrington 03/24/2024 Letter at p. 8.

[118] Harrington 03/24/2024 Letter at p. 21 (noting that ''[the CFTC margin requirements] render the flip-clause-contract commercially impracticable in the U.S.'' and that ''U.S. swap margin rules, including the CFTC swap margin rule, have greatly benefited U.S. persons by subduing financial sector credit exposures that might otherwise draw bailouts or other U.S. government support'').

[119] Harrington 03/24/2024 Letter at p. 25 (arguing that ''U.K. and other non-U.S. swap margin and capital rules perpetuate the flip-clause-swap-contract by allowing [asset-backed securities] issuers, other structured debt issuers, banks, and swap dealers to under-resource their [respective] contract exposures via both exemptions from margin posting and see-no-evil capital rules that treat the contract as '*plain vanilla*'.'')

[120] 12 CFR 217.34 and 12 CFR 217.132 (indicating that nonbank SDs may recognize the risk-mitigating effects of financial collateral for collateralized derivatives contracts) and PRA Rulebook, CRR Firms, Counterparty Credit Risk Part, Article 276 and UK CRR, Article 285 (setting forth rules for the recognition and treatment of collateral in calculating the PRA-designated UK nonbank SD's counterparty credit risk exposure).

[121] Ravnitzky Letter at p. 4.

[122] *See* 2024 Proposal at 8036.

[123] Condition 24 of the final Comparability Order. The Commission notes that it made certain non-substantive, clarifying changes to the language of final Condition 24 as compared to proposed Condition 24.

[124] *See* 2024 Proposal at 8036. As stated in the 2024 Proposal, the Commission may also amend or supplement the final Comparability Order to address any material changes to the CFTC Capital Rules and CFTC Financial Reporting Rules, including rule amendments to capital rules of the Federal Reserve Board that are incorporated into the CFTC Capital Rules' Bank-Based Approach under Commission Regulation 23.101(a)(1)(i), that are adopted after the final Comparability Order is issued. *See id.,* (n. 128). As noted in the 2024 Proposal, the Commission is aware that the PRA is considering changes to the UK PRA Capital Rules to implement Basel 3.1 standards. *See* PRA, PS17/23—Implementation of the Basel 3.1 Standards Near-Final Part 1, December 12, 2023, available here: *https://www.bankofengland.co.uk/news/2023/december/pra-publishes-first-of-two-policy-statements-for-basel-3-1-standards-implementation*. If the PRA proceeds with the implementation of the Basel 3.1 standards as proposed, the regulatory changes would be applicable after July 1, 2025 with a 4.5-year transitional period ending on January 1, 2030. The Commission will monitor progress on the PRA's proposed regulatory changes and may amend or supplement the Comparability Order. As noted, the Commission requires notification of any material changes to the UK PRA Capital Rules, including any Basel 3.1 implementing provisions.

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and UK PRA Capital Rules and UK PRA Financial Reporting Rules

1. Preliminary Determination

As reflected in the 2024 Proposal and discussed above, the Commission preliminarily determined that the overall objectives of the UK PRA Capital Rules and the CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing regulatory regimes that require nonbank SDs to maintain a sufficient amount of qualifying regulatory capital to absorb losses, including losses from swaps and other trading activities, and to absorb decreases in the value of firm assets and increases in the value of firm liabilities without the nonbank SDs becoming insolvent.[125] The Commission further noted that the UK PRA Capital Rules and CFTC Capital Rules are based on, and consistent with, the BCBS framework, which was designed to ensure that banking entities hold sufficient levels of capital to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without the banks becoming insolvent.[126]

The Commission also preliminarily found that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules given that both regulatory approaches compute the minimum capital requirements based on the level of a nonbank SD's on-balance sheet and off-balance sheet exposures, with the objective and purpose of ensuring that the nonbank SD's capital is adequate to absorb losses or decreases in the value of firm assets or increases in the value of firm liabilities resulting from such exposures. The Commission observed that the UK PRA Capital Rules and CFTC Capital Rules provide for a comparable approach to the calculation of market risk and credit risk exposures using standardized or internal model-based approaches.[127] In addition, as discussed in the 2024 Proposal, the UK PRA Capital Rules' and CFTC Capital Rules' requirements for identifying and measuring on-balance sheet and off-balance sheet exposures under standardized or internal model-based approaches are also consistent with the requirements set forth under the BCBS framework for identifying and measuring on-balance sheet and off-balance sheet exposures.[128]

Finally, the Commission preliminarily noted that the UK PRA Capital Rules and CFTC Capital Rules further achieve comparable outcomes and are comparable in purpose and effect in that both sets of rules limit the types of capital instruments that qualify as regulatory capital to cover the on-balance sheet and off-balance sheet risk exposures to high quality equity capital and qualifying subordinated debt instruments that meet conditions designed to ensure that the holders of the debt have effectively subordinated their claims to other creditors of the nonbank SD.[129] As discussed in the 2024 Proposal and in section II.B. below, both the UK PRA Capital Rules and the CFTC Capital Rules define high quality capital by the degree to which the capital represents permanent capital that is contributed, or readily available to a nonbank SD, on an unrestricted basis to absorb unexpected losses, including losses from swaps trading and other activities, without the nonbank SD becoming insolvent.[130]

The Commission further stated that it preliminarily found the UK PRA Financial Reporting Rules to be comparable in purpose and effect to the CFTC Financial Reporting Rules as both the PRA and CFTC require nonbank SDs to file periodic financial reports, including unaudited financial reports and an annual audited financial report, detailing their financial operations and demonstrating their compliance with minimum capital requirements.[131] As discussed in the 2024 Proposal, in addition to providing the CFTC and the PRA with information necessary to comprehensively assess the financial condition of a nonbank SD on an ongoing basis, the financial reports further provide the CFTC and the PRA with information regarding potential changes in a nonbank SD's risk profile by disclosing changes in account balances reported over a period of time.[132] Such changes in account balances may indicate, among other things, that the nonbank SD has entered into new lines of business, has increased its activity in an existing line of business relative to other activities, or has terminated a previous line of business.[133]

In assessing the comparability between the CFTC Financial Reporting Rules and the UK PRA Financial Reporting Rules, the Commission noted that the prompt and effective monitoring of the financial condition of nonbank SDs through the receipt and review of periodic financial reports supports the Commission and the PRA in meeting their respective objectives of ensuring the safety and soundness of nonbank SDs. In this regard, the Commission stated that the early identification of potential financial issues provides the Commission and the PRA with an opportunity to address such issues with the nonbank SD before they develop to a state where the financial condition of the firm is impaired such that it may no longer hold a sufficient amount of qualifying regulatory capital to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, or cover losses from its business activities, including the firm's swap dealing activities and obligations to swap counterparties.[134]

2. Comment Analysis and Final Determination

In response to the Commission's request for comment, Better Markets identified certain differences between the CFTC Capital Rules and Financial Reporting Rules and the UK PRA Capital Rules and Financial Reporting Rules and stated that the differences mandated denial of the request for a comparability determination.[135] Better Markets further stated that the nature and number of conditions that the Commission deemed necessary to impose are inconsistent with a finding of comparability.[136] In this connection, Better Markets also noted that the imposition of conditions will exacerbate complexity as the Commission will have to monitor compliance with the conditions, including reviewing the financial reports of the PRA-designated UK nonbank SDs and tracking developments in the UK PRA regulatory regime more generally.[137] Finally, Better Markets asserted that the proposed Comparability Order failed to provide sufficient analysis as to exactly how and why the Commission concluded that the UK and U.S. frameworks would produce ''comparable outcomes.'' [138]

[125] *See* 2024 Proposal at 8037.

[126] The BCBS's mandate is to strengthen the regulation, supervision, and practices of banks with the purpose of enhancing financial stability. *See Basel Committee Charter* available on the Bank for International Settlement website: *www.bis.org/bcbs/charter.htm*. *See* 2024 Proposal at 8037.

[127] 2024 Proposal at 8039–8047.

[128] *Id.*

[129] 2024 Proposal at 8039.

[130] *Id.*

[131] *Id.* at 8037.

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] Better Markets Letter at p. 15.

[136] *Id.* at p. 11.

[137] *Id.* at p. 16.

[138] *Id.* at p. 11.

As described herein and in the 2024 Proposal, Commission staff has engaged in a detailed, comprehensive study and evaluation of the UK PRA capital and financial reporting framework and has confirmed that its understanding of the elements and application of the framework is accurate. The Commission has also concluded, based on its evaluation, that the PRA has a comprehensive oversight program for monitoring PRA-designated UK nonbank SDs' compliance with relevant UK PRA Capital Rules.

Furthermore, as discussed in section I.E. above, the conditions set forth in the Comparability Order are generally intended to ensure that: (i) only PRA-designated UK nonbank SDs that are subject to the laws and regulations assessed under the Comparability Determination are eligible for substituted compliance; (ii) the PRA-designated UK nonbank SDs are subject to supervision by the PRA; and (iii) the PRA-designated UK nonbank SDs provide information to the Commission and NFA that is relevant to the ongoing supervision of their operations and financial condition. Considering this thorough analysis, and the ongoing requirement for PRA-designated UK nonbank SDs to provide information to the Commission and NFA demonstrating compliance with the Comparability Order, the Commission is confident that it is capable of effectively conducting, together with NFA, oversight of the PRA-designated UK nonbank SDs consistent with the conduct of oversight of U.S.-domiciled nonbank SDs. In light of the Commission's ultimate conclusion that the UK PRA capital and financial reporting requirements are comparable based on the standards articulated in Commission Regulation 23.106(a)(3), the Commission believes that a failure to issue a Comparability Determination and Comparability Order would in fact ''exacerbate complexity'' as it would impose duplicative requirements that would result in increased costs for registrants and market participants without a commensurate benefit from an oversight perspective.

As discussed in sections I.B. and E. above, and detailed herein, the Commission finds that the CFTC Capital Rules and Financial Reporting Rules and the UK PRA Capital Rules and Financial Reporting Rules are comparable in purpose and effect, and have overall comparable objectives, notwithstanding the identified differences. In this regard, the Commission notes that, as described above, instead of conducting a line-by-line assessment or comparison of the UK PRA Capital and Financial Reporting Rules and the CFTC Capital and Financial Reporting Rules, it has applied in the assessment set forth in the determination and order, a principles-based, holistic approach in assessing the comparability of both regimes, consistent with the standard of review it adopted in Commission Regulation 23.106(a)(3). Based on that principles-based, holistic assessment, the individual elements of which are described in more detail in sections II.B. through II.F. below, the Commission has determined that both sets of rules are designed to ensure the safety and soundness of nonbank SDs and achieve comparable outcomes. As such, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the analysis of the regulatory objectives of the CFTC Capital Rules and Financial Reporting Rules and the UK PRA Capital and Financial Reporting Rules.

B. Nonbank Swap Dealer Qualifying Capital

1. Preliminary Determination

As discussed in the 2024 Proposal, the Commission preliminarily determined that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements.[139] The Commission explained that the UK PRA Capital Rules and the CFTC Capital Rules for nonbank SDs both require a nonbank SD to maintain a quantity of high-quality and permanent capital that, based on the firm's activities and on-balance sheet and off-balance sheet exposures, is sufficient to absorb losses and decreases in the value of firm assets and increases in the value of firm liabilities without resulting in the firm becoming insolvent.[140] The Commission observed that the UK PRA Capital Rules and the CFTC Capital Rules permit nonbank SDs to recognize comparable forms of equity capital and qualifying subordinated debt instruments toward meeting minimum capital requirements, with both the UK PRA Capital Rules and the CFTC Capital Rules emphasizing high quality capital instruments.[141]

In support of its preliminary Comparability Determination, the Commission noted that the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in amounts that meet certain stated minimum requirements set forth in Commission Regulation 23.101.[142] Common equity tier 1 capital is generally composed of an entity's common stock instruments, and any related surpluses, retained earnings, and accumulated other comprehensive income, and is a more conservative or permanent form of capital that is last in line to receive distributions in the event of the entity's insolvency.[143] Additional tier 1 capital is generally composed of equity instruments such as preferred stock and certain hybrid securities that may be converted to common stock if triggering events occur and may have a preference in distributions over common equity tier 1 capital in the event of an insolvency.[144] Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital. Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.[145] Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules.[146]

The preliminary Comparability Determination also noted that the UK PRA Capital Rules require a PRA-designated nonbank SD to maintain an amount of regulatory capital (*i.e.,* equity capital and qualifying subordinated debt) equal to or greater than 8 percent of the PRA-designated UK nonbank SD's total risk exposure, which is calculated as the sum of the firm's: (i) capital charges for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital charges for settlement risk; (iv) credit valuation adjustment (''CVA'') risk of over-the-counter (''OTC'') derivatives instruments; and (v) capital charges for operational risk. The UK PRA Capital Rules limit the composition of regulatory capital to

[139] *See* 2024 Proposal at 8039.

[140] *Id.*

[141] *Id.*

[142] 17 CFR 23.101(a)(1)(i) and 2024 Proposal at 8037–8038. The terms ''common equity tier 1 capital,'' ''additional tier 1 capital,'' and ''tier 2 capital'' are defined in the bank holding company regulations of the Federal Reserve Board. 12 CFR 217.20.

[143] 12 CFR 217.20(b).

[144] 12 CFR 217.20(c).

[145] 12 CFR 217.20(d).

[146] Subordinated debt must meet requirements set forth in SEC Rule 18a–1d. Specifically, subordinated debt instruments must have a term of at least one year (with the exception of approved revolving subordinated debt agreements which may have a maturity term that is less than one year), and contain terms that effectively subordinate the rights of lenders to receive any payments, including accrued interest, to other creditors of the firm. 17 CFR 23.101(a)(1)(i)(B) and 17 CFR 240.18a–1d.

common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in a manner consistent with the BCBS framework. Specifically, the UK PRA Capital Rules provide that a PRA-designated UK nonbank SD's regulatory capital may be composed of: (i) common equity tier 1 capital instruments, which generally include the PRA-designated UK nonbank SD's common equity (stock), retained earnings, and accumulated other comprehensive income; (ii) additional tier 1 capital instruments, which includes other forms of capital instruments and certain long-term convertible debt instruments; and (iii) tier 2 capital instruments, which include other reserves, hybrid capital instruments, and certain qualifying subordinated term debt.[147] Capital instruments that qualify as common equity tier 1 capital under the UK PRA Capital Rules include instruments that: (i) are issued directly by the PRA-designated UK nonbank SD; (ii) are paid in full and not funded directly or indirectly by the PRA-designated UK nonbank SD; and (iii) are perpetual.[148] In addition, the principal amount of the common equity tier 1 capital instruments may not be reduced or repaid, except in the liquidation of the PRA-designated UK nonbank SD.[149] Furthermore, to qualify as additional tier 1 capital, the capital instruments must meet certain conditions including: (i) the instruments are issued directly by the PRA-designated UK nonbank SD and paid in full; (ii) the instruments are not owned by the PRA-designated UK nonbank SD or its subsidiaries; (iii) the purchase of the instruments is not funded directly or indirectly by the PRA-designated UK nonbank SD; (iv) the instruments rank below tier 2 instruments in the event of the insolvency of the PRA-designated UK nonbank SD; (v) the instruments are not secured or guaranteed by the PRA-designated UK nonbank SD or an affiliate; (vi) the instruments are perpetual and do not include an incentive for the PRA-designated UK nonbank SD to redeem them; and (vii) distributions under the instruments are pursuant to defined terms and may be cancelled under the full discretion of the PRA-designated UK nonbank SD.[150] Lastly, subordinated debt instruments must meet certain conditions to qualify as tier 2 regulatory capital under the UK PRA Capital Rules, including that the: (i) loans are not granted by the PRA-designated UK nonbank SD or its subsidiaries; (ii) claims on the principal amount of the subordinated loans under the provisions governing the subordinated loan agreement rank below any claim from eligible liabilities instruments (*i.e.,* certain non-capital instruments), meaning that they are effectively subordinated to claims of all non-subordinated creditors of the PRA-designated UK nonbank SD; (iii) subordinated loans are not secured, or subject to a guarantee that enhances the seniority of the claim, by the PRA-designated UK nonbank SD, its subsidiaries, or affiliates; (iv) loans have an original maturity of at least five years; and (v) provisions governing the loans do not include any incentive for the principal amount to be repaid by the PRA-designated UK nonbank SD prior to the loans' maturity.[151]

Based on its comparative assessment, the Commission preliminarily found that the types and characteristics of the equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the UK PRA Capital Rules are comparable to the types and characteristics of equity instruments comprising common equity tier 1 capital and additional tier 1 capital under the CFTC Capital Rules.[152] Specifically, the Commission noted that the UK PRA Capital Rules' common equity tier 1 capital and additional tier 1 capital and the CFTC Capital Rules' common equity tier 1 capital and additional tier 1 capital are comparable in that these forms of equity capital have similar characteristics (*e.g.,* the equity must be in the form of high-quality, committed, and permanent capital) and represent contributed equity capital that generally has no priority to the distribution of firm assets or income with respect to other shareholders or creditors of the firm, which allows a nonbank SD to use this equity to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including the firm's swap dealing activities.[153]

The Commission also found subordinated debt under the UK PRA Capital Rules comparable to tier 2 capital under the CFTC Capital Rules.[154] Specifically, the Commission noted that the qualifying conditions imposed on subordinated debt instruments are comparable under the UK PRA Capital Rules and the CFTC Capital Rules in that they are designed to ensure that the debt has qualities supporting its recognition by a nonbank SD as equity for capital purposes, including by effectively subordinating the debt lenders' claims for repayment on the debt to other creditors of the nonbank SD and by limiting or restricting repayment of the subordinated loans if such repayments result in the nonbank SD's equity falling below certain defined thresholds.[155] The Commission preliminarily concluded that these terms and conditions provided assurances that the subordinated debt is appropriate to be recognized as regulatory capital available to a nonbank SD to meet its obligations and to absorb business losses and decreases in the value of firm assets and increases in the value of firm liabilities.[156]

2. Comment Analysis and Final Determination

The Commission did not receive comments regarding its preliminary determination that the UK PRA Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the types and characteristics of a nonbank SD's equity and subordinated debt that qualifies as regulatory capital in meeting its minimum requirements. In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect, and achieve comparable regulatory outcomes, with respect to the types of capital instruments that qualify as regulatory capital. Both the UK PRA Capital Rules and the CFTC Capital Rules limit regulatory capital to permanent and conservative forms of capital, including common equity, capital surpluses, retained earnings, and subordinate debt where debt holders effectively subordinate their claims to repayment to all other creditors of the nonbank SD in the event of the firm's insolvency. Limiting regulatory capital to the above categories of equity and debt instruments promotes the safety and soundness of the nonbank SD by helping to ensure that the regulatory capital is not withdrawn or converted to other equity instruments that may have rights or priority with respect to payments, such as dividends or distributions in insolvency, over other creditors, including swap counterparties. The Commission, therefore, is adopting the Comparability Order as proposed with respect to the types and characteristics of equity and subordinated debt that qualifies as regulatory capital to meet minimum

[147] 2024 Proposal at 8038.

[148] *Id.* and UK CRR, Articles 26 and 28.

[149] *Id.*

[150] *Id.* and UK CRR, Articles 51–52.

[151] *Id.* and UK CRR, Article 63.

[152] *See* 2024 Proposal at 8039.

