COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Order Granting Conditional Substituted Compliance in Connection with Certain Capital and Financial Reporting Requirements Applicable to a Nonbank Swap Dealer Domiciled in the French Republic and Subject to the European Union's Investment Firms Regulation and Investment Firms Directive

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing an order regarding an application submitted by Goldman Sachs Paris Inc. et Cie requesting that the Commission determine that the capital and financial reporting laws and regulations of the European Union applicable to a CFTC-registered swap dealer, which is organized and domiciled in the French Republic and subject to the Investment Firms Regulation (EU) 2019/2033 ("IFR") and Investment Firms Directive (EU) 2019/2034 ("IFD") legislative package, provide sufficient bases for an affirmative finding of comparability with respect to the Commission's swap dealer capital and financial reporting requirements adopted under the Commodity Exchange Act.

The order provides that a nonbank swap dealer organized and domiciled in the French Republic and subject to the IFR and IFD legislative package 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 European Union laws and regulations and conditions set forth in the order.

DATES: This determination was made and issued by the Commission on May 12, 2026.

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SUPPLEMENTARY INFORMATION:

Sections 4s(e)[1] and 4s(f)[2] of the Commodity Exchange Act ("CEA") direct the Commodity Futures Trading Commission ("Commission" or "CFTC") to impose capital requirements and financial reporting obligations on each swap dealer and major swap participant that is not subject to regulation by a prudential regulator ("nonbank SD" and "nonbank MSP", respectively). Commission Regulation 23.106[3] establishes a substituted compliance framework whereby the Commission may determine that compliance by a foreign nonbank SD or foreign nonbank MSP with its home country's capital and financial reporting requirements will satisfy all or parts of the Commission's capital and financial reporting requirements.

On July 18, 2024, the Commission issued four comparability determinations and related comparability orders granting substituted compliance in connection with the CFTC's capital and

[1] 7 U.S.C. 6s(e).
[2] 7 U.S.C. 6s(f).
[3] 17 CFR 23.106. Commission regulations referred to in this release are found at 17 CFR chapter I, and are accessible on the Commission's website: *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm*.

financial reporting requirements to CFTC-registered nonbank SDs organized and domiciled in Japan, Mexico, the European Union (France and Germany), and the United Kingdom, subject to certain conditions set forth in each order.[4] In preparing each of the comparability determinations and related comparability orders, the Commission reviewed, analyzed, and assessed the regulatory requirements of each relevant foreign jurisdiction. Additionally, each of the comparability determinations and related comparability orders, including the 2024 EU Comparability Order, was issued after discussions with market participants and foreign regulators, and after reviewing and incorporating relevant comments received from the public. The Commission, therefore, has gained an understanding of the capital and financial reporting requirements of each relevant jurisdiction, including the European Union ("EU").

On September 3, 2024, Goldman Sachs Paris Inc. et Cie ("Goldman Sachs Paris" or "Applicant") submitted an application (the "EU IFR/IFD Application"),[5] requesting that the Commission determine that a registered nonbank swap dealer ("nonbank SD")[6] organized and domiciled within the EU (specifically, the French Republic ("France")) may satisfy certain capital and financial reporting requirements under the CEA[7] by being subject to, and complying

[4] *See* Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan, 89 FR 58470 (July 18, 2024); Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico, 89 FR 58505 (July 18, 2024); 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, 89 FR 58572 (July 18, 2024) (the "2024 EU Comparability Order"); and 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, 89 FR 58535 (July 18, 2024).

[5] *See* Letter dated September 3, 2024, submitted on behalf of Goldman Sachs Paris. The EU IFR/IFD Application is available on the Commission's website at *https://www.cftc.gov/LawRegulation/DoddFrankAct/CDSCP/index.htm*.

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

[7] 7 U.S.C. 1 et seq. The CEA may be accessed through the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm*.

with, comparable capital and financial reporting requirements established under the EU Investment Firms Regulation ("IFR")[8] and Investment Firms Directive ("IFD").[9] Although the Applicant is subject to a similar regulatory regime and is domiciled in the same jurisdiction as some of the nonbank SDs included in the 2024 EU Comparability Order, it cannot rely on the 2024 EU Comparability Order because of the scope of the order.[10] The Commission is issuing an order under which such nonbank SD ("EU IFR/IFD nonbank SD") organized and domiciled in France will be able, subject to defined conditions, to comply with certain CFTC nonbank SD capital and financial reporting requirements in the manner set forth in the order discussed below.[11]

I. Introduction

A. Regulatory Background –Swap Dealer and Major Swap Participant Capital and Financial Reporting Requirements

Section 4s(e) of the CEA[12] directs the Commission and "prudential regulators" [13] to impose capital requirements on all swap dealers ("SDs") and major swap participants ("MSPs")

[8] *Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and EU No 806/2014* ("Investment Firms Regulation" or "IFR").

[9] *Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU* ("Investment Firms Directive" or "IFD").

[10] The 2024 EU Comparability Order only conducted an analysis on nonbank SDs that are subject to the capital and financial reporting requirements established under the Capital Requirements Regulation and the Capital Requirements Directive and, therefore, does not encompass nonbank SDs that are subject to IFR and IFD.

[11] As further discussed below, Goldman Sachs Paris is currently the only CFTC-registered nonbank SD organized and domiciled in France that is subject to the capital and financial reporting requirements established under IFR and IFD.

[12] 7 U.S.C. 6s(e). The CEA may be found at 7 U.S.C. 1 *et seq,* and may be accessed through the Commission's website, *https://www.cftc.gov*.

[13] 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. *See* 7 U.S.C. 1a(39).

registered with the Commission.[14] Sections 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 CFTC-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 regulation by a prudential regulator ("bank SDs" and "bank MSPs," 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 regulation by a prudential regulator ("nonbank SD" and "nonbank MSP," respectively) to meet the minimum capital requirements and uncleared swaps margin requirements adopted by the Commission.[15] Therefore, the Commission's authority to impose capital and margin requirements extends to nonbank SDs and nonbank MSPs, including nonbanking subsidiaries of bank holding companies regulated by the Federal Reserve Board.[16]

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

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[14] Subject to certain exceptions, the term "swap dealer" is generally defined in the CEA 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 in the CEA 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).

[15] 7 U.S.C. 6s(e)(2).

[16] 7 U.S.C. 6s(e)(1) and (2).

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.[17] 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.[18] 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").[19]

Section 4s(f) of the CEA addresses SD and MSP financial reporting requirements.[20] Section 4s(f) of the CEA 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) of the CEA provides, in relevant part, that each registered SD and MSP must make financial condition reports as required by regulations adopted by the Commission.[21] The Commission's financial reporting obligations were adopted with the Commission's nonbank SD and nonbank MSP capital requirements, and have a compliance date of October 6, 2021 ("CFTC Financial Reporting Rules").[22]

B. Commission 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-

[17] *See Margin and Capital Requirements for Covered Swap Entities*, 80 FR 74840 (Nov. 30, 2015).
[18] *See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 81 FR 636 (Jan. 6, 2016).
[19] *See Capital Requirements of Swap Dealers and Major Swap Participants*, 85 FR 57462 (Sept. 15, 2020).
[20] 7 U.S.C. 6s(f).
[21] 7 U.S.C. 6s(f)(1)(A).
[22] *See* 85 FR 57462.

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").[23] The Commission's capital adequacy and financial reporting requirements are designed to address and manage risks 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 determination 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.[24] The Commission will issue a Comparability Determination in the form of an order ("Comparability Order").[25]

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,

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[23] 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 a non-U.S. nonbank MSP, a trade association or other similar group on behalf of its nonbank SD or nonbank MSP members, or a foreign regulatory authority that has direct supervisory authority over one or more non-U.S. nonbank SDs or non-U.S. nonbank MSPs. However, Commission regulations 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)(3), 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).

[24] 17 CFR 23.106(a)(3). *See also* 85 FR 57462 at 57521.

[25] 17 CFR 23.106(a)(3).

holistic approach. It is not a line-by-line evaluation or comparison of a foreign jurisdiction's regulatory requirements with the Commission's requirements,[26] but focuses on whether the applicable foreign jurisdiction's capital and financial reporting requirements achieve comparable outcomes to the corresponding CFTC requirements.[27] In performing the analysis, the Commission recognizes that jurisdictions may adopt differing approaches to achieving regulatory objectives and comparable 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.

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. In 2013, the Commission issued an Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, establishing that it would assess foreign regulatory systems holistically.[28] In the Guidance, the Commission stated that, when evaluating foreign regimes, it will take into consideration all relevant factors, including: (i) the scope and objectives of the foreign rules; (ii) the comprehensiveness of requirements; and (iii) the strength of supervisory and enforcement programs.[29] A foreign regime, therefore, does not need to be identical to the CFTC requirements to be deemed comparable.

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[26] 85 FR 57462 at 57521.
[27] *Id.*
[28] *Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations,* 78 FR 45292 (July 26, 2013) ("Guidance").
[29] Guidance at 45343.