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *Id.*

capital requirements under the UK PRA Capital Rules.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. Introduction to Nonbank Swap Dealer Minimum Capital Requirements

As reflected in the 2024 Proposal, the CFTC Capital Rules require a nonbank SD electing the Bank-Based Approach to maintain regulatory capital that satisfies each of the following criteria: (i) an amount of common equity tier 1 capital of at least $20 million; (ii) an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent; (iii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or in excess of 8 percent of the nonbank SD's uncleared swap margin amount; [157] and (iv) the amount of capital required by NFA.[158]

In comparison, the UK PRA Capital Rules, consistent with the BCBS framework, require each PRA-designated UK nonbank SD to maintain sufficient levels of capital to satisfy the following, expressed as a percentage of the PRA-designated UK nonbank SD's ''total risk exposure amount'' (*i.e.,* the sum of the PRA-designated UK nonbank SD's risk-weighted assets and exposures): (i) a common equity tier 1 capital ratio of 4.5 percent; (ii) a tier 1 capital ratio of 6 percent; and (iii) a total capital ratio of 8 percent. Furthermore, PRA-designated UK nonbank SDs must maintain a capital conservation buffer composed of common equity tier 1 capital in an amount equal to 2.5 percent of the firm's total risk exposure. The common equity tier 1 capital used to meet the capital conservation buffer must be separate and in addition to the 4.5 percent of common equity tier 1 capital required to meet its core 8 percent capital requirement.[159] As explained in the 2024 Proposal, the ''total risk exposure amount'' is calculated as the sum of the PRA-designated UK nonbank SD's: (i) capital requirements for market risk; (ii) risk-weighted exposure amounts for credit risk; (iii) capital requirements for CVA risk of OTC derivatives; and (iv) capital requirements for operational risk.[160] Capital charges for market risk and credit risk are computed based on a PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures, weighted according to risk.[161]

2. Preliminary Determination and Comment Analysis

While noting certain differences in the minimum capital requirements and calculation of regulatory capital between the UK PRA Capital Rules and the CFTC Capital Rules, the Commission preliminarily found that the UK PRA Capital Rules and CFTC Capital Rules achieve, subject to the conditions in the proposed Comparability Determination and proposed Comparability Order, comparable outcomes by requiring a nonbank SD to maintain a minimum level of qualifying regulatory capital and subordinated debt to absorb losses from the firm's business activities, including its swap dealing activities, and decreases in the value of the firm's assets and increases in the firm's liabilities without the nonbank SD becoming insolvent.[162] As further discussed below, the Commission's preliminary finding of comparability was based on a principles-based, holistic comparative analysis of the three minimum capital requirement thresholds of the CFTC Capital Rules' Bank-Based Approach referenced above and the respective elements of the UK PRA Capital Rules' requirements.

a. Fixed Amount Minimum Capital Requirement

As noted above, prong (i) of the CFTC Capital Rules requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of $20 million of common equity tier 1 capital. The CFTC's $20 million fixed-dollar minimum capital requirement is intended to ensure that each nonbank SD maintains a level of regulatory capital, without regard to the level of the firm's dealing and other activities, sufficient to meet its obligations to swap market participants given the firm's status as a CFTC-registered nonbank SD and to help ensure the safety and soundness of the nonbank SD.[163] In comparison, the UK PRA Capital Rules also contain a requirement that a PRA-designated UK nonbank SD maintain a fixed amount of minimum initial capital of GBP 750,000.[164]

The Commission, in the 2024 Proposal, recognized that the $20 million fixed-dollar minimum capital required under the CFTC Capital Rules is substantially higher than the GBP 750,000 minimum base capital required under the UK PRA Capital Rules. Therefore, the Commission preliminarily proposed a condition that each PRA-designated UK nonbank SD would be required to maintain, at all times, a minimum amount of common equity tier 1 capital, as defined in Article 26 of UK CRR, denominated in GBP equal to or in excess of the equivalent of $20 million.[165]

One commenter, Better Markets, argued that the establishment in the UK PRA Capital Rules of a base level requirement that is substantially lower than the CFTC Capital Rules' fixed amount minimum requirement ''demonstrates a fatal lack of comparability.'' [166] Better Markets further stated that to compensate for this gap, the Commission proposed a condition requiring PRA-designated UK nonbank SDs to maintain a minimum amount of common equity tier 1 capital denominated in GBP equal to or in excess of the equivalent of $20 million.[167]

As noted above, the Commission recognized the material difference in the requirement under the UK PRA Capital Rules and the CFTC Capital Rules with respect to the $20 million minimum dollar amount of regulatory capital a nonbank SD is required to maintain. The Commission's proposed condition, however, effectively addresses this difference by providing that a PRA-

[157] 17 CFR 23.101(a)(1)(i). *See also* 2024 Proposal at 8039. The term ''uncleared swap margin'' is defined in Commission Regulation 23.100 to generally mean the amount of initial margin that a nonbank SD would be required to collect from each counterparty for each outstanding swap position of the nonbank SD. 17 CFR 23.100. A nonbank SD must include all swap positions in the calculation of the uncleared swap margin amount, including swaps that are exempt or excluded from the scope of the Commission's uncleared swap margin regulations. A nonbank SD must compute the uncleared swap margin amount in accordance with the Commission's margin rules for uncleared swaps. 17 CFR 23.154.

[158] 17 CFR 23.101(a)(1)(i)(D). *See also* 2024 Proposal at 8039. Commission Regulation 23.101(a)(1)(i)(D) sets forth one of the minimum thresholds that a nonbank SD must meet as the ''the amount of capital required by a registered futures association.'' As previously noted, NFA is currently the only entity that is registered with the Commission as a futures association. NFA has adopted the Commission's capital requirements as its own requirements, and has not adopted any additional or stricter minimum capital requirements. *See* NFA rulebook, Financial Requirements Section 18 Swap Dealer and Major Swap Participant Financial Requirements, available at *nfa.futures.org.*

[159] *See* 2024 Proposal at 8041–8042.

[160] *Id.* at 8042.

[161] *Id.*

[162] *Id.* at 8045.

[163] 85 FR 57462 at 57492.

[164] 2024 Proposal at 8045.

[165] *Id.* The Commission also noted that the six current PRA-designated UK nonbank SDs maintain common equity tier 1 capital in amounts in excess of the equivalent of $20 million based on financial filings made with the Commission. *Id.* (note 255).

[166] Better Markets Letter at p. 13.

[167] *Id.*

designated UK nonbank SD may not avail itself of substituted compliance unless it maintains a minimum amount of common equity tier 1 capital denominated in GBP equal to or excess of the equivalent of $20 million. Furthermore, the imposition of conditions in a Comparability Order, as discussed in section I.E. above, is authorized by Commission Regulation 23.106(a)(5), which provides that the Commission may issue terms and conditions as it deems appropriate. In addition, as further noted in section I.E. above, the Guidance also provides that the Commission may impose conditions as part of the substituted compliance process to address a lack of comparable and comprehensive regulation in a home jurisdiction.[168] In this connection, the Commission concludes that requiring PRA-designated UK nonbank SDs to maintain an amount of regulatory capital in the form of common equity tier 1 items, as defined in Article 26 of UK CRR, equal to or in excess of the equivalent of $20 million will impose an equally stringent standard to the analogue requirement under the CFTC Capital Rules and will appropriately address the substantially lower minimum fixed amount capital requirement under the UK PRA Capital Rules.

In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules, with the imposition of the condition for PRA-designated UK nonbank SDs to maintain a minimum level of common equity tier 1 capital in an amount equivalent to at least $20 million, are comparable in purpose and effect and achieve comparable outcomes with respect to capital requirements based on a minimum dollar amount. The requirement for a nonbank SD with limited swap dealing or other business activities to maintain a minimum level of regulatory capital equivalent to $20 million helps to ensure the firm's safety and soundness by allowing it to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to swap counterparties, other creditors, and market participants, without the firm becoming insolvent.

b. Minimum Capital Requirement Based on Risk-Weighted Assets

Prong (ii) of the CFTC Capital Rules' minimum capital requirements described above requires each nonbank SD electing the Bank-Based Approach to maintain an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital in an amount equal to or greater than 8 percent of the nonbank SD's total risk-weighted assets, with common equity tier 1 capital comprising at least 6.5 percent of the 8 percent.[169] Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet market risk and credit risk exposures, including exposures associated with proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The requirements and capital ratios set forth in prong (ii) are based on the Federal Reserve Board's capital requirements for bank holding companies and are consistent with the BCBS framework. The requirement for each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets is intended to help ensure that the nonbank SD's level of capital is sufficient to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover unexpected losses resulting from the firm's business activities, including losses resulting from uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.[170]

The UK PRA Capital Rules contain capital requirements for PRA-designated UK nonbank SDs that the Commission preliminarily found comparable to the requirements in prong (ii) of the CFTC Capital Requirements.[171] Specifically, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to maintain: (i) common equity tier 1 capital equal to at least 4.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount; (ii) total tier 1 capital (*i.e.,* common equity tier 1 capital plus additional tier 1 capital) equal to at least 6 percent of the PRA-designated UK nonbank SD's total risk exposure amount; and (iii) total capital (*i.e.,* an aggregate amount of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) equal to at least 8 percent of the PRA-designated UK nonbank SD's total risk exposure amount. The UK PRA Capital Rules further require each PRA-designated UK nonbank SD to maintain an additional capital conservation buffer equal to 2.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount, which must be met with common equity tier 1 capital. Thus, a PRA-designated UK nonbank SD is effectively required to maintain total qualifying regulatory capital in an amount equal to or in excess of 10.5 percent of the market risk, credit risk, CVA risk, settlement risk, and operational risk of the firm (*i.e.,* total capital requirement of 8 percent of risk-weighted assets and an additional 2.5 percent of risk-weighted assets as a capital conservation buffer), which is a higher capital ratio than the 8 percent required of nonbank SDs under prong (ii) of the CFTC Capital Rules.[172]

The Commission also preliminarily found that the UK PRA Capital Rules and the CFTC Capital Rules are comparable with respect to the approaches used in the calculation of risk-weighted asset amounts for market risk and credit risk in determining the nonbank SD's risk-weighted assets.[173] In that regard, the Commission noted that both regimes require a nonbank SD to use standardized approaches to compute market risk and credit risk amounts, unless the firm is approved to use internal models.[174]

As the Commission observed, the standardized approaches to calculating risk-weighted asset amounts for market risk and credit risk under both sets of rules follow the same structure that is now the common global standard: (i) allocating assets to categories according to risk and assigning each a risk weight; (ii) allocating counterparties according to risk assessments and assigning each a risk factor; (iii) calculating gross exposures based on valuation of assets; (iv) calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; (v) adjusting the net exposure by the market risk weights; and finally, (vi) for credit risk exposures, multiplying the sum of net exposures to each counterparty by their corresponding risk factor.[175]

More specifically, with respect to the calculation of standardized risk-weighted asset amounts for market risk, the Commission explained that the CFTC Capital Rules incorporate by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a–1 for nonbank security-based swap dealers (''SBSDs'').[176] The standardized market risk charges under Commission Regulation 1.17 and SEC Rule 18a–1 are calculated as a standardized or table-based percentage of the market value or notional value of the nonbank SD's marketable securities and derivatives positions, with the percentages applied

[168] Guidance at 45343.

[169] 17 CFR 23.101(a)(1)(i)(B).

[170] *See generally* 85 FR 57462 at 57530.

[171] *See* 2024 Proposal at 8046.

[172] *Id.* and UK CRR Articles 26, 28, 50–52, 61–63 and 92, and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 2 Capital Conservation Buffer.

[173] *See* 2024 Proposal at 8046.

[174] *Id.*

[175] *Id.*

[176] *Id.* at 8040 and paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

to the market value or notional value increasing as the expected or anticipated risk of the positions increases.[177] For example, CFTC Capital Rules require nonbank SDs to calculate standardized market risk-weighted asset amounts for uncleared swaps based on notional values of the swap positions multiplied by percentages set forth in the applicable rules.[178] In addition, market risk-weighted asset amounts for readily marketable equity securities are calculated by multiplying the fair market value of the securities by 15 percent.[179]

Under the CFTC Capital Rules, the resulting total market risk-weighted asset amount is multiplied by a factor of 12.5 to cancel the effect of the 8 percent multiplication factor applied to all of the nonbank SD's risk-weighted assets under prong (ii) of the rules' minimum capital requirements described above. As a result, a nonbank SD is effectively required to hold qualifying regulatory capital equal to or greater than 100 percent of the amount of its market risk exposure amount.[180]

Comparable to the CFTC Capital Rules, the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate its standardized risk-weighted asset amounts for market risk by multiplying the notional or carrying amount of net positions by risk-weighting factors, which are based on the underlying market risk of each asset or exposure and increase as the expected risk of the positions increases.[181] The Commission further explained that a PRA-designated UK nonbank SD is required to calculate market risk requirements for debt instruments and equity instruments separately, by computing each category as the sum of specific risk and general risk of the positions.[182] As further discussed in the 2024 Proposal, the UK PRA Capital Rules also require PRA-designated UK nonbank SDs to include in their risk-weighted assets market risk exposures to certain foreign currency and gold positions. Specifically, a PRA-designated UK nonbank SD with net positions in foreign exchange and gold that exceed 2 percent of the firm's total capital must calculate capital requirements for foreign exchange risk.[183] The capital requirement for foreign exchange risk under the standardized approach is 8 percent of the PRA-designated UK nonbank SD's net positions in foreign exchange and gold.[184] The UK PRA Capital Rules further require PRA-designated UK nonbank SDs to include exposures to commodity positions in calculating the firm's risk-weighted assets. The standardized calculation of commodity risk exposures may follow one of three approaches depending on type of position or exposure. The first is the sum of a flat percentage rate for net positions, with netting allowed among tightly defined sets, plus another flat percentage rate for the gross position.[185] The other two standardized approaches are based on maturity-ladders, where unmatched portions of each maturity band (*i.e.,* portions that do not net out to zero) are charged at a step-up rate in comparison to the base charges for matched portions.[186]

With respect to standardized risk-weighted asset amounts for credit risk, the Commission explained that under the CFTC Capital Rules, a nonbank SD must compute its on-balance sheet and off-balance sheet exposures in accordance with the standardized risk-weighting requirements adopted by the Federal Reserve Board and set forth in Subpart D of 12 CFR 217 as if the SD itself were a bank holding company subject to Subpart D.[187] Standardized risk-weighted asset amounts for credit risk are computed by multiplying the amount of the exposure by defined counterparty credit risk factors that range from 0 percent to 150 percent.[188] A nonbank SD with off-balance sheet exposures is required to calculate a risk-weighted amount for credit risk by multiplying each exposure by a credit conversion factor that ranges from 0 percent to 100 percent, depending on the type of exposure.[189]

In comparison, the Commission noted that the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate its standardized risk-weighted asset amounts for credit risk in a manner aligned with the Commission's Bank-Based Approach and the BCBS framework by taking the carrying value or notional value of each of the PRA-designated UK nonbank SD's on-balance sheet and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset's credit quality.[190] For instance, exposures to the ECB, the UK government, and the Bank of England, carry a zero percent risk weight; exposures to other central governments and central banks may carry risk weights between 0 and 150, depending on the credit rating available for the central government or central bank; and exposures to banks, PRA-designated investment firms, or other businesses may carry risk weights between 20 percent and 150 percent depending on the credit ratings available for the entity or, for exposures to banks and investment firms, for the central government of the jurisdiction in which the entity is incorporated.[191] If no credit rating is available, the PRA-designated UK nonbank SD must generally apply a 100 percent risk weight, meaning the total accounting value of the exposure is used.[192]

With respect to counterparty credit risk for derivatives positions, the Commission explained that under the CFTC Capital Rules, a nonbank SD may compute standardized credit risk

[177] *See* 2024 Proposal at 8040, 17 CFR 1.17(c)(5), and 17 CFR 240.18a–1(c)(1).

[178] 17 CFR 1.17(c)(5)(iii).

[179] 17 CFR 1.17(c)(5)(v), referencing SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240.15c3–1(c)(2)(vi)).

[180] 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*). As noted, a nonbank SD is required to maintain qualifying capital (*i.e.,* an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital) in an amount that equals or exceeds 8 percent of its risk-weighted assets. The regulations, however, require the nonbank SD to effectively maintain qualifying capital equal to or in excess of 100 percent of its market risk-weighted assets by requiring the nonbank SD to multiply its market-risk weighted assets by a factor of 12.5. For example, the market risk exposure amount for marketable equity securities with a current fair market value of $250,000 is $37,500 (market value of $250,000 × .15 standardized market risk factor). The nonbank SD is required to maintain regulatory capital equal to or in excess of full market risk exposure amount of $37,500 (risk exposure amount of $37,500 × 8 percent regulatory capital requirement equals $3,000; the regulatory capital requirement is then multiplied by a factor of 12.5, which effectively requires the nonbank SD to hold regulatory capital in an amount equal to at least 100 percent of the market risk exposure amount ($3,000 × 12.5 factor equals $37,500)).

[181] *See* 2024 Proposal at 8042.

[182] *Id.* and UK CRR, Article 326. As indicated in Article 326 of UK CRR, securitizations are treated as debt instruments for market risk requirements.

[183] 2024 Proposal at 8042 and UK CRR, Article 351.

[184] *Id.*

[185] 2024 Proposal at 8042 and UK CRR, Article 360.

[186] 2024 Proposal at 8042 and UK CRR, Article 359–361.

[187] 23.101(a)(1)(i)(B) and paragraph (1) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100. *See also* 2024 Proposal at 8040.

[188] 12 CFR 217.32. Lower credit risk factors are assigned to entities with lower credit risk and higher credit risk factors are assigned to entities with higher credit risk. For example, a credit risk factor of 0 percent is applied to exposures to the U.S. government, the Federal Reserve Bank, and U.S. government agencies (12 CFR 217.32(a)(1)), and a credit risk factor of 100 percent is assigned to an exposure to foreign sovereigns that are not members of the Organization of Economic Co-operation and Development (12 CFR 217.32(a)(2)). *See also* discussion in 2024 Proposal at 8040.

[189] 12 CFR 217.33. *See also* discussion in 2024 Proposal at 8040.

[190] 2024 Proposal at 8043 and UK CRR, Articles 111 and 113(1).

[191] 2024 Proposal at 8043 and UK CRR, Articles 114–122.