In 2016, the Commission issued final rules to address the cross-border application of the Commission's margin requirements for uncleared swap transactions, which reaffirmed its outcome based method when assessing comparability of foreign margin rules.[30] The Commission recognized that jurisdictions may adopt different approaches to achieving the same outcome and, therefore, focused 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.[31] 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.

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 any international standards; and (iii) a description of the ability of the relevant foreign regulatory authority to supervise and enforce compliance with the relevant foreign

[30] *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).
[31] *Id.*

jurisdiction's capital adequacy and financial reporting requirements. The applicant must also submit, upon request, such other information and documentation that the Commission deems necessary to evaluate the comparability of the capital adequacy and financial reporting requirements of the foreign jurisdiction.[32]

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.[33] 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 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 and 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

[32] 17 CFR 23.106(a)(2).

[33] 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.

capital and financial reporting requirements achieve comparable outcomes to the Commission's corresponding capital 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.[34]

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 assessment will include a review of the foreign jurisdiction's surveillance program for

[34] 17 CFR 23.106(a)(3), 85 FR 57462 at 57520-57522.

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.[35]

Commission Regulation 23.106 further provides that the Commission may impose terms and conditions it deems appropriate in issuing a Comparability Determination.[36] Any specific terms or conditions with respect to capital adequacy or financial reporting requirements will be set forth in the Commission's Comparability Order. Consistent with the Commission's holistic, principles-based approach to conducting comparability assessments, 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 a nonbank SD registered with the Commission, whereas other conditions may address areas where the foreign jurisdiction lacks analogous requirements to those set forth in Commission regulations.[37] As a general condition to all Comparability Orders, the Commission will require notification from 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 relevant foreign jurisdiction's 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

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

[36] 17 CFR 23.106(a)(5).

[37] *See e.g.*, Guidance at 45343 and *Comparability Determination for the European Union: Certain Transaction Level Requirements,* 78 FR 78878 (December 27, 2013) at 78880.

applicable capital adequacy and financial reporting requirements of the foreign jurisdiction in lieu of all or parts of the CFTC Capital Rules and/or CFTC Financial Reporting Rules.[38] Notices must be filed electronically with the Commission's Market Participants Division ("MPD").[39] 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 the CFTC Capital Rules and the 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.[40]

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 in compliance with the Commission's corresponding CFTC Capital Rules and/or CFTC Financial Reporting Rules.[41] 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.[42]

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[38] 17 CFR 23.106(a)(4)(i).
[39] Notices must be filed in electronic form to the following email address: *MPDFinancialRequirements@cftc.gov*.
[40] 17 CFR 23.106(a)(4)(ii); 17 CFR 140.91(a)(11).
[41] 17 CFR 23.106(a)(4)(ii); 17 CFR 140.91(a)(11).
[42] 17 CFR 23.106(a)(4)(ii).

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.[43]

C. Application for a Comparability Determination for an EU IFR/IFD Nonbank Swap Dealer Organized and Domiciled in France

The Applicant represented that the capital adequacy and financial reporting requirements applicable to financial institutions licensed to operate in a member state of the EU ("EU Member State") are established by EU regulations and directives. In this regard, the Capital Requirements Regulation[44] and the Capital Requirements Directive[45] set forth capital and financial reporting requirements applicable to entities defined as "credit institutions" or "investment firms" within the EU. The term "credit institution" includes an entity engaged in taking deposits or other repayable funds from the public and lending its own funds and taking on the full financial risk of such lending activity ("Banking Activities").[46] An entity engaged in Banking Activities is subject to the capital and financial reporting requirements of CRR and CRD.

The term "credit institution" also includes an entity engaged in: (i) dealing for its own account; (ii) underwriting financial instruments; or (iii) placing financial instruments on a firm commitment basis (collectively, "Investment Activities"), provided that the entity also meets

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[43] *Id.*
[44] *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 amended* ("Capital Requirements Regulation" or "CRR").
[45] *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*, as amended ("Capital Requirements Directive" or "CRD").
[46] CRR, Article 4(1)(1) (defining the term "credit institution").

certain defined financial thresholds set forth in the definition.[47] Specifically, an entity engaged in Investment Activities that maintains a total value of consolidated assets equal to or in excess of EUR 30 billion is required to be authorized as a "credit institution" and is subject to the capital and financial reporting requirements of CRR and CRD.[48]