[192] 2024 Proposal at 8043 and UK CRR, Articles 121(2) and 122(2).

exposures, using either the current exposure method (''CEM'') or the standardized approach for measuring counterparty credit risk (''SA–CCR'').[193] Both CEM and SA–CCR are non-model, rules-based approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under CEM is the sum of: (i) the current exposure (*i.e.,* the positive mark-to-market) of the derivatives contract; and (ii) the potential future exposure, which is calculated as the product of the notional principal amount of the derivatives contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.[194] Credit risk exposure under SA–CCR is defined as the exposure at default amount of a derivatives contract, which is computed by multiplying a factor of 1.4 by the sum of: (i) the replacement costs of the contract (*i.e.,* the positive mark-to market); and (ii) the potential future exposure of the contract.[195] In comparison, the UK PRA Capital Rules require a PRA-designated UK nonbank SD that is not approved to use credit risk models to calculate its exposure using the SA–CCR.[196] The exposure amount under the SA–CCR is computed, under both the UK PRA Capital Rules and the Commission's Bank-Based Approach, as the sum of the replacement cost of the contract and the potential future exposure of the contract, multiplied by a factor of 1.4.[197]

UK PRA Capital Rules also require a PRA-designated UK nonbank SD to include its exposures to settlement risk in its calculation of its risk-weighted assets.[198] Consistent with the BCBS framework, the risk-weighted asset amount for settlement risk for transactions settled on a delivery-versus-payment basis is computed by multiplying the price difference to which a PRA-designated UK nonbank SD is exposed as a result of an unsettled transaction by a percentage factor that varies from 8 percent to 100 percent based on the number of working days after the settlement due date during which the transaction remains unsettled.[199] The CFTC's Bank-Based Approach provides for a similar calculation methodology for risk-weighted asset amounts for unsettled transactions involving securities, foreign exchange instruments, and commodities.[200]

Consistent with the BCBS framework, a PRA-designated UK nonbank SD is also required to calculate a CVA risk-weighted asset amount for OTC derivative instruments to reflect the current market value of the credit risk of the counterparty to the PRA-designated UK nonbank SD.[201] Risk-weighted asset amounts for CVA risk can be calculated following similar methodologies as those described in Subpart E of the Federal Reserve Board's part 217 regulations.[202]

As discussed in the 2024 Proposal, both the CFTC Capital Rules and the UK PRA Capital Rules also provide that, if approved by NFA or the PRA, respectively, nonbank SDs may also use internal models to calculate market and/or credit risk exposures.[203] The Commission noted that the internal market and credit risk models under the UK PRA Capital Rules and the CFTC Capital Rules are based on the BCBS framework and preliminarily found that such models must meet comparable quantitative and qualitative requirements covering the same risks, though with slightly different categorization, and including comparable model risk management requirements.[204] In this regard, the Commission observed that both rule sets address the same types of risk, with similar allowed methodologies and under similar controls.[205] The Commission also preliminarily determined that the UK PRA Capital Rules and the CFTC Capital Rules are comparable with respect to the requirement that nonbank SDs account for operational risk in computing their minimum capital requirements.[206] In this connection, the Commission noted that the UK PRA Capital Rules require a PRA-designated UK nonbank SD to calculate an operational risk exposure as a component of the firm's total risk exposure amount.[207] PRA-designated UK nonbank SDs may use either a standardized approach or, if the PRA-designated UK nonbank has obtained regulatory permission, an internal approach based on the firm's own measurement systems, to calculate their risk-weighted asset amounts for

[193] 17 CFR 217.34 and 17 CFR 23.100 (defining the term *BHC risk-weighted assets* and providing that a nonbank SD that does not have model approval may use either CEM or SA–CCR to compute its exposures for OTC derivative contracts without regard to the status of its affiliate with respect to the use of a calculation approach under the Federal Reserve Board's capital rules). *See also* discussion in 2024 Proposal at 8040.

[194] 12 CFR 217.34.

[195] 12 CFR 217.132(c).

[196] 2024 Proposal at 8043, UK CRR, Articles 92(3)(f), and PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR). As noted in the 2024 Proposal, PRA-designated UK nonbank SDs with smaller-sized derivatives business may also use a ''simplified standardized approach to counterparty credit risk'' or an ''original exposure method'' as simpler methods for calculating exposure values. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Articles 281–282. To use either of these alternative methods, an entity's on-and off-balance sheet derivatives business must be equal to or less than 10 percent of the entity's total assets and GBP 260 million or 5 percent of the entity's total assets and GBP 88 million, respectively. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Article 273a.

[197] PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Chapter 3 Counterparty Credit Risk (Part Three, Title Two, Chapter Six CRR), Article 274 and 12 CFR 217.132(c). *See also* discussion in 2024 Proposal at 8043.

[198] 2024 Proposal at 8043 and UK CRR, Article 378 (indicating that if transactions in which debt instruments, equities, foreign currencies and commodities excluding repurchase transactions and securities or commodities lending and securities or commodities borrowing are unsettled after their delivery due dates, a PRA-designated UK nonbank SD must calculate the price difference to which it is exposed).

[199] *Id.* The price difference to which a PRA-designated UK nonbank SD is exposed is the difference between the agreed settlement price for an instrument (*i.e.,* a debt instrument, equity, foreign currency or commodity) and the instrument's current market value, where the difference could involve a loss for the firm. UK CRR, Article 378.

[200] 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*), 12 CFR 217.38 and 12 CFR 217.136.

[201] 2024 Proposal at 8043 and UK CRR, Articles 381 and 382(1).

[202] UK CRR, Articles 383–384 and 12 CFR 217.132(e)(5) and (6). Under the CFTC's Bank-Based Approach, nonbank SDs calculating their credit risk-weighted assets using the regulations in Subpart D of the Federal Reserve Board's Part 217 regulations do not calculate CVA of OTC derivatives instruments.

[203] *See* 2024 Proposal at 8040–8041 and 8043, respectively, for discussions of NFA and PRA model approvals. In discussing approval requirements for credit risk models as part of the general overview of the UK PRA Capital Rules, the Commission referred generally to counterparty credit risk exposures for ''OTC derivatives transactions.'' *See* 2024 Proposal at 8034–8035 (n. 115). For clarity, the Commission notes that the Internal Model Methodology for counterparty credit risk set out in UK CRR, Articles 283–294, can be used for the derivatives listed in Annex II of UK CRR, securities financing transactions, and long settlement transactions. PRA Rulebook, CRR Firms, Counterparty Credit Risk (CRR) Part, Article 273.

[204] *See* 2024 Proposal at 8046. For a discussion of the qualitative and quantitative requirements that models must meet under the CFTC Capital Rules and the UK PRA Capital Rules, *see* 2024 Proposal at 8040–8041 and 8043–8044, respectively. In discussing model approval conditions, the Commission noted that PRA-designated UK nonbank SDs were not permitted to use internal models to calculate counterparty credit risk amounts for large exposures. *See* 2024 Proposal at 8043 and 8044 (n. 217 and n. 237). The Commission notes that this statement is not correct with regard to securities financing transactions. PRA-designated UK nonbank SDs are allowed to use internal models to calculate exposure values for securities financing transactions. PRA Rulebook, CRR Firms, Large Exposures (CRR) Part, Chapter 4 Large Exposures (Part Four CRR), Article 390.

[205] *See* 2024 Proposal at 8046.

[206] *Id.*

[207] *Id.* and UK CRR, Article 92(3).

operational risk. The CFTC Capital Rules address operational risk both as a stand-alone, separate minimum capital requirement that a nonbank SD is required to meet under prong (iii) of the Bank-Based Approach and as a component of the calculation of risk-weighted assets for nonbank SDs that use Subpart E of the Federal Reserve Board's part 217 regulations to calculate their credit risk-weighted assets via internal models.[208]

Only one commenter specifically addressed the Commission's comparative analysis of the minimum capital requirement based on risk-weighted assets. The commenter, Ravnitzky, stated that the UK PRA Capital Rules and the CFTC Capital Rules differ in several areas, including in their approaches to calculating risk-weighted amounts for market risk and credit risk.[209] Ravnitzky asserted that unlike the UK PRA Capital Rules, which use a standardized approach, the CFTC Capital Rules use a model-based approach to calculating risk-weighted amounts.[210] The Commission notes that this description of the respective rule sets is not accurate. As discussed above, the currently applicable UK PRA Capital Rules and CFTC Capital Rules both incorporate standardized and model-based approaches to calculating market risk and credit risk amounts.[211]

In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the computation of minimum capital requirements based on a nonbank SD's risk-weighted assets. In this regard, the Commission finds that the UK PRA Capital Rules and the CFTC Capital rules have a comparable approach to the computation of market risk exposure amounts and credit risk exposure amounts for on-balance sheet and off-balance sheet exposures, which are intended to ensure that a nonbank SD maintains a sufficient level of regulatory capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

c. Minimum Capital Requirement Based on the Uncleared Swap Margin Amount

As noted above, prong (iii) of the CFTC Capital Rules' Bank-Based Approach requires a nonbank SD to maintain regulatory capital in an amount equal to or greater than 8 percent of the firm's total uncleared swap margin amount associated with its uncleared swap transactions to address potential operational, legal, and liquidity risks.[212]

The UK PRA Capital Rules differ from the CFTC Capital Rules in that they do not impose a capital requirement on PRA-designated UK nonbank SDs based on a percentage of the margin for uncleared swap transactions.[213] In the 2024 Proposal, the Commission described, however, how certain UK PRA capital and liquidity requirements may compensate for the lack of direct analogue to the 8 percent uncleared swap margin amount requirement.[214] Specifically, the Commission noted that under the UK PRA Capital Rules the total risk exposure amount is computed as the sum of the PRA-designated UK nonbank SD's risk-weighted asset amounts for market risk, credit risk, settlement risk, CVA risk of OTC derivatives instruments, and operational risk.[215] Notably, the UK PRA Capital Rules require that PRA-designated UK nonbank SDs, including firms that do not use internal models, calculate capital charges for operational risk as a separate component of the total risk exposure amount. The UK PRA Capital Rules also impose separate liquidity requirements designed to ensure that the PRA-designated UK nonbank SDs can meet both short- and long-term obligations, in addition to the general requirement to maintain processes and systems for the identification of liquidity risk.[216] In comparison, the Commission requires nonbank SDs to maintain a risk management program covering liquidity risk, among other risk categories, but does not have a distinct liquidity requirement.[217]

Addressing the Commission's request for comment on the comparability between the CFTC's capital requirement based on a percentage of the margin for uncleared swap transactions and the UK PRA Capital Rules' requirements with respect to operational risk and liquidity risk, one commenter, Better Markets, asserted that the requirement for PRA-designated UK nonbank SDs to hold qualifying regulatory capital to cover operational risk is not comparable to the CFTC's requirement for nonbank SDs to hold qualifying capital in an amount equal to at least 8 percent of the nonbank SD's uncleared swap margin amount.[218] Better Markets further asserted that the proposed Comparability Determination fell short in furnishing an adequate analysis substantiating that the incorporation of an operational risk charge and the existence of separate liquidity requirements would genuinely yield an equivalent result.[219] Furthermore, Better Markets argued that the Commission should have undertaken ''an examination to ascertain whether the PRA-designated UK nonbank SD's operational risk charge and liquidity requirements would adequately cover [its] cumulative amounts of uncleared swaps margin.'' [220]

The Applicants offered a contrasting view in their comment letter, stating that, although the UK PRA Capital Rules do not ''have a direct analogue to the 8 percent uncleared swap margin requirement'' under the CFTC Capital

[208] *Id.* and 17 CFR 23.101(a)(1)(i) and 17 CFR 23.100 (definition of *BHC equivalent risk-weighted assets*).

[209] Ravnitzky Letter at pp. 3–4.

[210] *Id.*

[211] As noted in the 2024 Proposal, the Commission is aware that the PRA is considering changes to the UK PRA Capital Rules to implement Basel 3.1 standards. If the PRA proceeds with the implementation of the Basel 3.1 standards as proposed, the regulatory changes would be applicable after July 1, 2025 with a 4.5-year transitional period ending on January 1, 2030. The Commission will monitor progress on the PRA's proposed regulatory changes and may amend or supplement the Comparability Order, as appropriate. 2024 Proposal at 8036 (n. 128).

[212] More specifically, in establishing the requirement that a nonbank SD must maintain a level of regulatory capital in excess of 8 percent of the uncleared swap margin amount associated with the firm's swap transactions, the Commission stated that the intent of the uncleared swap margin amount was to establish a method of developing a minimum amount of capital for a nonbank SD to meet all of its obligations as an SD to market participants, and to cover potential operational risk, legal risk and liquidity risk, and not just the risks of its trading portfolio. 85 FR 57462 at 57485.

[213] *See* 2024 Proposal at 8046–8047.

[214] *Id.*

[215] *Id.* at 8047 and UK CRR, Article 92(3).

[216] *Id.* More specifically, the UK PRA Capital Rules impose separate liquidity buffers and ''stable funding'' requirements designed to ensure that PRA-designated UK nonbank SDs can cover both long-term obligations and short-term payment obligations under stressed conditions for 30 days. PRA Rulebook, CRR Firms, Liquidity (CRR) Part, Chapter 4 Liquidity (Part Six CRR), Article 412–413. In addition, PRA-designated UK nonbank SDs are required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day. PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part.

[217] *See* 2024 Proposal at 8047. Specifically, Commission Regulation 23.600(b) requires each SD to establish, document, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks related to swaps, and any products used to hedge swaps, including futures, options, swaps, security-based swaps, debt or equity securities, foreign currency, physical commodities, and other derivatives. The elements of the SD's risk management program are required to include the identification of risks and risk tolerance limits with respect to applicable risks, including operational, liquidity, and legal risk, together with a description of the risk tolerance limits set by the SD and the underlying methodology in written policies and procedures. 17 CFR 23.600.

[218] Better Markets Letter at p. 13.

[219] *Id.*

[220] *Id.*

Rules, they have ''various other measures that achieve the same regulatory objective of ensuring that an SD maintains an amount of capital that is sufficient to cover the full range of risks a PRA-designated UK nonbank SD may face.'' [221] In support of the statement, the Applicants discussed, among other measures, the various categories of risk charges that a PRA-designated UK nonbank SD is required to include in its total risk exposure amount, as well as the capital conservation buffer, leverage ratio floor, and liquidity requirements that the UK PRA Capital Rules impose on PRA-designated UK nonbank SDs.[222]

The Commission finds that the additional categories of risk-weighted asset amounts that PRA-designated UK nonbank SDs are required to include in the total risk-weighted assets amount, as well as the various regulatory measures seeking to ensure that PRA-designated UK nonbank SDs hold sufficient capital to cover the full range of risks that they may face, support the comparability of the UK PRA Capital Rules and the CFTC Capital Rules even in the absence of a separate capital requirement in the UK PRA Capital Rules requiring PRA-designated UK nonbank SDs to have qualified capital equal to or greater than 8 percent of the amount of uncleared swap margin. The Commission notes that the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin amount was conceived as a proxy, not an exact measure, for inherent risk in the SD's positions and operations, including operational risk, legal risk, and liquidity risk.[223] As the Commission noted in adopting the CFTC Capital Rules, although the amount of capital required of a nonbank SD under the uncleared swap margin calculation is directly related to the volume, size, complexity, and risk of the covered SD's positions, the minimum capital requirement is intended to cover a multitude of potential risks faced by the SD.[224] The Commission understands that other jurisdictions may adopt alternative measures to cover the same risks. As such, a strict comparison between the amounts that a PRA-designated UK nonbank SD holds to account for operational risk and liquidity risk pursuant to the UK PRA Capital Rules and the amount of uncleared swap margin that a PRA-designated UK nonbank SD would have been required to hold pursuant to the CFTC Capital Rules is not warranted. As discussed in section I.E. above, the Commission's analysis in ascertaining the comparability of a foreign jurisdiction's capital rules to the CFTC Capital Rules is focused on determining whether the foreign jurisdiction's rules have comparable regulatory objectives and achieve comparable outcomes. Following this standard of review, the Commission finds that the various measures that the UK PRA Capital Rules have established to help ensure that PRA-designated UK nonbank SDs hold sufficient capital to cover the full range of risks that they face have comparable objectives and achieve comparable outcomes.

In conclusion, the Commission finds that the UK PRA Capital Rules and the CFTC Capital Rules are comparable in purpose and effect with respect to the requirement that a nonbank SD's minimum level of regulatory capital reflects potential operational risk exposures in addition to market risk and credit risk exposures. The Commission emphasizes that the intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin is to establish a minimum capital requirement that would help ensure that the nonbank SD meets its obligations as an SD to market participants, and to cover potential operational risk, legal risk, and liquidity risk in addition to the risks associated with its trading portfolio.[225] The UK PRA Capital Rules address comparable risks albeit not through a requirement based on a UK nonbank SD's uncleared swap margin amount. In this regard, UK nonbank SDs are required to maintain a minimum level of regulatory capital based on an aggregate of the firm's total risk-weighted asset amounts for market risk, credit risk, and operational risk. Accordingly, the Commission has determined that, notwithstanding the differences in approaches, the UK PRA Capital Rules and CFTC Capital Rules are comparable in purpose and effect in requiring nonbank SDs to maintain a minimum level of regulatory capital that addresses potential market risk, credit risk, and operational risk to help ensure the safety and soundness of the firm, and to ensure that the firm has sufficient capital to absorb decreases in firm assets, absorb increases in firm liabilities, and meet obligations to counterparties and creditors, without the firm becoming insolvent.

3. Final Determination

Based on its analysis of comments and its holistic assessment of the respective requirements discussed in sections II.C.2.a., b., and c. above, the Commission adopts the Comparability Determination and Comparability Order as proposed with respect to the minimum capital requirements and calculation of regulatory capital, subject to the condition that PRA-designated UK nonbank SDs must maintain a minimum level of regulatory capital in the form of common equity tier 1 capital that equals or exceeds the equivalent of $20 million U.S. dollars.

D. Nonbank Swap Dealer Financial Reporting Requirements

1. Proposed Determination

The Commission detailed the requirements of the CFTC Financial Reporting Rules in the 2024 Proposal.[226] Specifically, the 2024 Proposal noted that the CFTC Financial Reporting Rules require nonbank SDs to file with the Commission and NFA periodic unaudited and annual audited financial reports.[227] The unaudited financial reports must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement demonstrating compliance with, and calculation of, the applicable regulatory minimum capital requirement; (iv) a statement of changes in ownership equity; (v) a statement of changes in liabilities subordinated to claims of general creditors; and (vi) such further material information necessary to make the required statements not misleading.[228] The annual audited financial reports must include the same financial statements that are required to be included in the unaudited financial reports, and must further include: (i) a statement of cash flows; (ii) appropriate footnote disclosures; and (iii) a reconciliation of any material differences between the financial statements contained in the annual audited financial reports and the financial statements contained in the

[221] Applicants' Letter at p. 3.

[222] *Id.* at pp. 2–3. As discussed in the 2024 Proposal, the UK PRA Capital Rules impose a 3.35 percent leverage ratio floor on PRA-designated UK nonbank SDs that hold significant amounts of non-UK assets, as an additional element of the capital requirements. Specifically, a PRA-designated UK nonbank SD that has non-UK assets equal to or greater than GBP 10 billion is required to maintain tier 1 capital (*i.e.,* an aggregate of common equity tier 1 capital and additional tier 1 capital) equal to or in excess of 3.35 percent of the firm's on-balance sheet and off-balance sheet exposures, including exposures on uncleared swaps but excluding certain exposures to central banks, without regard to any risk-weighting. *See* 2024 Proposal at 8034 and PRA Rulebook, CRR Firms, Leverage Ratio (CRR) Part, Chapter 3 Leverage Ratio (Part Seven CRR), Article 429 *et seq.*

[223] 85 FR 57462 at 57497.

[224] 85 FR 57462 at 57485 and 57497.

[225] *See* 2024 Proposal at 8040 (referencing 85 FR 57462).

[226] 2024 Proposal at 8047–8048.

[227] *Id.* and 17 CFR 23.105(d) and (e).

[228] *Id.* and 17 CFR 23.105(d)(2).

unaudited financial reports prepared as of the nonbank SD's year-end date.[229] In addition, a nonbank SD must attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct.[230] The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.[231]

The CFTC Financial Reporting Rules also require a nonbank SD to file the following financial information with the Commission and NFA on a monthly basis: (i) a schedule listing the nonbank SD's financial positions reported at fair market value; [232] (ii) schedules showing the nonbank SD's counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries; [233] and (iii) for nonbank SDs approved to use internal capital models, certain model metrics, such as aggregate value-at-risk (''VaR''), a graph reflecting the daily intra-month VaR for each business line, and counterparty credit risk information.[234]

The CFTC Financial Reporting Rules further require a nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions (''Margin Report'').[235] The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin on behalf of the nonbank SD or its swap counterparties; (ii) the amount of initial and variation margin required by the uncleared margin rules held by each custodian on behalf of the nonbank SD and on behalf its swap counterparties; and (iii) the aggregate amount of initial margin that the nonbank SD is required to collect from, or post with, swap counterparties for uncleared swap transactions subject to the uncleared margin rules.[236]

A nonbank SD electing the Bank-Based Capital Approach is required to file the unaudited financial report, Schedule 1, schedules of counterparty credit exposures, and the Margin Report with the Commission and NFA no later than 17 business days after the applicable month-end reporting date.[237] A nonbank SD must file its annual report with the Commission and NFA no later than 60 calendar days after the end of its fiscal year.[238]

The 2024 Proposal also detailed relevant financial reporting requirements of the UK PRA Financial Reporting Rules.[239] The UK PRA Financial Reporting Rules require a PRA-designated UK nonbank SD to report information to the PRA concerning its capital and financial condition sufficient to provide a comprehensive view of the firm's risk profile, including information on the firm's capital requirements, leverage ratio, large exposures, and liquidity requirements.[240] PRA-designated UK nonbank SDs must follow the templates and instructions provided in the PRA Rulebook for purposes of the prudential requirements reporting referred to COREP.[241] Under the COREP requirements, PRA-designated UK nonbank SDs are required to provide, on a quarterly basis,[242] calculations in relation to the PRA-designated UK nonbank SD's capital and capital requirements,[243] capital ratios and capital levels,[244] and market risk,[245] among other items.

In addition to the prudential requirements reporting, Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook imposes financial information reporting on PRA-designated UK nonbank SDs that are subject to section 403(1) of the Companies Act 2006 (*i.e.,* entities that are parent companies [246] and report on a consolidated basis using UK-adopted International Financial Reporting Standards (IFRS) and that issue securities admitted to trading on a UK-regulated market).[247] The relevant reporting templates and instructions, referred to as FINREP, are included in Chapter 6 of the Reporting (CRR) Part of the PRA Rulebook. Under the FINREP requirements, PRA-designated UK nonbank SDs subject to the requirements of Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook are required to provide the following documents to the PRA, among other items: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the PRA-designated UK nonbank SD's financial condition; [248] (ii) on a quarterly basis, a statement of profit or loss; [249] (iii) on a quarterly basis, a breakdown of financial liabilities by product and by counterparty sector; [250] (iv) on a quarterly basis, a listing of subordinated financial liabilities; [251] and (v) on an annual basis, a statement of changes in equity.[252]

Under the FINREP requirements, a PRA-designated UK nonbank SD subject to the requirements of Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook is also required to provide the PRA with additional financial information, including a breakdown of

[229] *Id.* and 17 CFR 23.105(e)(4).

[230] *Id.* at 8048 and 17 CFR 23.105(f).

[231] *Id.*

[232] 2024 Proposal at 8048, Regulation 23.105(l), and Schedule 1 of Appendix B to Subpart E of Part 23 (''Schedule 1''). 17 CFR 23.105(l) and 17 CFR Appendix B to Subpart E of Part 23. Schedule 1 includes a nonbank SD's holding of U.S Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

[233] 2024 Proposal 8048 and schedules 2, 3 and 4, respectively, of Appendix B to Subpart E of Part 23.

[234] 2024 Proposal 8048 and 17 CFR 23.105(k) and (l), and schedules 2, 3 and 4 of Appendix B to Subpart E of Part 23.

[235] 2024 Proposal 8048 and 17 CFR 23.105(m).

[236] *Id.*

[237] *Id.*

[238] *Id.*

[239] 2024 Proposal at 8048–8050.

[240] 2024 Proposal at 8048–8049 and PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Rule 1.

[241] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions.

[242] PRA Rulebook, CRR Firms, Reporting (CRR) Part, 5 Reporting Requirements, Chapter 3 Format and Frequency of Reporting on Own Funds, Own Funds Requirements.

[243] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Templates C 01.00 and C 02.00.

[244] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Template C 03.00.

[245] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I, Template C 02.00.

[246] A parent company (*i.e.,* ''parent undertaking'') is defined in Companies Act 2006, Section 1162.

[247] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Article 430, Rule 3. The International Accounting Standards Board is an independent, private-sector body that develops and approves IFRS.

[248] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Templates 1.1., 1.2., and 1.3 at Annex III (for reporting according to IFRS) and Templates 1.1., 1.2., and 1.3 at Annex IV (for reporting according to national accounting frameworks).

[249] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 2 at Annex III (for reporting according to IFRS) and Template 2 at Annex IV (for reporting according to national accounting frameworks).

[250] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 8.1 at Annex III (for reporting according to IFRS) and Template 8.1 at Annex IV (for reporting according to national accounting frameworks).

[251] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 8.2 at Annex III (for reporting according to IFRS) and Template 8.2. at Template 8.2 at Annex IV (for reporting according to national accounting frameworks).

[252] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 46 at Annex III (for reporting according to IFRS) and Template 46 at Annex IV (for reporting according to national accounting frameworks).

its loans and advances by product and type of counterparty,[253] as well as detailed information regarding its derivatives trading activities,[254] collateral, and guarantees.[255]

For PRA-designated UK nonbank SD that are not subject to financial information reporting under Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook, the Regulatory Reporting Part of the PRA Rulebook dictates the applicable reporting requirements.[256] Specifically, as firms that fall into Regulated Activity Group 3 (''RAG 3''), PRA-designated UK nonbank SDs are required to provide the following documents to the PRA, among other items: (i) on a quarterly basis, a balance sheet statement (or statement of financial position) that reflects the PRA-designated UK nonbank SD's financial condition; [257] (ii) on a quarterly basis, a statement of profit or loss; [258] and (iii) on an annual basis, an annual report and accounts.[259] The Applicants represented that the six UK PRA-designated nonbank SDs currently registered with the Commission are designated as RAG 3 firms and are required to provide the aforementioned documents.[260]

Furthermore, all PRA-designated UK nonbank SDs are required to prepare annual audited accounts and a strategic report (together, ''annual audited financial report'') pursuant to Parts 15 and 16 of the Companies Act 2006.[261] The audit of the accounts and report is required to be performed by one or more independent statutory auditors, which have the required skill, resources, and experience to perform their duties based on the complexity of the firm's business and the regulatory requirements to which the firm is subject.[262] PRA-designated UK nonbank SDs must submit the annual audited financial report to the PRA within 80 business days from the firm's accounting reference date.[263] In addition, under generally applicable company law requirements, PRA-designated UK nonbank SDs are required to submit the annual audited financial report to the UK Registrar of Companies.[264] The registrar makes the report available to the public on its website, free of charge.[265]

The annual audited accounts must comprise, at a minimum, a balance sheet, a profit and loss statement, and notes about the accounts.[266] The auditor's audit report must include: (i) a description of the annual accounts subject to the audit and the financial reporting framework that was applied in their preparation; (ii) a description of the scope of the audit, which must specify the auditing standards used to conduct the audit; (iii) an audit opinion stating whether the annual accounts give a true and fair view of the state of affairs and/or the profit and loss of the firm, as applicable, and whether the annual accounts have been prepared in accordance with the relevant financial reporting framework; and (iv) a reference to any matters emphasized by the auditor that did not qualify the audit opinion.[267]

The strategic report is required to include a review of the development and performance of the PRA-designated UK nonbank SD's during the financial year and a description of the principal risks and uncertainties that the firm faces.[268] The auditors are required to express an opinion on whether the strategic report is consistent with the accounts for the same financial year, and whether the strategic report has been prepared in accordance with applicable legal requirements.[269] The opinion also must state whether the auditor has identified material misstatements in the strategic report and, if so, describe the misstatement.[270]

In addition, as noted in the 2024 Proposal, the SEC's UK Order granting substituted compliance for financial reporting to UK nonbank SBSDs, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information, require a UK nonbank SBSD to file an unaudited FOCUS Report with the SEC on a monthly basis.[271] The FOCUS Report is required to include, among other statements and schedules: (i) a statement of financial condition; (ii) a statement of the UK nonbank SBSD's capital computation in accordance with home country Basel-based requirements; (iii) a statement of income/loss; and (iv) a statement of capital withdrawals.[272] A UK nonbank SBSD is required to file its FOCUS Report with the SEC within 35 calendar days of the month end.[273]

Based on its review of the UK Application and the relevant UK laws and regulations, the Commission preliminarily determined that, subject to the conditions specified in the 2024 Proposal, the UK PRA Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect. The Commission noted that both sets of rules provide the PRA,

[253] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Templates 5.1 and 6.1 at Annex III (for reporting according to IFRS) and Templates 5.1 and 6.1 at Annex IV (for reporting according to national accounting frameworks).

[254] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 10 at Annex III (for reporting according to IFRS) and Template 10 at Annex IV (for reporting according to national accounting frameworks).

[255] PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Template 13 at Annex III (for reporting according to IFRS) and Template 13 at Annex IV (for reporting according to national accounting frameworks).

[256] As indicated by the Applicants, the Regulatory Reporting Part of the PRA Rulebook applies to all PRA-designated UK nonbank SDs. *See* Responses to Staff Questions dated October 5, 2023.

[257] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 (referencing Templates 1.1., 1.2., and 1.3 at Annex III and Templates 1.1., 1.2., and 1.3 at Annex IV of Chapter 6 of the Reporting (CRR) Part) and Rule 9.3.

[258] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 (referencing Template 2 at Annex III and Template 2 at Annex IV of Chapter 6 of the Reporting (CRR) Part) and Rule 9.3.

[259] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulated Activity Group 3, Rule 9.2 and Rule 9.3.

[260] *See* Response to Staff Questions dated October 5, 2023. For the avoidance of doubt, as represented by the Applicants, the six PRA-designated UK nonbank SDs currently registered with the Commission are subject to the RAG 3 requirements in the Regulatory Reporting Part of the PRA Rulebook but are not subject the FINREP requirements set forth in Article 430(3) of the Reporting (CRR) Part of the PRA Rulebook. As such, the six PRA-designated UK nonbank SDs currently registered with the Commission are required to submit to the PRA only Templates 1 through 3 of FINREP.

[261] Companies Act 2006, Sections 393 to 414D and 475. Section 475 provides for an exemption from the audit requirement for certain entities (*i.e.,* ''small companies'', qualifying ''subsidiary companies'' and ''dormant companies''.) None of the six PRA-designated UK nonbank SD, however, falls into the exempt categories. *See* Responses to Staff Questions dated October 5, 2023.

[262] Companies Act 2006, Section 485 et *seq.; see also* PRA Rulebook, CRR Firms, Auditors Part, Rule 3 Auditors' Qualifications, and Rule 4 Auditors' Independence.

[263] PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulatory Activity Group 3, Rules 9.1. and 9.4. The ''accounting reference date'' is determined in accordance with Section 391 of the Companies Act 2006 and depending on the firm's date of incorporation.

[264] Companies Act 2006, Section 441. The deadline for filing the annual audited financial report with the UK Registrar of Companies is nine months from the firm's accounting reference date for private companies and six months from the firm's accounting reference date for public companies. *Id.,* Articles 442 (setting forth the filing deadlines by category of firm) and 391 (defining the terms ''accounting reference period'' and ''accounting reference date'').

[265] Companies Act 2006, Sections 1080 and 1085. Information filed with the UK Registrar of Companies is available at: *https://www.gov.uk/government/organisations/companies-house.*

[266] Companies Act 2006, Section 396.

[267] *Id.,* Section 495.

[268] *Id.,* Section 414C.

[269] *Id.,* Section 496.

[270] *Id.*

[271] *See* 2024 Proposal at 8050 and UK Order. *See also* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[272] *See,* SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information.

[273] *Id.*

Commission, and NFA with financial information to monitor a nonbank SD's compliance with capital requirements, and to assess a nonbank SD's overall safety and soundness.[274] Specifically, the Commission preliminarily found that the UK PRA Financial Reporting Rules impose reporting requirements that are comparable with respect to overall form and content to the CFTC Financial Reporting Rules.[275] In this regard, both the CFTC Financial Reporting Rules and the UK PRA Financial Reporting Rules require a nonbank SD to file statements of financial condition, statements of profit and loss, and statements of regulatory capital that, collectively, provide information for the PRA, Commission, and NFA to assess a nonbank SD's overall ability to absorb decreases in the value of firm assets, absorb increases in the value of firm liabilities, and cover losses from business activities, including swap dealing activities, without the firm becoming insolvent.[276]

The proposed conditions would ensure that the Commission and NFA receive appropriate and timely financial information from PRA-designated UK nonbank SDs to monitor the firms' compliance with UK PRA capital requirements and to assess the firms' overall safety and soundness. The proposed conditions would require a PRA-designated UK nonbank SD to provide the Commission and NFA with copies of the relevant templates of the FINREP reports and COREP reports that correspond to the PRA-designated UK nonbank SD's statement of financial condition, statement of income/loss, and statement of regulatory capital, total risk exposure, and capital ratios. These templates consist of FINREP templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), and 2 (Statement of profit or loss), and COREP templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios). In addition, the Commission proposed to require PRA-designated UK nonbank SDs to submit to the Commission and NFA copies of the PRA-designated UK nonbank SD's annual audited financial report.[277]

The proposed conditions would also require that the PRA-designated UK nonbank SD provide the reports and statements with balances converted to U.S. dollars.[278] The Commission further recognized that the requirement to convert accounts denominated in British pound to U.S. dollars on the annual audited financial report may have an unintended impact on the opinion expressed by the independent auditor. The Commission, therefore, proposed to accept the annual audited financial report denominated in British pound.[279]

The proposed conditions also would require a PRA-designated UK nonbank SD to file with the Commission and NFA its: (i) FINREP reports and COREP reports within 35 calendar days of the end of each month; and (ii) annual audited financial report on the on the earlier of the date the report is filed with the PRA or the date the report is required to be filed with the PRA.[280]

The Commission also proposed a condition to require PRA-designated UK nonbank SDs to file with the Commission and NFA, on a monthly basis, Schedule 1 showing the aggregate securities, commodities, and swap positions of the firm at fair market value as of the reporting date.[281] The Commission explained that Schedule 1 provides the Commission and NFA with detailed information regarding the financial positions that a nonbank SD holds as of the end of each month, including the firm's swaps positions, which allows the Commission and NFA to monitor the types of investments and other activities that the firm engages in and would assist the Commission and NFA in monitoring the safety and soundness of the firm.[282] The Commission proposed to require that Schedule 1 be filed by a PRA-designated UK nonbank SD along with the firm's monthly submission of selected FINREP and COREP templates.[283] The Commission also proposed to require that Schedule 1 be prepared with balances reported in U.S. dollars.

The Commission further proposed that, in lieu of filing FINREP and COREP reports, PRA-designated UK nonbank SDs that are registered with the SEC as UK nonbank SBSDs could satisfy this condition by filing with the CFTC and NFA, on a monthly basis, copies of the unaudited FOCUS Reports that the PRA-designated UK nonbank SDs are required to file with the SEC pursuant to the SEC UK Order, as supplemented by the SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information. The filing of a FOCUS Report was proposed as an elective option for the PRA-designated UK nonbank SD, as an alternative to the filing of unaudited FINREP templates, COREP templates, and Schedule 1 that such firms would otherwise be required to file with the Commission and NFA pursuant to the proposed Comparability Order. In this connection, the Commission noted that all six of the PRA-designated UK nonbank SDs are currently registered with the SEC as UK nonbank SBSDs and would be eligible to file copies of their monthly FOCUS Report with the Commission and NFA in lieu of the FINREP and COREP templates and Schedule 1. A PRA-designated UK nonbank SD electing to file copies of its monthly FOCUS Report would be required to submit the reports to the Commission and NFA within 35 calendar days of the end of each month.

Proposing that PRA-designated UK nonbank SDs that are registered with the SEC as UK nonbank SBSDs file the FOCUS Report in lieu of the FINREP and COREP templates and Schedule 1 as an elective option was consistent with Commission Regulation 23.105(d)(3), which at the time the 2024 Proposal was issued, provided that a nonbank SD or nonbank MSP that is also registered with the SEC as a broker or dealer, an SBSD, or a major security-based swap participant might elect to file a FOCUS Report in lieu of the financial reports required by the Commission. On April

[274] 2024 Proposal at 8050.

[275] *Id.*

[276] *Id.*

[277] *Id.* at 8051.

[278] *Id.* In the 2024 Proposal, the Commission proposed that the conversion of account balances from British pound to U.S. dollars would not be required to be subject to the audit of the independent auditor. A PRA-designated UK nonbank SD would be required report the exchange rate that it used to convert balances from British pound to U.S. dollars to the Commission and NFA as part of the financial reporting.

[279] *Id.*

[280] *Id.* The Commission noted that the UK PRA Financial Reporting Rules require PRA-designated UK nonbank SDs to submit the unaudited FINREP and COREP templates to PRA on a quarterly basis, whereas the CFTC Financial Reporting Rules contain a more frequent reporting requirement by requiring nonbank SDs that elect the Bank-Based Approach to file unaudited financial information with the Commission and NFA on a monthly basis. In emphasizing the importance of financial statement reporting requirements for the Commission's and NFA's oversight and the Commission's experience in monitoring the financial conditions of registrants through the receipt of monthly financial statements, the Commission proposed to condition the Comparability Order on a more frequent reporting submission. *See* 2024 Proposal at 8050–8051. The Commission also noted that PRA-designated UK nonbank SDs are required to submit the annual audited financial report to the PRA within 80 business days of the firm's accounting reference date. *See* PRA Rulebook, Regulatory Reporting Part, Rule 9.1.

[281] 2024 Proposal at 8052. Schedule 1 includes a nonbank SD's holding of U.S Treasury securities, U.S. government agency debt securities, foreign debt and equity securities, money market instruments, corporate obligations, spot commodities, and cleared and uncleared swaps, security-based swaps, and mixed swaps in addition to other position information.

[282] 2024 Proposal at 8052.

[283] *Id.*

30, 2024, the Commission amended Commission Regulation 23.105(d)(3) to mandate the filing of a FOCUS Report by such dually-registered entities, including dually-registered non-U.S. nonbank SDs, in lieu of the Commission's financial reports.[284] As such, the Commission is also adopting as final a revised Condition 10 to require that PRA-designated UK nonbank SDs registered as UK nonbank SBSDs comply with the requirement to file periodic financial statements by filing a copy of the FOCUS Report that the PRA-designated UK nonbank SDs are required to file with the SEC.

The Commission also proposed a condition to require a PRA-designated UK nonbank SD to submit with each set of selected FINREP and COREP templates, annual audited financial report, and the applicable Schedule 1, a statement by an authorized representative or representatives of the PRA-designated UK nonbank SD that to the best knowledge and belief of the person(s) the information contained in the respective reports and statements is true and correct, including the conversion of balances in the statements to U.S. dollars, as applicable.[285] The statement by the authorized representative or representatives of the PRA-designated UK nonbank SD was intended to be a substitute of the oath or affirmation required of nonbank SDs under Commission Regulation 23.105(f),[286] to ensure that reports and statements filed with the Commission and NFA are prepared and submitted by firm personnel with knowledge of the financial reporting of the firm who can attest to the accuracy of the reporting and conversion.[287]

The Commission noted that a Margin Report would assist the Commission and NFA in their assessment of the safety and soundness of the PRA-designated UK nonbank SDs by providing information regarding the firm's swap book and the extent to which it has uncollateralized exposures to counterparties or has not met its financial obligations to counterparties. The Commission explained that this information, along with the list of custodians holding both the firms' and counterparties' collateral for swap transactions, would assist with identifying potential financial impacts to the nonbank SD resulting from defaults on its swap transactions. The Commission further proposed to require a PRA-designated UK nonbank SD to file the Margin Report with the Commission and NFA within 35 calendar days of the end of each month, which corresponds with the proposed timeframe for the PRA-designated UK nonbank SD to file the selected FINREP and COREP templates or FOCUS Report, as applicable. The Commission also proposed to require the Margin Report to be provided with balances reported in U.S. dollars.