Credit institutions that qualify as "significant supervised entities" are subject to the direct prudential supervision of the European Central Bank ("ECB").[49] Credit institutions that are "less significant supervised entities" are prudentially supervised by the applicable prudential supervisory authority in the entity's home EU Member State (*i.e.*, "national competent authority").[50]

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[47] *Id.*

[48] *Id.* and CRD, Articles 8 and 8a (requiring an entity that engages in Investment Activities and meets the financial thresholds to submit an application for authorization as a "credit institution" under the relevant provisions of the applicable national law). CRR, Article 4(1)(1) provides that an entity carrying out Investment Activities meets the financial threshold for authorization as a credit institution if: (i) the total value of the consolidated assets of the entity is equal to or in excess of EUR 30 billion; (ii) the total value of the assets of the entity is less than EUR 30 billion, and the entity is part of a group in which the total value of the consolidated assets of all entities in that group that individually have total assets of less than EUR 30 billion and that engage in Investment Activities is equal to or in excess of EUR 30 billion; or (iii) the total value of the assets of the entity is less than EUR 30 billion, and the entity is part of a group in which the total value of the consolidated assets of all entities in the group that engage in Investment Activities is equal to or in excess of EUR 30 billion, where the consolidated supervisor, in consultation with the supervisory college, decides that the entity must be authorized as a credit institution to address potential risks of circumvention and potential risks for financial stability of the EU.

[49] *See generally*, *Council Regulation (EU) 1024/ 2013 of 15 October 2013 Conferring Specific Tasks to the European Central Bank Concerning Policies Relating to the Prudential Supervision of Credit Institutions* ("SSM Regulation") and *Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 Establishing the Framework for Cooperation within the Single Supervisory Mechanism Between the European Central Bank and the National Competent Authorities and with National Designated Authorities* ("SSM Framework Regulation"). The criteria for determining whether credit institutions are considered "significant supervised entities" include size, economic importance for the specific EU Member State or the EU economy, significance of cross-border activities, and request for or receipt of direct public financial assistance. SSM Regulation, Article 6 and SSM Framework Regulation, Articles 39–44 and 50–62.

[50] SSM Regulation, Article 6. Less significant entities are supervised by their national competent authorities in close cooperation with the ECB. With respect to the prudential supervision of less significant entities, the ECB has the power to issue regulations, guidelines or general instructions to the national competent authorities. SSM Regulation, Article 6(5)(a). At any time, the ECB can also decide to directly supervise a less significant entity to ensure that high supervisory standards are applied consistently. SSM Regulation, Article 6(5)(b).

The term "investment firm" is defined as an entity authorized under the Markets in Financial Instruments Directive,[51] 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 (including Investment Activities as defined above).[52] An investment firm that engages in Investment Activities and maintains total consolidated assets of at least EUR 15 billion is subject to the capital and financial reporting requirements of CRR and CRD.[53] The investment firm, however, is not required to be authorized as a "credit institution" under the relevant provisions of the applicable national law in the EU Member State and is prudentially supervised by the national competent authority.

Lastly, an entity defined as an "investment firm" that does not engage in Investment Activities, or that engages in Investment Activities but does not meet the criteria of either

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[51] *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 2").

[52] CRR, Article 4(1)(2) cross-referencing Article 4(1)(1) of MiFID 2.

[53] *Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/ 2014* ("Investment Firms Regulation" or "IFR"), Article 1(1) and (1)(2) (indicating that an investment firm that engages in Investment Activities is subject to CRR (and by cross-reference to CRD) if any of the following applies: (i) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 15 billion; (ii) the total value of the consolidated assets of the investment firm is less than EUR 15 billion, and the investment firm is part of a group in which the total value of the consolidated assets of all investment firms in the group that individually have total assets of less than EUR 15 billion and that engage in Investment Activities is equal to or exceeds EUR 15 billion; or (iii) the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, the investment firm engages in Investment Activities, and the competent authority has determined that the investment firm should be subject to CRR based on criteria set forth in Article 5 of Directive (EU) 2019/2034). *See also, Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU* ("Investment Firms Directive" or "IFD"), Article 5 (providing that the competent authority may decide to apply the requirements of CRR to an investment firm whose consolidated assets are equal or exceed EUR 5 billion and that engages in Investment Activities if one or more of the following criteria apply: (i) the investment firm engages in Investment Activities on a scale that the failure or distress of the investment firm could lead to systemic risk; (ii) the investment firm is a clearing member; and/or (iii) the competent authority considers it to be justified in light of the size, nature, scale, and complexity of the activities of the investment firm considering the importance of the investment firm for the economy of the EU or of the relevant EU Member State, the significance of the investment firm's cross-border activities, and the interconnectedness of the investment firm with the financial system).