The Commission's preliminary determination did not require a PRA-designated UK nonbank SD to file the model metrics and counterparty credit exposure information required by Commission Regulations 23.105(k) and (l) [288] in recognition that NFA's current SD risk monitoring program requires all SDs, including PRA-designated UK nonbank SDs, to file with NFA on a monthly basis certain risk metrics that are comparable with the risk metrics contained in Commission Regulation 23.105(k) and (l) and address the market risk and credit risk of the SD's positions.[289] Specifically, the Commission noted that NFA's monthly risk metric information includes: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures before collateral and net of collateral.[290]

Furthermore, the Commission recognized that although the UK PRA Financial Reporting Rules do not contain an analogue to the CFTC's requirements for nonbank SDs to file monthly model metric information and counterparty exposures information, the PRA has access to comparable information. More specifically, the Commission noted that, under the UK PRA Financial Reporting Rules, the PRA has broad powers to request any information necessary for the exercise of its functions.[291] As such, the PRA has access to information allowing it to assess the ongoing performance of risk models and to monitor the PRA-designated UK nonbank SD's credit exposures, which may be comprised of credit exposures to primarily other UK and EU counterparties. In addition, the COREP reports, which PRA-designated UK nonbank SDs are required to file with the PRA on a quarterly basis, include information regarding the PRA-designated UK nonbank SD's risk exposure amounts, including risk-weighted exposure amounts for credit risk.[292]

2. Comment Analysis and Final Determination

The Commission received comments regarding the comparability of financial reporting and specific comments addressing several of the financial reporting issues on which the Commission solicited feedback. Better Markets expressed a general disagreement with the Commission's preliminary finding of comparability, arguing that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable.[293] More generally, Better Markets asserted that the 2024 Proposal did not provide a sufficient analysis supporting the Commission's preliminary conclusion that the UK PRA and the U.S. financial

[284] *See Capital and Financial Reporting Requirements of Swap Dealers and Major Swap Participants,* 89 FR 45569 (May 23, 2024).

[285] 2024 Proposal at 8052.

[286] 17 CFR 23.105(f). Commission Regulation 23.105(f) requires a nonbank SD to attach to each unaudited and audited financial report an oath or affirmation that to the best knowledge and belief of the individual making the affirmation the information contained in the financial report is true and correct. The individual making the oath or affirmation must be a duly authorized officer if the nonbank SD is a corporation, or one of the persons specified in the regulation for business organizations that are not corporations.

[287] 2024 Proposal at 8052.

[288] Commission Regulation 23.105(k) requires a nonbank SD that has obtained approval from the Commission or NFA to use internal capital models to submit to the Commission and NFA each month information regarding its risk exposures, including VaR, and requires certain credit risk exposure information from model and non-model approved firms. 17 CFR 23.105(k). Commission Regulation 23.105(l) requires each nonbank SD to provide information to the Commission and NFA regarding its counterparty credit concentration for the 15 largest exposures in derivatives, a summary of its derivatives exposures by internal credit ratings, and the geographic distribution of derivatives exposures for the 10 largest countries in Schedules 2, 3, and 4, respectively. 17 CFR 23.105(l).

[289] 2024 Proposal at 8052–8053. As previously noted, however, the current six PRA-designated UK nonbank SDs will be required to include credit risk information set forth in Schedules 2–4 of Appendix B to Subpart E in the monthly FOCUS Report that the firms will be required to file with the Commission under Condition 10 of the final Comparability Order. In addition, as previously noted, each PRA-designated UK nonbank SD will be required to file Schedule 1 under Condition 12 of the final Comparability Determination.

[290] *See* 2024 Proposal at 8053 and *NFA Financial Requirements, Section 17—Swap Dealer and Major Swap Participant Reporting Requirements* (''NFA Section 17 Rule''), available here: *https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=SECTION%2017&Section=7,* and *Notice to Members—Monthly Risk Data Reporting for Swap Dealers* (May 30, 2017) (''NFA Notice I–17–10''), available here: *https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817.*

[291] *See* 2024 Proposal at 8053 and FSMA, Part XI (indicating that the PRA has broad information gathering powers).

[292] *See* 2024 Proposal at 8053 and PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 6 Templates and Instructions, Annex I.

[293] Better Markets Letter at p. 14.

reporting frameworks would produce comparable outcomes.[294]

Better Markets also disagreed with the 2024 Proposal to the extent that the Commission proposed not to require PRA-designated UK nonbank SDs that have been approved by the PRA to use capital models to file the monthly model metric information required by Commission Regulation 23.105(k) with the Commission or NFA.[295] Commission Regulation 23.105(k) requires nonbank SDs that have been approved by the Commission or NFA to use models to compute market risk or credit risk for computing capital requirements to file certain information with the Commission and NFA on a monthly basis.[296] As noted above, the information required to be filed includes: (i) for nonbank SDs approved to use market risk models, a listing of any products that the nonbank SD excludes from the approved market risk model and the amount of the standardized market risk charge taken on such products; (ii) a graph reflecting, for each business line of the nonbank SD, the daily intra-month VaR; (iii) the aggregate VaR for the nonbank SD; (iv) certain credit risk information for swaps, mixed swaps and security-based swaps, including: (a) overall current exposure, (b) current exposure listed by counterparty for the 15 largest exposures, (c) the 10 largest commitments listed by counterparty, (d) maximum potential exposure listed by counterparty for the 15 largest exposures, (e) aggregate maximum potential exposure, (f) a summary report reflecting the SD's current and maximum potential exposures by credit rating category, and (g) a summary report reflecting current exposure for each of the top ten countries to which the nonbank SD is exposed.[297] Better Markets stated that by not requiring the information contained in Commission Regulation 23.105(k), the Commission was proposing to take a back seat to the UK and blindly accept the assessments resulting from the PRA-designated UK nonbank SDs' use of internal models to calculate risk.[298]

With respect to Better Markets' statement that the number and variety of conditions regarding financial reporting are the most compelling evidence that the requirements are not comparable, the Commission disagrees that the inclusion of conditions in the Comparability Order demonstrates that the UK PRA Financial Reporting Requirement are not comparable to CFTC Financial Reporting Requirements in achieving the overall objective of ensuring the safety and soundness of nonbank SDs. As discussed in section I.E. above, the conditions impose obligations on PRA-designated UK nonbank SDs to provide information to the Commission and NFA necessary for the effective oversight of the PRA-designated UK nonbank SDs on an ongoing basis. As also discussed in section I.E. above, Commission staff engaged in a thorough analysis of the UK PRA Capital Rules and UK PRA Financial Reporting Rules, which supports the Commission's conclusion that the respective regulatory frameworks would produce comparable outcomes.

The Commission also does not agree that its approach is effectively deferring model oversight to the PRA or that it is otherwise ''blindly'' accepting the internal model-based assessments of the PRA-designated UK nonbank SDs. As noted above, pursuant to NFA rules, all registered SDs, including PRA-designated UK nonbank SDs, are required to submit to NFA, on a monthly basis, a list of specified risk metrics related to the SD's market risk and credit risk exposures.[299] Specifically, the risk metrics include: (i) VaR for interest rates, credit, foreign exchange, equities, commodities, and total VaR; (ii) total stressed VaR; (iii) interest rate, credit spread, foreign exchange market, and commodity sensitivities; (iv) total swaps current exposure both before and after offsetting against collateral held by the firm; and (v) a list of the 15 largest swaps counterparty current exposures.[300] As part of its regulatory oversight program, NFA uses the risk metrics information to identify firms that may pose heightened risk and to allocate appropriate oversight resources. NFA also may request additional information from a nonbank SD to the extent it determines that information in the risk metrics or other financial filings warrants a need for additional follow-up. Furthermore, Commission staff has access to the collected risks metrics information and participates in NFA's risk monitoring function by regularly exchanging information and discussing potential risks with NFA staff.

As the list of specified risk metrics discussed above indicates, although the information collected by NFA is not identical to the information required under Commission Regulation 23.105(k), there is a significant overlap in the data items. The Commission also notes that NFA, in its role of primary supervisor of nonbank SDs' risk management practices, has identified the risk data items listed in NFA Notice I–17–10 as the most relevant risk metrics to be collected for oversight purposes. As such, the Commission finds that the information required pursuant to NFA Notice I–17–10 would provide the Commission and NFA with key data allowing them to monitor nonbank SDs' risk exposures. In addition, the Commission has the ability to request additional information from its registrants, including PRA-designated UK nonbank SDs, at any time. Finally, the Commission notes that the PRA, which will be conducting the initial approval and ongoing assessment of the performance of the PRA-designated UK nonbank SDs' internal models, under a regulatory framework that the Commission finds comparable to the CFTC Capital Rules, will have access to additional information that the PRA deems relevant in the conduct of such approval and assessment. The Commission, therefore, concludes that it is not necessary to require PRA-designated UK nonbank SDs relying on the final Comparability Order to submit the model metric information and credit risk information mandated by Commission Regulations 23.105(k) and (l).

Finally, the Applicants addressed the Commission's request for comment on the compliance dates for the reporting conditions that the proposed Comparability Order would impose on PRA-designated UK nonbank SDs.[301] The Applicants requested that the Commission set the compliance date at least six months following the issue date of the final Comparability Order to allow PRA-designated UK nonbank SDs to adequately prepare for compliance with the reporting conditions imposed by the Comparability Order.[302]

The Commission believes that granting an additional period of time to allow PRA-designated UK nonbank SDs to develop and implement the necessary systems and processes for compliance with the Comparability Order is appropriate with respect to the new reporting obligations imposed on PRA-

[294] *Id.* at p. 11.

[295] *Id.* at pp. 14–15.

[296] 17 CFR 23.105(k).

[297] 17 CFR 23.105(k)(1).

[298] Better Markets Letter at p.15.

[299] NFA Section 17 Rule, available here: *https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=SECTION%2017&Section=7,* and NFA Notice I–17–10, available here: *https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4817.*

[300] *See* 2024 Proposal at 8053, NFA Section 17 Rule, and NFA Notice I–17–10.

[301] Applicants' Letter at p. 8.

[302] *Id.*

designated UK nonbank SDs under the final Order. For other reporting obligations, for which a process already exists, such as the reports that PRA-designated UK nonbank SDs currently submit to the Commission and NFA pursuant to CFTC Staff Letter 22–10,[303] prepare pursuant to the UK PRA Financial Reporting Rules, and/or submit to the SEC (*i.e.,* FOCUS Reports), additional time for compliance does not appear necessary. Accordingly, the Commission is setting a compliance date of 180 calendar days from the date of publication of the final Comparability Order in the **Federal Register**, to comply with final Condition 14, which requires PRA-designated UK nonbank SDs to file monthly Margin Reports with the Commission and NFA.

For purposes of clarity, the Commission also notes that PRA-designated UK nonbank SDs may present the financial information required to be provided to the Commission and NFA under the final Comparability Order in accordance with generally accepted accounting principles that the PRA-designated UK nonbank SD uses to prepare general purpose financial statements in the UK. This clarification is consistent with proposed Condition 9, which the Commission adopts without modification in the final Comparability Order, requiring that the PRA-designated UK nonbank SD prepares and keeps current ledgers and other similar records ''in accordance with [the PRA Rulebook] and conforming with the applicable accounting principles.'' [304] In taking the position that PRA-designated UK nonbank SDs may provide financial reporting prepared in accordance with the accounting standards applicable in their home jurisdiction, the Commission considered the nature of the financial reporting information required from nonbank SDs for purposes of monitoring their overall financial condition and compliance with capital requirements. Specifically, the Commission notes that the requirements for how nonbank SDs calculate their risk-weighted assets and capital ratio, in both the UK and the U.S., follow a rules-based approach consistent with the Basel standards, and, consequently, the Commission does not anticipate that a variation in the applicable accounting standards would materially impact this calculation.[305] In this regard, the Commission notes that PRA-designated UK nonbank SDs currently submit financial reports, including a statement of financial condition and a statement of regulatory capital, pursuant to CFTC Staff Letter 22–10.[306] The reports provide the Commission with appropriate information to assess the financial and operational condition of PRA-designated UK nonbank SDs, as well as the firms' compliance with the capital ratios imposed on PRA-designated UK nonbank SDs under the UK PRA Capital Rules.

In summary, the Commission adopts the final Comparability Order and conditions substantially as proposed with respect to the comparability of the CFTC Financial Reporting Rules and UK PRA Financial Reporting Requirements, subject to the amendment in Condition 10 to mandate the filing by EU nonbank SDs registered as EU nonbank SBSDs of a copy of the FOCUS Report that such dually-registered PRA-designated UK nonbank SDs are required to file with the SEC. The Commission also specifies, in final Conditions 10, 12, and 14, that the conversion of balances to U.S. dollars must be done using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the respective report. Finally, the Commission also grants an additional compliance period for the new reporting obligations imposed on PRA-designated UK nonbank SDs under the final Order set forth below.

E. Notice Requirements

1. Proposed Determination

The Commission noted in the 2024 Proposal that the CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.[307] Commission Regulation 23.105(c) requires a nonbank SD to file written notice with the Commission and NFA of the following events: (i) the nonbank SD's regulatory capital is less than the minimum amount required; (ii) the nonbank SD's regulatory capital is less than 120 percent of the minimum amount required; (iii) the nonbank SD fails to make or to keep current required financial books and records; (iv) the nonbank SD experiences a reduction in the level of its excess regulatory capital of 30 percent or more from the amount last reported in a financial report filed with the Commission; (v) the nonbank SD plans to distribute capital to equity holders in an amount in excess of 30 percent of the firm's excess regulatory capital; (vi) the nonbank SD fails to post to, or collect from, a counterparty (or group of counterparties under common ownership or control) required initial and variation margin, and the aggregate amount of such margin equals or exceeds 25 percent of the nonbank SD's minimum capital requirement; (vii) the nonbank SD fails to post to, or collect from, swap counterparties required initial and variation margin, and the aggregate amount of such margin equals or exceeds 50 percent of the nonbank SD's minimum capital requirement; and (viii) the nonbank SD is registered with the SEC as an SBSD and files a notice with the SEC under applicable SEC Rules.[308]

The notices are part of the Commission's overall program of helping to ensure the safety and soundness of nonbank SDs and the

[303] CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union,* issued by MPD on August 17, 2022. CFTC Staff Letter No. 22–10, which extended the expiration of CFTC Letter 21–20, provides that MPD would not recommend an enforcement action to the Commission if a non-U.S. nonbank SD covered by the letter, subject to certain conditions, complied with their respective home-country capital and financial reporting requirements in lieu of the Commission's capital and financial reporting requirements set forth in Commission Regulations 23.100 through 23.106, pending the Commission's determination of whether the capital and financial reporting requirements of certain foreign jurisdictions are comparable to the Commission's corresponding requirements.

[304] 2024 Proposal at 8059.

[305] Furthermore, the Commission's approach to permitting PRA-designated UK nonbank SDs to maintain financial books and records, and to file financial reports and other financial information, prepared in accordance with local accounting standards is consistent with the SEC's final comparability determinations for non-U.S. SBSDs. German Order at 59812 and SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information at 59219. Specifically, the SEC stated that the use of local reporting requirements will avoid non-U.S. SBSDs ''having to perform and present two Basel capital calculations (one pursuant to local requirements and one pursuant to U.S. requirements).'' SEC Order on Manner and Format of Filing Unaudited Financial and Operational Information at 59219. The SEC noted, in this regard, that the Basel standards are international standards that have been adopted in the U.S. and in jurisdictions where substituted compliance is available for capital under the SEC comparability determinations and that, therefore, requirements for how firms calculate capital pursuant to the Basel standards generally should be similar. *Id.* The Commission's approach to permitting PRA-designated UK nonbank SDs to maintain financial books and records, and file financial information, prepared in accordance with local accounting standards will also facilitate financial reporting by dually-registered PRA-designated UK nonbank SDs—UK nonbank SBSDs. In such case, dually-registered entities would not have to perform multiple calculations under different accounting standards or submit two different FOCUS Reports.

[306] CFTC Staff Letter No. 22–10, *Extension of Time-Limited No-Action Position for Foreign Based Nonbank Swap Dealers domiciled in Japan, Mexico, the United Kingdom, and the European Union,* August 17, 2022.

[307] 2024 Proposal at 8053–8054 and 17 CFR 23.105(c).

[308] 17 CFR 23.105(c).

swaps markets in general.[309] Notices provide the Commission and NFA with an opportunity to assess whether there is an actual or potential financial and/or operational issue at a nonbank SD. In situations where there is an underlying issue, Commission and NFA staff engage with the nonbank SD in an effort to minimize potential adverse impacts on the firm, swap counterparties, and the larger swaps market.[310]

The UK capital and resolution framework, in turn, require PRA-designated UK nonbank SDs to provide certain notices to the PRA concerning the firm's compliance with relevant laws and regulations.[311] The Commission noted that the UK PRA Financial Reporting Rules require a PRA-designated UK nonbank SD to provide notice to the PRA within five business days if the firm fails to meet its combined buffer requirement, which at a minimum consists of a capital conservation buffer of 2.5 percent of the PRA-designated UK nonbank SD's total risk exposure amount.[312] To meet its capital buffer requirements, a PRA-designated UK nonbank SD must hold common equity tier 1 capital in addition to the minimum common equity tier 1 ratio requirement of 4.5 percent of the firm's core capital requirement of 8 percent of the firm's total risk exposure amount.[313] The notice to the PRA must be accompanied by a capital conservation plan that sets out how the PRA-designated UK nonbank SD will restore its capital levels.[314] The capital conservation plan is required to include: (i) the ''maximum distributable amount'' calculated in accordance with the PRA rules; (ii) estimates of income and expenditures and a forecast balance sheet; (iii) measures to increase the capital ratios of the PRA-designated UK nonbank SD; and (iv) a plan and timeframe for the increase in the capital of the PRA-designated UK nonbank SD with the objective of meeting fully the combined buffer requirement.[315] The PRA is required to assess the capital conservation plan and may approve the plan only if it considers that the plan would be reasonably likely to conserve or raise sufficient capital to enable the PRA-designated UK nonbank SD to meet its combined capital buffer requirement within a timeframe that the PRA considers to be appropriate.[316] A PRA-designated UK nonbank SD is required to notify the PRA as early as possible where it has identified a material risk to its ability to meet the combined buffer according to the capital conservation plan and timeframe approved by the PRA.[317]

In addition, a PRA-designated UK nonbank SD must notify the PRA if the firm's management considers that the firm is failing or will in the near future fail to satisfy one or more of the ''threshold conditions,'' which are the minimum requirements that a PRA-designated UK nonbank SD must meet to be permitted to carry the regulated activities in which it engages.[318] In broad terms, the PRA's threshold conditions include, among other things, requirements that the firm has appropriate financial resources and capacity to measure, monitor and manage risks.[319]

Emphasizing that the requirement for a nonbank SD to file notice with the Commission and NFA if the firm becomes undercapitalized or if the firm experiences a decrease of excess regulatory capital below defined levels is a central component of the Commission's and NFA's oversight program for nonbank SDs, the Commission proposed a condition to require a PRA-designated UK nonbank SD to file with the Commission and NFA copies of notices filed under the Capital Buffers Part of the PRA Rulebook by PRA-designated UK nonbank SDs alerting the PRA of a breach of the PRA-designated UK nonbank SD's combined capital buffer.[320] The Commission proposed to require that the notice be filed by the PRA-designated UK nonbank SD within 24 hours of the filing of the notice with the PRA.

The Commission, however, preliminarily determined that the requirement for a PRA-designated UK nonbank SD to provide notice of a breach of its capital buffer requirements to the PRA is not sufficiently comparable in purpose and effect to the CFTC notice provisions contained in Commission Regulation 23.105(c)(1) and (2),[321] which require a nonbank SD to provide notice to the Commission and to NFA if the firm fails to meet its minimum capital requirement or if the firm's regulatory capital falls below 120 percent of its minimum capital requirement (''Early Warning Level''). The Commission noted that, in its preliminary view, the requirement for a PRA-designated UK nonbank SD to provide notice of a breach of its capital buffer requirements does not achieve a comparable outcome to the CFTC's Early Warning Level requirement due to the difference in the thresholds triggering a notice requirement in the respective rule sets. Therefore, the Commission proposed a condition to require a PRA-designated UK nonbank SD to file a notice with the Commission and NFA if the firm's capital ratio does not equal or exceed 12.6 percent.[322] The proposed condition would further require the PRA-designated UK nonbank SD to file the notice with the Commission and NFA within 24 hours of when the firm knows or should have known that its regulatory capital was below 120 percent of its minimum capital requirement.[323]

The Commission also noted that the UK PRA Financial Reporting Rules also do not contain an explicit requirement for a PRA-designated UK nonbank SD to notify the PRA if the firm fails to maintain current books and records, experiences a decrease in regulatory capital over levels previously reported, or fails to collect or post initial margin with uncleared swap counterparties that exceed certain threshold levels.[324] The UK PRA Financial Reporting Rules also do not require a PRA-designated UK nonbank SD to provide the PRA with advance notice of equity withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.[325]

To ensure that the Commission and NFA receive prompt information concerning potential operational or financial issues that may adversely

[309] *Id.*

[310] *See* 2024 Proposal at 8053.

[311] *Id.* at 8054.

[312] See 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.4. The combined capital buffer requirement is the total common equity tier 1 capital required to meet the sum of the capital conservation buffer and the institution-specific countercyclical capital buffer. PRA Rulebook, Capital Buffers Part, Chapter 1 Application and Definitions, Rule 1.2.

[313] *Id.*

[314] *See* 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rules 4.4 and 4.5.

[315] *See* 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.5.

[316] *See* 2024 Proposal at 8054 and Supervisory Statement SS6/14 Implementing Capital Buffers, Prudential Regulation Authority, January 2021 (''SS6/14''), available here: *https://www.bankofengland.co.uk/prudential-regulation/publication/2014/implementing-crdiv-capital-buffers-ss.*

[317] *Id.*

[318] *See* 2024 Proposal at 8054 and PRA Rulebook, CRR Firms, Notifications Part, Chapter 8 Specific Notifications, Rule 8.3.

[319] FSMA, Part 4A and Schedule 6.

[320] *See* 2024 Proposal at 8055.

[321] 17 CFR 23.105(c)(1) and (2).

[322] 2024 Proposal at 8055.

[323] *Id.*

[324] *Id.* at 8056.

[325] Commission Regulation 23.105(c)(5) requires a nonbank SD to provide written notice to the Commission and NFA two business days prior to the withdrawal of capital by action of the equity holders if the amount of the withdrawal exceeds 30 percent of the nonbank SD's excess regulatory capital. 17 CFR 23.105(c)(5).

impact the safety and soundness of a PRA-designated UK nonbank SD, the Commission proposed to condition the Comparability Order to require PRA-designated UK nonbank SDs to file certain notices mandated by Commission Regulation 23.105(c) with the Commission and NFA as discussed below. Pursuant to the proposed conditions, a PRA-designated UK nonbank SD would be required to file a notice the Commission and NFA if the firm fails to maintain current books and records with respect to its financial condition and financial reporting requirements.[326] The Commission stated that, in this context, books and records would include current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the PRA-designated UK nonbank SD's asset, liability, income, expense, and capital accounts in accordance with the accounting principles accepted by the relevant authorities.[327] The Commission further stated that it preliminarily believed that the maintenance of current books and records is a fundamental and essential component of operating as a registered nonbank SD and that the failure to comply with such a requirement may indicate an inability of the firm to promptly and accurately record transactions and to ensure compliance with regulatory requirements, including regulatory capital requirements. As such, the Commission proposed to condition the proposed Order on a PRA-designated UK nonbank SD providing the Commission and NFA with a written notice within 24 hours if the firm fails to maintain books and records on a current basis.[328]

The Commission further proposed to condition the Comparability Order on a PRA-designated UK nonbank SD filing a notice with the Commission and NFA if: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin on uncleared swap and security-based swap positions that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (iii) a PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; and (iv) a PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement. The Commission proposed to require this notice so that, in the event that such a notice is filed, the Commission and NFA may commence communication with the PRA-designated UK nonbank SD and the PRA to obtain an understanding of the facts that have led to the failure to exchange material amounts of initial margin and variation margin in accordance with the applicable margin rules, and to assess whether there is a concern regarding the financial condition of the firm that may impair its ability to meet its financial obligations to customers, counterparties, creditors, and general market participants, or otherwise adversely impact the firm's safety and soundness.[329]

The Commission did not propose to require a PRA-designated UK nonbank SD to file notices with the Commission and NFA concerning withdrawals of capital or changes in capital levels as such information would be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the order, and because the PRA-designated UK nonbank SD's capital levels are monitored by the PRA. As such, the Commission preliminarily considered that the separate reporting of the information to the Commission would be superfluous.[330]

The Commission proposed to require that a PRA-designated UK nonbank SD file any notices required under the Order with the Commission and NFA reflecting any balances, where applicable, in U.S. dollars. The Commission stated that each notice required by the proposed Comparability Order had to be filed in accordance with instructions issued by the Commission or NFA.[331]

Based on its review of the UK Application and the relevant UK laws and regulations, and subject to the proposed conditions discussed above and specified in the proposed Comparability Order, the Commission preliminarily determined that the UK PRA Financial Reporting Rules related to notice provisions are comparable in purpose and effect to the notice provisions of the CFTC Financial Reporting Rules.[332]

2. Comments and Final Determination

With respect to the proposed requirements in Condition 20 that a PRA-designated UK nonbank SD file a notice with the Commission and NFA within 24 hours of when the firm knew or should have known that its regulatory capital fell below 120 percent of its minimum capital requirement, the Applicants asserted that the wording of the proposed condition raises practical challenges as it would require notification prior to the discovery of the relevant event.[333] The Applicants recommended that the Commission amend the proposed condition to require notice within 24 hours of when the firm ''knew'' that its regulatory capital fell below 120 percent of the minimum capital requirement.[334] Similarly, with respect to proposed Condition 21, which would require a PRA-designated UK nonbank SD to file a notice with the Commission and NFA within 24 hours if the firm fails to make or keep current the financial books and records, the Applicants recommended that the Commission amend the condition to require that a PRA-designated UK file a notice within 24 hours ''of when it knows it has failed to make or keep current the financial books and records.'' [335] In addition, with respect to proposed Condition 20, the Applicants asserted that, pursuant to the condition, a PRA-designated UK nonbank SD would calculate the Early Warning Level by applying a buffer of 20 percent in excess capital, in the form of common equity tier 1 capital, on top of the firm's capital conservation buffer, which, at a minimum, equals 2.5 percent of the firm's total risk exposure amount and must be met in the form of common equity tier 1 capital. In the Applicants' view, an aggregate notification trigger of 12.6 percent of total risk exposure amount would be too

[326] 2024 Proposal at 8056.

[327] For comparison, see Commission Regulation 23.105(b), which similarly defines the term ''current books and records'' as used in the context of the Commission's requirements. 17 CFR 23.105(b).

[328] 2024 Proposal at 8056.

[329] *Id.*

[330] *Id.*

[331] *Id.*

[332] *Id.* at 8054–8057.

[333] Applicants' Letter at p. 5.

[334] *Id.*

[335] *Id.*

high. The Applicants recommended that the Commission set the notification trigger at 120 percent of the minimum total capital requirement.[336]

The Early Warning Level notice requirement is a central component of the Commission's and NFA's oversight programs. The Commission, however, recognizes that by requiring a PRA-designated UK nonbank SD to provide notice if its capital ratio falls below 120 percent of the firm's minimum capital requirement, as defined to comprise the applicable capital buffers, the Commission would be imposing a higher threshold level for the notice trigger than is currently applicable to nonbank SDs under the CFTC Capital Rules. To achieve the condition's goal of providing the Commission and NFA with information on decreases in capital that may indicate financial or operational challenges at the firm, the Commission is revising proposed Condition 20 to require instead that a PRA-designated UK nonbank SD provide notice to the Commission if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to the last reported.[337] The condition is consistent with the requirement applicable to nonbank SDs under Commission Regulation 23.105(c)(4).[338] The Commission believes that this condition, combined with the condition requiring a PRA-designated UK nonbank SD to file with the Commission and NFA copies of notices filed with the PRA of a breach of the PRA-designated UK nonbank SD's combined capital buffer, will provide a timely opportunity to the Commission and NFA to initiate conversations and fact finding with a PRA-designated UK nonbank SD that may be experiencing operational or financial issues that may adversely impact the firm's ability to meet its obligations to market participants, including customers or swap counterparties.

In connection with the Applicants' general request that the Commission set the compliance date of the Comparability Order at least six months following the issuance of the final Order, the Commission believes, as stated above, that granting an additional period of time to allow PRA-designated UK nonbank SDs to establish and implement the necessary systems and processes to comply with the notice reporting obligations imposed by the Comparability Order is appropriate with respect to certain notice obligations. Specifically, the Commission understands that establishing a system and process for monitoring material decreases in excess regulatory capital as required by final Condition 20 or for monitoring failures to collect or post initial margin or variation margin for uncleared swap transactions that exceed specified thresholds for purposes of complying with final Condition 22 may take time.[339] Conversely, the Commission does not believe that additional time is necessary for implementing a system and process of providing a notice to the Commission and NFA in connection with the occurrence of events that PRA-designated UK nonbank SDs currently monitor and/or report to the PRA. The Commission is also of the view that, given the nature of the notice obligation, PRA-designated UK nonbank SDs should be in a position to comply with all other notice obligations, including those requiring PRA-designated UK nonbanks SDs to provide notice to the Commission and NFA if they fail to make or keep current financial books and records or if they fail to maintain regulatory capital in the form of common equity tier 1 equal or in excess of the U.S. dollar equivalent of $20 million, immediately upon effectiveness of the Comparability Order. Specifically, with respect to the requirement in Condition 21 that a PRA-designated UK nonbank SD notify the Commission and NFA if the firm fails to make or keep current the financial books and records, the Commission notes that maintaining current books and records of all financial transactions is a fundamental recordkeeping requirement for a registered nonbank SD, and is essential to provide management with the information necessary to ensure that transactions are timely and accurately reported and that the firm complies with capital and other regulatory requirements. The Commission finds that it is necessary for a nonbank SD to maintain internal controls and procedures to affirmatively monitor that financial books and records are being maintained on a current basis. The Commission also notes that the language of Condition 21 is consistent with the timing standard of Commission Regulation 23.105(c)(3).[340] As such, the Commission is adopting Condition 21 as proposed. The Commission, however, is setting a compliance date of 180 calendar days after the publication of the final Comparability Order in the **Federal Register** with respect to the notice reporting obligations under final Conditions 20 and 22 of the Comparability Order.

With respect to the notice requirement in final Condition 22, the Applicants also recommended that the Commission clarify the term ''minimum capital requirement,'' used in connection with the thresholds triggering a notice requirement.[341] In response, the Commission will amend the condition to indicate that, in the context of final Condition 22, the PRA-designated UK nonbank SD's ''minimum capital requirement'' is the core capital requirement under the UK PRA Capital Rules, excluding capital buffers.

Finally, the Applicants recommended that the Commission amend proposed Condition 24 to require that a PRA-designated UK nonbank SDs, or an entity acting on its behalf, notify the Commission and NFA of ''material changes'' to the UK PRA Capital Rules or UK PRA Financial Reporting Rules instead of ''proposed or final material changes'' to the UK PRA Capital Rules or UK PRA Financial Reporting Rules.[342] Separately, the Applicants noted that the language of proposed Condition 24 is confusing in that it differentiates between rules that are ''imposed on'' and those that ''apply to'' PRA-designated UK nonbank SDs.[343] The Commission did not intend to distinguish between rules that are ''imposed on'' and rules that ''apply to'' PRA-designated UK nonbank SDs and will use instead the defined terms ''UK PRA Capital Rules'' and ''UK PRA Financial Reporting Rules'' to address the potential for confusion. The

[336] Applicants' Letter at p. 6.

[337] For clarity, by ''excess regulatory capital,'' the Commission refers to the capital ratio by which the firm's capital exceeds the core capital ratio requirement of 8 percent of the firm's risk-weighted assets. For instance, if a firm maintains a capital ratio of 20 percent, its excess regulatory capital would be 12 percent. In this example, 30 percent of the excess regulatory capital would equal 3.6 percent.

[338] 17 CFR 23.105(c)(4).

[339] With regard to Condition 22, the Commission also notes, for clarity, that in proposing a notice condition based on thresholds of ''required'' margin, the Commission's intent was to set the notice trigger by reference to margin amounts that are legally required to be exchanged under the applicable margin requirements. To determine the applicable margin requirements, the Commission will consider the framework set forth in Commission Regulation 23.160. To the extent PRA-designated UK nonbank SDs intending to rely on the Comparability Order have inquiries regarding the scope of uncleared swap margin transactions to be monitored for purposes of complying with final Condition 22, MPD will discuss such inquiries with the PRA-designated UK nonbank SD during the confirmation process referenced in final Condition 8 of the Comparability Order.

[340] 17 CFR 23.105(c)(3).

[341] Applicants' Letter at p. 7. The Applicants indicated that in the context of proposed Condition 22, they understand the term ''minimum capital requirement'' to mean an amount equal to 8 percent of the PRA-designated UK nonbank SD's total risk exposure amount.

[342] Applicants' Letter at p. 8.

[343] Applicants' Letter at p. 8.

Commission, however, believes that it is necessary that the Commission and NFA receive an advance notice of potential material changes to the foreign jurisdiction's rules to allow the Commission a sufficient time to assess the potential impact of the proposed amendments and to address potential changes to the Comparability Determination and Comparability Order. As such, the Commission is adopting Condition 24 as proposed with regard to the required notice of ''proposed and final material changes'' to the UK PRA Capital Rules and UK PRA Financial Reporting Rules.

The Commission did not receive any comments with respect to the following proposed notice conditions: (i) the PRA-designated UK nonbank SD files notice with the Commission and NFA within 24 hours of being informed by the PRA that the firm is not in compliance with any component of the UK PRA Capital Rules or UK PRA Financial Reporting Rules (proposed Condition 15); (ii) the PRA-designated UK nonbank SD files notice with the Commission and NFA within 24 hours if the firm fails to maintain regulatory capital in the form of common equity tier 1 capital, as defined in Article 26 of UK CRR, equal to or in excess of the U.S. dollar equivalent of $20 million (proposed Condition 16); (iii) the PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours of filing a capital conservation plan (proposed Condition 17); (iv) the PRA-designated UK nonbank SD files notice with the Commission and NFA within 24 hours of being required by the PRA to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with certain other additional requirements that the PRA may impose pursuant to the UK PRA Capital Rules and the UK PRA Financial Reporting Rules (proposed Condition 18); (v) the PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its MREL (proposed Condition 19); or (vi) the PRA-designated UK nonbank SD files notice of PRA approving a change in the firm's fiscal year-end date, which must be filed with the Commission and NFA at least 15 business days prior to the effective date of the change (proposed Condition 23).

With regard to the proposed condition requiring that the PRA-designated UK nonbank SD file a notice with the Commission and NFA within 24 hours of filing a capital conservation plan, the Commission will revise the condition to require that the notice be filed within 24 hours of when the PRA-designated UK nonbank SD breaches its combined capital buffer requirement and is required to file a capital conservation plan. Thus, the Commission will help ensure that the PRA-designated UK nonbank SD provides a timely notice within 24 hours of breaching its combined capital buffer requirement instead of 24 hours of filing the capital conservation plan, which may occur up to five business days after the breach of the combined buffer requirement.

In conclusion, the Commission finds that the regulatory notice provisions of the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules, after consideration of the conditions imposed in the final Comparability Order, are comparable in purpose and effect, and achieve comparable outcomes, by providing timely notice to the PRA, and to the Commission and NFA, of specified events at a nonbank SD that may potentially indicate an ongoing issue with the safety and soundness of the firm and/or its ability to meet its obligations to swap counterparties, creditors, or other market participants without the firm becoming insolvent. As such, the Commission adopts the final Comparability Order and conditions as proposed with respect to the Commission's analysis of comparability of the PRA and Commission's nonbank SD notice reporting requirements, subject to the revisions in final Conditions 17 and 20, and the clarifying changes to final Condition 24 discussed above. The Commission is also adopting a compliance date for certain notice reporting requirements as discussed above in the final Comparability Order.

F. Supervision and Enforcement

1. Preliminary Determination

In the 2024 Proposal, the Commission discussed the oversight of nonbank SDs, noting that the Commission and NFA conduct ongoing supervision of nonbank SDs to assess their compliance with the CEA, Commission regulations, and NFA rules by reviewing financial reports, notices, risk exposure reports, and other filings that nonbank SDs are required to file with the Commission and NFA.[344] The 2024 Proposal also noted that the Commission and NFA also conduct periodic examinations as part of the supervision of nonbank SDs, including routine onsite examinations of nonbank SDs' books, records, and operations to ensure compliance with CFTC and NFA requirements.[345] In this regard, as noted in section I.E. above, section 17(p) of the CEA requires NFA, as a registered futures association, to establish minimum capital and financial requirements for nonbank SDs and to implement a program to audit and enforce compliance with such requirements.[346]

The Commission also discussed the financial reports and notices required under the CFTC Financial Reporting Rules, noting that the reports and notices provide the Commission and NFA with information necessary to: ensure the nonbank SD's compliance with minimum capital requirements; assess the firm's overall safety and soundness by being able to meet its financial obligations to customers, counterparties, creditors, and general market participants; and identify potential issues at a nonbank SD that may impact the firm's ability to maintain compliance with the CEA and Commission regulations.[347] As discussed in the 2024 Proposal, the Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information as the Commission or NFA may specify to monitor the safety and soundness of the firm.[348] The Commission further noted that it has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. In this regard, section 4b–1(a) of the CEA provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under section 4s(e) of the CEA.[349]

With respect to PRA-designated UK nonbank SDs, the Commission noted in the 2024 Proposal that the PRA conducts oversight of the firm's compliance with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules. In this regard, the Commission noted that the PRA has supervision, audit, and investigation powers with respect to PRA-designated UK nonbank SDs, which include the powers to obtain specified information reasonably required in connection with the exercise of the PRA's functions, the power to conduct or order investigations, and the power to impose sanctions on PRA-designated UK nonbank SDs that breach their regulatory obligations, including those deriving from the UK PRA Capital Rules

[344] 2024 Proposal at 8057.

[345] *Id.*

[346] 7 U.S.C. 21(p).

[347] 2024 Proposal at 8057.

[348] Commission Regulation 23.105(h) (17 CFR 23.105(h)). *See also* 2024 Proposal at 8057.

[349] 7 U.S.C. 6s(e).

and the UK PRA Financial Reporting Rules.[350]

The PRA also monitors the capital adequacy of PRA-designated UK nonbank SDs through supervisory measures on an ongoing basis. The monitoring includes assessing the notices and the capital conservation plan discussed in section II.E.1. above. In addition, the PRA is empowered with a variety of measures to address a PRA-designated UK nonbank SD's financial deterioration.[351] Under its general supervisory powers, the PRA may impose new requirements to a PRA-designated UK nonbank SD if the firm is failing, or likely to fail, to satisfy the threshold conditions for which the PRA is responsible.[352] More specifically, a breach in a PRA-designated UK nonbank SD's capital buffers automatically triggers restrictions on the firm's ability to make certain distributions (*e.g.,* pay certain dividends or employee bonuses).[353] In addition, the PRA may impose administrative penalties or other administrative measures, including prudential charges, if a PRA-designated nonbank SD's liquidity position falls below the liquidity and stable funding requirements.[354]

In case of non-compliance with the capital and liquidity thresholds, the PRA may also order PRA-designated UK nonbank SDs to comply with additional requirements, including: (i) maintaining additional capital in excess of the minimum requirements, if certain conditions are met; (ii) requiring that the PRA-designated UK nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) imposing restrictions on the business or operations of the PRA-designated UK nonbank SD; (iv) imposing restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) requiring additional or more frequent reporting requirements; and (vi) imposing additional specific liquidity requirements.[355] The PRA may also sanction the PRA-designated UK nonbank SD if the firm's capital or liquidity fall below the applicable thresholds or the PRA has evidence that the firm will breach such thresholds in the next 12 months.[356] The PRA may also withdraw a PRA-designated UK nonbank SD's authorization if the firm no longer meets its minimum capital requirements.[357]

In addition, if the capital and liquidity requirements are breached, the PRA 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 firm's business strategy or legal or operational structure, among other measures.[358]

Although the PRA generally has broad discretion as to what powers it may exercise, the UK PRA Capital Rules and the UK PRA Financial Reporting Rules specifically mandate that the PRA require PRA-designated UK nonbank SDs to hold increased capital when: (i) risks or elements of risks are not covered by the capital requirements imposed by the UK PRA Capital Rules; (ii) the PRA-designated UK nonbank SD lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types, and distribution of capital needed to cover the nature and level of risks to which it might be exposed; or (iii) the sole application of other administrative measures would be unlikely to timely and sufficiently improve the firm's arrangements and processes.[359]

Based on its review of the Application and its analysis of the relevant laws and regulations, the Commission preliminarily found that the PRA has the necessary powers to supervise, investigate, and discipline PRA-designated UK nonbank SDs for compliance with the applicable capital and financial reporting requirements, and to detect and deter violations of, and ensure compliance with, the applicable UK capital and financial reporting requirements.[360] Furthermore, the Commission noted that it retains supervision, examination, and enforcement authority over PRA-designated UK nonbank SDs that are covered by the Comparability Order.[361] Specifically, the Commission noted that a non-U.S. nonbank SD that operates under substituted compliance remains subject to the Commission's examination authority and may be subject to a Commission enforcement action if the firm fails to comply with a foreign jurisdiction's capital adequacy or financial reporting requirements.[362] The ability of the Commission to exercise its enforcement authority over a PRA-designated UK nonbank SD is not conditioned upon a finding by the PRA of a violation of the UK PRA Capital Rules or UK PRA Financial Reporting Rules. In addition, as each PRA-designated UK nonbank SD is a member of NFA, the firm is subject to NFA membership rules, examination authority, and disciplinary process.[363]

2. Comment Analysis and Final Determination

The Commission did not receive comments directly related to its analysis set forth in the proposed Comparability Determination and Comparability Order, or on its preliminary determination that the PRA has the necessary powers to supervise, investigate, and discipline PRA-designated UK nonbank SDs for non-compliance with the applicable UK capital and financial reporting requirements. The Commission has reviewed its preliminary Comparability Determination and finds that the PRA-designated UK nonbank SDs are subject to a supervisory and enforcement framework that is comparable to the Commission's supervisory and enforcement framework for nonbank SDs.

[350] 2024 Proposal at 8057 and FSMA, Parts 4A, XI, and XIV.

[351] *See* 2024 Proposal at 8057 and PRA, *The Prudential Regulation Authority's approach to banking supervision,* July 2023, available at: *https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors.*

[352] 2024 Proposal at 8057 and FSMA, Part 4A, Section 55M.

[353] PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.3.

[354] Capital Requirements Regulations 2013, Regulation 35B and FSMA, Part XIV Disciplinary Measures (setting forth the PRA's disciplinary power with respect to all rules adopted under FSMA). The Applicants represented that ''CRR rules'' (*i.e.,* general PRA rules applying to CRR firms, including PRA-designated UK nonbank SDs) are adopted pursuant to FSMA, Part 9D, and as such the PRA has power to impose disciplinary measures in connection with these rules. *See* Response to Staff Questions dated October 5, 2023.

[355] FSMA, Parts 4A, Sections 55M and 55P, and Capital Requirements Regulation 2013, Regulation 35B.

[356] FSMA, Parts 4A and XIV.

[357] FSMA, Part 4A, Sections 55J–55K.

[358] Bank Recovery and Resolution (No. 2) Order 2014, Article 2 (defining ''conditions for early intervention'' in case of breach of UK CRR requirements or requirements derived from CRD) and Part 8 (laying down the procedure to be followed by the PRA to determine whether early intervention measures should be taken under FSMA). If additional requirements are met, it is also possible that the Bank of England, as the resolution authority, may assess the PRA-designated UK nonbank SD as ''failing or likely to fail,'' triggering a resolution action, which could occur even before the firm actually breached its minimum capital requirements. Banking Act 2009, Sections 4 to 83.

[359] Capital Requirements Regulation 2013, Section 34.

[360] 2024 Proposal at 8058.

[361] 2024 Proposal at 8029.

[362] *Id. See also* 17 CFR 23.106(a)(4)(ii), which provides that all nonbank SDs, regardless of whether they rely on a Comparability Order or Comparability Determination, remain subject to the Commission's examination and enforcement authority.

[363] 7 U.S.C. 21(p).

As detailed in section II.F.1. above, PRA-designated UK nonbank SDs are subject to direct supervision by the PRA in its capacity of prudential regulator. The PRA has supervision, audit, and investigation powers with respect to the six PRA-designated UK nonbank SDs currently registered with the Commission.

The Commission's assessment of the PRA's supervisory programs included an evaluation of the PRA's authority to supervise PRA-designated UK nonbank SDs based on applicable UK laws and regulations, as discussed in section II.F.1. above. This evaluation included an assessment of the financial reporting that PRA-designated UK nonbank SDs are required to provide to the PRA, the PRA's ability to conduct examinations, including onsite inspections of PRA-designated UK nonbank SDs, and the PRA's ability to impose sanctions or take other action to address noncompliance with applicable laws and regulations. Based upon its evaluation, the Commission preliminarily determined that the relevant UK laws and regulations are comparable in purpose and effect to the CEA and Commission regulations, and that the PRA has appropriate power to supervise PRA-designated UK nonbank SDs for compliance with the UK PRA Capital Rules and UK PRA Financial Reporting Rules. The Commission further determined, based on applicable UK laws and regulations, that the PRA has the ability to sanction PRA-designated UK nonbank SDs for failing to comply with regulatory requirements. Specifically, as discussed in section II.F.1. above, the PRA has the power to impose sanctions on the PRA-designated UK nonbank SD if the firm's capital or liquidity fall below the applicable thresholds,[364] and may impose various requirements on PRA-designated UK nonbank SDs, including a requirement to hold additional capital if certain conditions are met.[365] The PRA may also withdraw a PRA-designated UK nonbank SD's authorization to operate if the firm no longer meets its minimum capital requirements.[366]

Furthermore, as discussed in this Comparability Determination, by issuing a Comparability Order, the Commission is not ceding its supervisory and enforcement authorities. PRA-designated UK nonbank SDs that are subject to a Comparability Order are registered with the Commission as SDs and are members of NFA, and, as such, are subject to the CEA, Commission regulations, and NFA membership rules and requirements. In this regard, PRA-designated UK nonbank SDs covered by a Comparability Order are required to directly provide the Commission with additional information upon the Commission's request to facilitate the ongoing supervision of such firms.[367] Further, section 17 of NFA's SD Financial Requirements rule provides that each SD member of NFA must file the financial, operational, risk management and other information required by NFA in the form and manner prescribed by NFA.[368] The ability to obtain information directly from PRA-designated UK nonbank SDs ensures that the Commission and NFA have access to the information necessary to monitor the financial condition of such firms and to assess the firms' compliance with applicable capital and financial reporting requirements. PRA-designated UK nonbank SDs covered by a Comparability Order remain subject to the Commission's examination and enforcement authority with respect to all elements of the CEA and Commission regulations, including capital and financial reporting.[369]

In addition, as detailed in section I.E. above, the conditions set forth in the Comparability Order reflect the fact that the Commission and NFA have a continuing obligation to conduct ongoing oversight, including potential examination, of PRA-designated UK nonbank SDs to ensure compliance with the Comparability Order and with relevant CEA requirements and Commission regulations. Specifically, the conditions require PRA-designated UK nonbank SDs to file directly with the Commission and NFA financial reports and notices that are comparable to the financial reports and notices filed by nonbank SDs domiciled in the U.S. In addition to requiring PRA-designated UK nonbank SDs to maintain current books and records reflecting all transactions,[370] the conditions further require each PRA-designated UK nonbank SD covered by the Comparability Order to file directly with the Commission and NFA: (i) monthly and annual financial reports; [371] (ii) notice that the firm was informed by the PRA that it is not in compliance with the UK PRA Capital Rules and/or UK PRA Financial Reporting Rules; [372] (iii) notice that the firm has experienced a decrease of 30 percent or more in its excess regulatory capital as compared to the last excess regulatory capital reported in filings with the Commission and NFA; [373] (iv) notice that the firm has breached its combined capital buffer requirement and is required to file a capital conservation plan with the PRA; [374] (v) notice that the firm has failed to maintain regulatory capital in the form of common equity tier 1 capital equal to or in excess of the U.S. dollar equivalent of $20 million; [375] and (vi) notice that the firm has failed to maintain current financial books and records.[376] The Comparability Order further requires the Applicants to provide notice to the Commission of any material changes to the information submitted in the application, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules and proposed and final material changes to the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs.[377] The financial information and notices required to be filed directly with the Commission and NFA under the Comparability Order, and through the Commission's and NFA's direct authority to obtain additional information from PRA-designated UK nonbank SDs, will allow the Commission and NFA to conduct ongoing oversight of such firms to assess their overall safety and soundness.

Although Commission Regulation 23.106 does not condition the issuance of a Comparability Order on the Commission and the authority or authorities in the relevant foreign jurisdiction having entered into a formal MOU or similar arrangement, the Commission recognizes the benefit that such an arrangement may provide. Specifically, although Commission staff may engage directly with PRA-designated UK nonbank SDs to obtain information regarding their financial and operational condition, it may not be able to exchange and discuss such firm-specific information [378] with the PRA or

[364] FSMA, Parts 4A and XIV.

[365] FSMA, Parts 4A, Sections 55M and 55P, and Capital Requirements Regulation 2013, Regulation 35B.

[366] FSMA, Part 4A, Sections 55J–55K.

[367] 17 CFR 23.105(h).

[368] NFA Section 17 Rule available at NFA's website: *https://www.nfa.futures.org/rulebooksql/index.aspx.*

[369] 17 CFR 23.106(a)(4)(ii).

[370] Condition 9 of the final Comparability Order.

[371] Conditions 10 and 11 of the final Comparability Order.

[372] Condition 15 of the final Comparability Order.

[373] Condition 20 of the final Comparability Order.

[374] Condition 17 of the final Comparability Order.

[375] Condition 16 of the final Comparability Order.

[376] Condition 21 of the final Comparability Order.

[377] Condition 24 of the final Comparability Order.

[378] The sharing of non-public information by CFTC staff would require assurances related to the use and treatment of such information in a manner consistent with Section 8(e) of the CEA, 7 U.S.C. 12(e).

reach shared expectations on procedures for conducting on-site examinations in the UK.[379] Therefore, Commission staff will continue its engagement with PRA staff to negotiate and finalize an MOU or similar arrangement to facilitate the joint supervision of PRA-designated UK nonbank SDs.

III. Final Capital Comparability Determination and Comparability Order

A. Commission's Final Comparability Determination

Based on the UK Application and the Commission's review of applicable UK laws and regulations, as well as the review of comments submitted in response to the Commission's request for comment on the UK Application and the proposed Comparability Determination and Comparability Order, the Commission finds that the UK PRA Capital Rules and the UK PRA Financial Reporting Rules, subject to the conditions set forth in the Comparability Order below, achieve comparable outcomes and are comparable in purpose and effect to the CFTC Capital Rules and CFTC Financial Reporting Rules. In reaching this conclusion, the Commission recognizes that there are certain differences between the UK PRA Capital Rules and CFTC Capital Rules and certain differences between the UK PRA Financial Reporting Rules and the CFTC Financial Reporting Rules. The Comparability Order is subject to conditions that are necessary to promote consistency in regulatory outcomes, or to reflect the scope of substituted compliance that would be available notwithstanding certain differences. In the Commission's view, the differences between the two rules sets are not inconsistent with providing a substituted compliance framework for PRA-designated UK nonbank SDs subject to the conditions specified in the Order below.

Furthermore, the Comparability Determination and Comparability Order are limited to the comparison of the UK PRA Capital Rules to the Bank-Based Approach contained within the CFTC Capital Rules. As noted previously, the Applicants have not requested, and the Commission has not performed, a comparison of the UK PRA Capital Rules to the Commission's NLA Approach or TNW Approach.

B. Order Providing Conditional Capital Comparability Determination for Certain PRA-Designated UK Nonbank Swap Dealers

It is hereby determined and ordered, pursuant to Commodity Futures Trading Commission (''CFTC'' or ''Commission'') Regulation 23.106 (17 CFR 23.106) under the Commodity Exchange Act (''CEA'') (7 U.S.C. 1 *et seq.*) that a swap dealer (''SD'') subject to the Commission's capital and financial reporting requirements under sections 4s(e) and (f) of the CEA (7 U.S.C. 6s(e) and (f)), that is organized and domiciled in the United Kingdom (''UK'') and designated for prudential supervision by the UK Prudential Regulation Authority (''PRA''), may satisfy the capital requirements under section 4s(e) of the CEA and Commission Regulation 23.101(a)(1)(i) (17 CFR 23.101(a)(1)(i)) (''CFTC Capital Rules''), and the financial reporting rules under section 4s(f) of the CEA and Commission Regulation 23.105 (17 CFR 23.105) (''CFTC Financial Reporting Rules''), by complying with certain specified requirements of the UK laws and regulations cited below and otherwise complying with the following conditions, as amended or superseded from time to time:

(1) The SD is not subject to regulation by a prudential regulator defined in section 1a(39) of the CEA (7 U.S.C. 1a(39));

(2) The SD is organized under the laws of the UK and is domiciled in the UK;

(3) The SD is licensed as an investment firm in the UK and is designated for prudential supervision by the PRA (''PRA-designated UK nonbank SD'');

(4) The PRA-designated UK nonbank SD is subject to and complies with: *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012* as restated and applicable in the UK (''UK CRR''), the provisions implementing the *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC* (''CRD''), including *Capital Requirements Regulations 2013* and *Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions* (''Liquidity Coverage Delegated Regulation''), the provisions of the Banking Act 2009 and its secondary legislation related to the minimum requirement for own funds and eligible liabilities (''MREL''), and the rules of the PRA as reflected in the PRA Rulebook (collectively the ''UK PRA Capital Rules'');

(5) The PRA-designated UK nonbank SD satisfies at all times applicable capital ratio and leverage ratio requirements set forth in Article 92 of UK CRR and the rules in PRA Rulebook, CRR Firms, Leverage Ratio—Capital Requirements and Buffers Part, Chapter 3 Minimum Leverage Ratio, the capital conservation buffer requirements set forth in PRA Rulebook, CRR Firms, Capital Buffers Part, and applicable liquidity requirements set forth in PRA Rulebook, CRR Firms, Liquidity Coverage Requirement—UK Designated Investment Firms Part and PRA Rulebook, CRR Firms, Liquidity (CRR) Part, and otherwise complies with the requirements to maintain a liquidity risk management program as required under PRA Rulebook, CRR Firms, Internal Liquidity Adequacy Assessment Part;

(6) The PRA-designated UK nonbank SD is subject to and complies with: Reporting (CRR) and Regulatory Reporting parts of the PRA Rulebook and the Companies Act 2006, Parts 15 and 16 (collectively and together with UK CRR, the ''UK PRA Financial Reporting Rules'');

(7) The PRA-designated UK nonbank SD maintains at all times an amount of regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of UK CRR, equal to or in excess of the equivalent of $20 million in United States dollars (''U.S. dollars''). The PRA-designated UK nonbank SD shall use a commercially reasonable and observable British pound/U.S. dollar exchange rate to convert the value of the pound-denominated common equity tier 1 capital to U.S. dollars;

(8) The PRA-designated UK nonbank SD has filed with the Commission a notice stating its intention to comply with the UK PRA Capital Rules and the UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the PRA-designated UK nonbank SD's representation that the firm is organized and domiciled in the UK, is a licensed investment firm designated for prudential supervision by the PRA, and

[379] For UK nonbank SDs regulated by the FCA, the Commission and the FCA are signatories to a supervisory MOU that covers information sharing and examinations. *Memorandum of Understanding Concerning Cooperation and the Exchange of Information in the Context of Supervising Covered Firms* (June 20, 2019).

is subject to, and complies with, the UK PRA Capital Rules and UK PRA Financial Reporting Rules. A PRA-designated UK nonbank SD may not rely on this Comparability Order until it receives confirmation from Commission staff, acting pursuant to authority delegated by the Commission under Commission Regulation 140.91(a)(11) (17 CFR 140.91(a)(11)), that the PRA-designated UK nonbank SD may comply with the UK PRA Capital Rules and UK PRA Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Reporting Rules. Each notice filed pursuant to this condition must be submitted to the Commission via email to the following address: *MPDFinancialRequirements@cftc.gov;*

(9) The PRA-designated UK nonbank SD prepares and keeps current ledgers and other similar records in accordance with the PRA Rulebook, General Organisational Requirements Part, Rule 2.2 and Record Keeping Part, Rule 2.1 and 2.2, and conforming with the applicable accounting principles;

(10) The PRA-designated UK nonbank SD files with the Commission and with the National Futures Association (''NFA'') a copy of templates 1.1 (Balance Sheet Statement: assets), 1.2 (Balance Sheet Statement: liabilities), 1.3 (Balance Sheet Statement: equity), and 2 (Statement of profit or loss) of the financial reports (''FINREP'') that PRA-designated UK nonbank SDs are required to submit pursuant to PRA Rulebook, CRR Firms, Regulatory Reporting Part, Chapter 9 Regulatory Activity Group 3, Rule 9.2, and templates 1 (Own Funds), 2 (Own Funds Requirements) and 3 (Capital Ratios) of the common reports (''COREP'') that PRA-designated UK nonbank SDs are required to submit pursuant to PRA Rulebook, CRR Firms, Reporting (CRR) Part, Chapter 4 Reporting (Part Seven A CRR), Article 430 Reporting on Prudential Requirements and Financial Information, Rule 1. The FINREP and COREP templates must be provided with balances converted to U.S. dollars, using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the reports, and must be filed with the Commission and NFA within 35 calendar days of the end of each month. PRA-designated UK nonbank SDs that are registered as security-based swap dealers (''SBSDs'') with the U.S. Securities and Exchange Commission (''SEC'') must comply with this condition by filing with the Commission and NFA a copy of Form X–17A–5 (''FOCUS Report'') that the PRA-designated UK nonbank SD is required to file with the SEC or its designee pursuant to an order granting conditional substituted compliance with respect to Securities Exchange Act of 1934 Rule 18a–7. The copy of the FOCUS Report must be filed with the Commission and NFA within 35 calendar days after the end of each month in the manner, format and conditions specified by the SEC in *Order Specifying the Manner and Format of Filing Unaudited Financial and Operational Information by Security-Based Swap Dealers and Major Security-Based Swap Participants that are not U.S. Persons and are Relying on Substituted Compliance with Respect to Rule 18a–7,* 86 FR 59208 (Oct. 26, 2021);

(11) The PRA-designated UK nonbank SD files with the Commission and with NFA a copy of its annual audited accounts and strategic report (together, ''annual audited financial report'') that are required to be prepared and published pursuant to Parts 15 and 16 of Companies Act 2006. The annual audited financial report may be reported in British pound. The annual audited financial report must be filed with the Commission and NFA on the earlier of the date the report is filed with the PRA or the date the report is required to be filed with the PRA pursuant to the UK PRA Financial Reporting Rules;

(12) The PRA-designated UK nonbank SD files Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations (17 CFR 23 Subpart E—appendix B) with the Commission and NFA on a monthly basis. Schedule 1 must be prepared with balances reported in U.S. dollars, using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the report, and must be filed with the Commission and NFA within 35 calendar days of the end of each month. PRA-designated UK nonbank SDs that are registered as SBSDs must comply with this condition by filing with the Commission and NFA a copy of the FOCUS Report that they file with the SEC or its designee as set forth in Condition 10;

(13) The PRA-designated UK nonbank SD submits with each set of FINREP and COREP templates, annual audited financial report, and Schedule 1 of appendix B to Subpart E of part 23 of the Commission's regulations, a statement by an authorized representative or representatives of the PRA-designated UK nonbank SD that to the best knowledge and belief of the representative or representatives, the information contained in the reports, including the conversion of balances in the reports to U.S. dollars, is true and correct;

(14) The PRA-designated UK nonbank SD files a margin report containing the information specified in Commission Regulation 23.105(m) (17 CFR 23.105(m)) (''Margin Report'') with the Commission and with NFA within 35 calendar days of the end of each month. The Margin Report's balances must be reported in U.S. dollars, using a commercially reasonable and observable British pound/U.S. dollar spot rate as of the date of the report;

(15) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the PRA that the firm is not in compliance with any component of the UK PRA Capital Rules or the UK PRA Financial Reporting Rules;

(16) The PRA-designated UK nonbank SD files a notice within 24 hours with the Commission and NFA if it fails to maintain regulatory capital in the form of common equity tier 1 capital as defined in Article 26 of UK CRR, equal to or in excess of the U.S. dollar equivalent of $20 million using a commercially reasonable and observable British pound/U.S. dollar exchange rate;

(17) The PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours of breaching its combined capital buffer requirement and being required to file a capital conservation plan with the PRA pursuant to PRA Rulebook, CRR Firms, Capital Buffers Part, Chapter 4 Capital Conservation Measures, Rule 4.4;

(18) The PRA-designated UK nonbank SD provides the Commission and NFA with notice within 24 hours if it is required by the PRA to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Financial Services and Markets Act 2000, Part 4A or the Capital Requirements Regulation 2013, Regulation 35B;

(19) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to maintain its MREL, if the PRA-designated UK nonbank SD is subject to such requirement as set forth by the Bank of England pursuant to the Banking Act 2009, section 3A and the Bank Recovery and Resolution (No. 2) Order 2014, Part 9;

(20) The PRA-designated UK nonbank SD files a notice with the Commission and NFA if it experiences a 30 percent or more decrease in its excess regulatory capital as compared to that last reported in the financial information filed pursuant to Condition 10. The notice filed with Commission and NFA must be filed within two business days of the firm experiencing the 30 percent or

more decrease in excess regulatory capital;

(21) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours if it fails to make or keep current the financial books and records;

(22) The PRA-designated UK nonbank SD files a notice with the Commission and NFA within 24 hours of the occurrence of any of the following: (i) a single counterparty, or group of counterparties under common ownership or control, fails to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the PRA-designated UK nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement; (iii) the PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin for uncleared swap and non-cleared security-based swap positions to a single counterparty or group of counterparties under common ownership and control that, in the aggregate, exceeds 25 percent of the PRA-designated UK nonbank SD's minimum capital requirement; or (iv) the PRA-designated UK nonbank SD fails to post required initial margin or pay required variation margin to counterparties for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the PRA-designated UK nonbank SD's minimum capital requirement. For purposes of the calculation, the PRA-designated UK nonbank SD's minimum capital requirement is the core capital requirement under the UK PRA Capital Rules, excluding capital buffers;

(23) The PRA-designated UK nonbank SD files a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the PRA. The notice required by this paragraph will satisfy the requirement for a nonbank SD to obtain the approval of NFA for a change in fiscal year-end under Commission Regulation 23.105(g) (17 CFR 23.105(g)). The notice of change in fiscal year-end must be filed with the Commission and NFA at least 15 business days prior to the effective date of the PRA-designated UK nonbank SD's change in fiscal year-end;

(24) The PRA-designated UK nonbank SD or an entity acting on its behalf notifies the Commission of any material changes to the information submitted in the application for Comparability Determination, including, but not limited to, proposed and final material changes to the UK PRA Capital Rules or UK PRA Financial Reporting Rules and proposed and final material changes to the PRA's supervisory authority or supervisory regime over PRA-designated UK nonbank SDs; and

(25) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the PRA-designated UK nonbank SD with the Commission and NFA pursuant to the conditions of this Comparability Order must be submitted electronically to the Commission and NFA in accordance with instructions provided by the Commission or NFA.

It is also hereby determined and ordered that this Comparability Order becomes effective upon its publication in the **Federal Register**, with the exception of Conditions 14, 20, and 22, which will become effective 180 calendar days after publication of the Comparability Order in the **Federal Register**.

Issued in Washington, DC, on July 3, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the United Kingdom Prudential Regulation Authority—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam

I support the Commission's approval of four comparability determinations and related orders finding that the capital and financial reporting requirements in Japan, Mexico, the European Union (France and Germany), and the United Kingdom (for swap dealers (SDs) designated for prudential supervision by the UK Prudential Regulation Authority (PRA)) are comparable to the Commission's capital and financial reporting requirements applicable to nonbank SDs. These are the first comparability determinations that the Commission has finalized for applications filed following the July 2020 adoption of its regulatory framework for substituted compliance for non-U.S. domiciled nonbank SDs.[1] There are currently 15 non-U.S. nonbank SDs that are eligible to comply with these conditional orders: three in Japan; three in Mexico; two in Germany and one in France for the EU; and six in the UK that are PRA-designated.

As part of the process leading to the Commission's final comparability determinations and orders, Commission staff engaged in a thorough analysis of each foreign jurisdictions' capital and financial reporting frameworks and considered the public comments received on the proposed determinations and orders. Based on those reviews, the Commission has determined that the respective foreign jurisdictions' rules are comparable in purpose and effect, and achieve comparable outcomes, to the CFTC's capital and financial reporting rules. Specifically, the Commission considered the scope and objectives of the foreign regulators' capital adequacy and financial reporting requirements; the ability of those regulators to supervise and enforce compliance with their respective capital and financial reporting requirements; and other facts or circumstances the Commission deemed relevant for each of the applications.

In certain instances, the Commission found that a foreign jurisdiction's rules impose stricter standards. In limited circumstances, where the Commission concluded that a foreign jurisdiction lacks comparable and comprehensive requirements on a specific issue, the Commission included a targeted condition designed to impose an equally stringent standard. The Commission has issued the final orders consistent with its authority to issue a comparability determination with the conditions it deems appropriate. These conditions aim to ensure that the orders only apply to nonbank SDs that are eligible for substituted compliance in these respective jurisdictions and that those non-U.S. nonbank SDs comply with the foreign country's capital and financial reporting requirements as well as certain additional capital, financial reporting, recordkeeping, and regulatory notice requirements. This approach acknowledges that jurisdictions may adopt unique approaches to achieving comparable outcomes. As a result, the Commission has focused on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding Commission requirements for nonbank SDs, not whether they are comparable in every aspect or contain identical elements.

With these comparability determinations, the Commission fully retains its enforcement and examination authority as well as its

[1] *Capital Requirements of Swap Dealers and Major Swap Participants,* 85 FR 57462 (Sept. 15, 2020). The Commission issued the final rule on July 24, 2020.

ability to obtain financial and event specific reporting to maintain direct oversight of nonbank SDs located in these four jurisdictions. The avoidance of duplicative requirements without a commensurate benefit to the Commission's oversight function reflects the Commission's approach to recognizing the global nature of the swap markets with dually-registered SDs that operate in multiple jurisdictions, which mandate prudent capital and financial reporting requirements. This is, however, an added benefit and not the Commission's sole justification for issuing these comparability determinations.

The comparability orders will become effective upon their publication in the **Federal Register**. For several order conditions, the Commission is granting an additional compliance period of 180 calendar days. To rely on a comparability order, an eligible non-U.S. nonbank SD must notify the Commission of its intention to satisfy the Commission's capital and financial requirements by substituted compliance and receive a Commission confirmation before relying on a determination.

I appreciate the hard work and dedication of the staff in the Market Participants Division over the past several years to propose and finalize these four determinations. I also thank the staff in the Office of the General Counsel and the Office of International Affairs for their support on these matters.

Appendix 3—Statement of Commissioner Kristin N. Johnson

I support the Commodity Futures Trading Commission's (Commission or CFTC) issuance of four final capital and financial reporting comparability determinations and related orders (together, Final Comparability Determinations) for non-U.S. nonbank swap dealers (foreign nonbank SDs) and non-U.S. nonbank major swap participants (foreign nonbank MSPs) organized and domiciled in the United Kingdom (UK), the European Union (specifically, France and Germany), Mexico, and Japan.[1]

The Final Comparability Determinations allow eligible foreign nonbank SDs to satisfy certain capital and financial reporting requirements under the Commodity Exchange Act (CEA) and Commission regulations if they: (1) are subject to, and comply with, comparable capital and financial reporting requirements under the laws and regulations applicable in their home countries and (2) comply with the conditions enumerated in the applicable Final Comparability Determination. Under this conditional substituted compliance framework, foreign nonbank SDs in the relevant jurisdictions that comply with these conditions are deemed to be in compliance with the Commission's capital and financial reporting requirements.

Well-calibrated capital requirements create a cushion to absorb unexpected losses in times of market stress, and well-calibrated financial reporting requirements provide the Commission with information to monitor the business operations and financial condition of registered SDs. These tools are critical to managing systemic risk and fostering the stability of U.S. derivatives markets and the U.S. financial system. The Commission's substituted compliance framework addresses the need to promote sound global derivatives regulation while mitigating potentially duplicative cross-border regulatory requirements for non-U.S. market participants operating in our markets. Where the Commission permits substituted compliance, it must retain sufficient oversight, examination, and enforcement authority to ensure compliance with the foreign jurisdiction's laws and the conditions to substituted compliance.

Crucially, while these Final Comparability Determinations permit foreign nonbank SDs to comply with home country regulations in lieu of compliance with Commission regulations, the Commission is also imposing important guardrails to ensure continuous supervision of the operations and financial condition of the foreign SD.

Background

For an example of the detrimental consequences of failing to adequately capitalize nonbank swap market participants, one need look no further than the 2008 global financial crisis. According to the U.S. Government Accountability Office, the crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to $10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost economic output.[2] In response to the crisis, in 2010, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which amended the CEA to create a new regulatory framework for swaps.

As amended, section 4s(e) of the CEA directs the Commission and prudential regulators to impose minimum capital requirements on SDs registered with the Commission. Section 4s(e) adopts separate approaches for the imposition of minimum capital requirements on bank and nonbank SDs. For bank SDs, prudential regulators are authorized to set the minimum capital requirements. For nonbank SDs, the Commission is authorized to set those requirements. The amended CEA also sets out financial reporting requirements for SDs. Under section 4s(f) of the CEA, registered SDs are required to make financial condition reports and other reports regarding transactions and positions as mandated by Commission regulations.

In 2020, the Commission adopted regulations implementing both the capital and financial reporting requirements for SDs, which were amended in 2024 (the Capital and Financial Reporting Rules).[3] The Capital and Financial Reporting Rules set minimum capital levels that nonbank SDs must maintain and financial reporting requirements that nonbank SDs must comply with, including filing periodic unaudited financial statements and an annual audited financial report.[4]

Like the U.S., many other nations adopted their own regulatory regimes to govern swaps markets in the aftermath of the financial crisis. Since then, regulators from around the world have endeavored to improve the resilience of swaps markets and establish a global set of standards on critical risk management issues, such as capital and financial reporting requirements. These efforts led to the development of the Principles for Financial Market Infrastructures, to which many jurisdictions, including our own, look for guidance.[5]

The Dodd-Frank Act amendments specifically address the cross-border application of the CFTC's swaps regime. Section 2(i) of the CEA establishes that the CEA's swaps provisions apply to foreign swaps activities that have a ''direct and significant'' connection to, or effect on, U.S. markets. In line with section 2(i) of the CEA, the Capital and Financial Reporting Rules set out a substituted compliance framework in Commission Regulation 23.106 for foreign nonbank SDs seeking to comply with the Commission's capital and financial reporting requirements.

The substituted compliance framework consists of comparability determinations that afford ''due consideration [to] international comity principles'' while being ''consistent with . . . the Commission's interest in focusing its authority on potential significant risks to the U.S. financial system.'' [6] The determinations involve an assessment of the home-country requirements that is a principles-based, holistic approach, focusing on whether the applicable home-country requirements have comparable objectives and achieve comparable outcomes to the Commission's Capital and Financial Reporting Rules.

Today's Final Comparability Determinations

The Final Comparability Determinations will apply to 15 foreign nonbank SDs

[1] Though the Final Comparability Determinations will apply to foreign nonbank MSPs in the relevant jurisdictions, there are no such MSPs currently registered with the Commission at this time. I will refer only to SDs herein.

[2] United States Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act (Jan. 2013), *https://fraser.stlouisfed.org/title/gao-reports-testimonies-6136/financial-regulatory-reform-622249.*

[3] Capital Requirements of Swap Dealers and Major Swap Participants, 85 FR 57462 (Sept. 15, 2020).

[4] The reporting requirements imposed on bank SD and bank MSPs were ''more limited'' ''as the financial condition of these entities will be predominantly supervised by the applicable prudential regulator and subject to its capital and financial reporting requirements.'' *Id.* at 57513. In May 2024, the Commission adopted amendments to the Capital and Financial Reporting Rules that codified two previously-issued staff letters providing interpretive guidance and no-action relief and made other technical amendments. 89 FR 45569 (May 23, 2024).

[5] Principles for Financial Market Infrastructures, Bank for International Settlements and International Organization of Securities Commissions (Apr. 2012), *https://www.bis.org/cpmi/publ/d101a.pdf.*

[6] Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924, 56924 (Sept. 14, 2020).

currently registered with the Commission and subject to oversight by the UK Prudential Regulation Authority, the European Central Bank, the Mexican Comisión Nacional Bancaria y de Valores, and the Financial Services Agency of Japan. I commend staff for their hard work on the Final Comparability Determinations, including their work to thoroughly and thoughtfully analyze and address comments.

Importantly, while the Final Comparability Determinations permit foreign nonbank SDs in the relevant jurisdictions to comply with home country regulations in lieu of compliance with Commission regulations, there are numerous protections in place to ensure the Commission's ability to supervise on an ongoing basis the adequacy of the foreign nonbank SDs' compliance. The Final Comparability Determinations all include key conditions with which the foreign nonbank SDs must comply. For example, each of the Final Comparability Determinations requires that the foreign nonbank SDs provide monthly and annual financial reports to the Commission—and the Commission can request additional information as required to facilitate ongoing supervision. Each Final Comparability Determination also requires the foreign nonbank SDs to notify the Commission if adverse events occur, such as a significant decrease in excess regulatory capital, a significant failure of a counterparty to post required margin, or non-compliance with certain capital or financial reporting requirements. Finally, in recognition of the fact that a country's capital standards and financial reporting requirements may change over time, the Final Comparability Determinations require the foreign nonbank SDs to provide notice of material changes to the home country capital or financial reporting frameworks.

Moreover, the foreign nonbank SDs subject to these determinations are registered with the Commission and are members of the National Futures Association (NFA). Therefore, these entities are subject to the CEA, Commission regulations, and NFA membership rules, and each entity remains subject to Commission supervisory, examination and enforcement authority. As noted in the Final Comparability Determinations, if a foreign SD fails to comply with its home country's capital and financial reporting requirements, the Commission may initiate an action for a violation of the Commission's Capital and Financial Reporting Rules.

As I have previously noted,[7] it is important to recognize foreign market participants' compliance with the laws and regulations of their regulators when the requirements lead to an outcome that is comparable to the outcome of complying with the CFTC's corresponding requirements. Respect for partner regulators in foreign jurisdictions advances the Commission as a global standard setter for sound derivatives regulation and enhances market stability.

I thank the staff in the Market Participants Division for their hard work on these matters, particularly Amanda Olear, Tom Smith, and Lily Bozhanova.

Appendix 4—Statement of Commissioner Caroline D. Pham

I am pleased to support the order granting conditional substituted compliance in connection with certain capital and financial reporting requirements applicable to nonbank swap dealers subject to regulation by the United Kingdom Prudential Regulatory Authority (UK PRA) (UK Final Order). The UK Final Order, on balance, reflects an appropriate approach by the CFTC to collaboration with non-U.S. regulators that is consistent with IOSCO's 2020 report on *Good Practices on Processes for Deference.*[1]

I would like to thank Amanda Olear, Thomas Smith, Rafael Martinez, Liliya Bozhanova, Joo Hong, and Justin McPhee from the CFTC's Market Participants Division for their truly hard work on the UK Final Order and for addressing my concerns regarding the conditions for notice requirements.[2] I also thank the UK PRA for its assistance and support.

The CFTC's capital comparability determinations are the result of tireless efforts spanning over a decade since the global financial crisis. I commend the staff for working together with our regulatory counterparts around the world to promote regulatory cohesion and financial stability, and mitigate market fragmentation and systemic risk.

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[7] Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424;* Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Notice and Order on EU Capital Comparability Determination (June 7, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement060723c;* Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order and Request for Comment on Mexican Capital Comparability Determination (Nov. 10, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement111022c;* Kristin N. Johnson, Commissioner, CFTC, Statement in Support of Proposed Order on Japanese Capital Comparability Determination (July 27, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072722c.*

[1] IOSCO Report, ''Good Practices on Processes for Deference'' (June 2020), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf.*

[2] Concurring Statement of Commissioner Caroline D. Pham Regarding Proposed Order and Request for Comment on an Application for a Capital Comparability Determination (Nov. 10, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement111022;* Statement of Commissioner Caroline D. Pham in Support of Proposed Order and Request for Comment on Comparability Determination for UK PRA Swap Dealer Capital and Financial Reporting Requirements (Jan. 24, 2024), *https://www.cftc.gov/PressRoom/peechesTestimony/phamstatement012424.*

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Regulation in the European Union

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: On June 27, 2023, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') issued a notice and request for comment on an application submitted by the Institute of International Bankers, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association requesting that the Commission determine that registered nonbank swap dealers organized and domiciled within the European Union may comply with certain capital and financial reporting requirements under the Commodity Exchange Act and Commission regulations by being subject to, and complying with, corresponding capital and financial reporting requirements of the European Union. The Commission also solicited public comment on a proposed comparability determination and related order providing for the conditional availability of substituted compliance in connection with the application. The Commission is adopting the proposed order with certain modifications and clarifications to address comments. The final order provides that a nonbank swap dealer organized and domiciled in the French Republic or the Federal Republic of Germany may satisfy the capital requirements and the financial reporting rules under the applicable provisions of the Commodity Exchange Act and Commission regulations by complying with certain specified EU laws and regulations and conditions set forth in the order.

DATES: This determination was made by the Commission on June 24, 2024.

FOR FURTHER INFORMATION CONTACT: Amanda L. Olear, Director, 202–418–5283, *aolear@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Rafael Martinez, Associate Director, 202–418–5462, *rmartinez@cftc.gov;* Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov;* Liliya Bozhanova,