maintaining consolidated assets of at least EUR 15 billion or maintaining consolidated assets of at least EUR 5 billion and meeting certain criteria of significance and interconnectedness, is not subject to CRR and CRD.[54] Such an investment firm is subject to capital and financial reporting requirements established by IFR and IFD ("IFR/IFD Framework") and is subject to prudential supervision by the national competent authority.[55]

The IFR/IFD Framework was developed to replace bank-centric CRR and CRD rules that did not address the diverse business models of smaller investment firms. The IFR/IFD Framework is designed to better reflect the nature, size and complexity of investment firms' activities compared to the CRR and CRD framework.[56] The IFR/IFD Framework also provides simpler and more bespoke capital requirements for investment firms ("EU Investment Firms Capital Rules")[57] and proportionate corresponding regulatory reporting requirements.[58]

IFR, as a regulation, is binding in its entirety and directly applicable in all EU Member States.[59] IFD, as a directive, was required to be transposed into EU Member States' national

[54] IFD Article 5 (setting forth the criteria that may justify a decision by the competent authority to apply the requirements of CRR to an investment firm that engages in Investment Activities and whose consolidated assets equal or exceed EUR 5 billion).
[55] IFR Article 1 and IFD Article 2. The national competent authority may exempt firms that qualify as "small and non-interconnected" as set forth in Article 12(1) of IFR from some of the requirements of the IFR/IFD Framework. IFR Article 6. This Comparability Determination does not address small and non-interconnected firms as none of the EU-domiciled, CFTC-registered nonbank SDs falls into this category.
[56] *Prudential rules for investment firms* issued by the European Commission and available at https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/prudential-rules-investment-firms_en#framework.
[57] IFR Recital (10) (stating that the specific prudential regime for investment firms which, by virtue of their size and interconnectedness with other financial and economic actors, are not considered to be systemic should address the specific business practices of different types of investment firms), IFD Recital 2 (stating that the existing prudential regimes under the CRR and CRD are largely based on successive iterations of the international regulatory standards set for large banking groups that only partially address the specific risks inherent to the diverse activities of a large number of investment firms).
[58] IFR, Recital (29) (stating that a proportionate regulatory reporting framework should be developed in conjunction with the new prudential regime and should be carefully tailored to the business of investment firms and the requirements of the prudential framework).
[59] *Consolidated Version of the Treaty on the Functioning of the European Union*, OJ (C 326) 171, Oct. 26, 2012 ("TFEU"), Article 288. Accordingly, IFR is directly applicable and binding law in France, the EU Member State where the EU IFR/IFD nonbank SD is organized and operating.

law.[60] EU Member States were required to adopt and apply IFR and IFD by June 26, 2021.[61] France implemented IFD by Ordinance No. 2021-796 of 23 June 2021 and Decree No. 2021-941 of 15 July 2021.[62]

With respect to financial reporting, IFR and IFD are complemented by implementing technical standards for supervisory reporting under IFR.[63] In addition, Directive 2013/34/EU[64] also contains relevant provisions, including a mandate that entities of a certain size be required to prepare annual audited financial statements and a management report.[65] The relevant provisions of the Accounting Directive are implemented in Articles L.511–35, L.511-37, and L.511–38 of the French Monetary and Financial Code ("French MFC") and, together with the financial reporting requirements established by the IFR/IFD Framework and the Reporting ITS, are referred to in this Comparability Determination as the "EU Investment Firms Financial Reporting Rules."

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[60] TFEU, 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 providing, 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 IFD by June 26, 2021, with limited exceptions.

[61] IFR Article 66 and IFD Article 67.

[62] *Ordinance No. 2021-796 of 23 June 2021 transposing Directive (EU) 2021 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms* and *Decree No. 2021-941 of 15 July 2021 transposing Directive (EU) 2021 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms*.

[63] *Commission Implementing Regulation (EU) 2021/2284 laying down implementing technical standards for the application of Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to supervisory reporting and disclosures of investment firms, December 10, 2021* ("Reporting ITS"), available here: https://eur-lex.europa.eu/eli/reg_impl/2021/2284/oj/eng (Implementing regulation - 2021/2284 - EN - EUR-Lex).

[64] *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/ EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/394/EEC* ("Accounting Directive").

[65] Accounting Directive, Article 4 (providing the minimum requirements and schedules to be included in the annual financial statements: the balance sheet, the statement of profit and loss, and notes to the financial statements), Article 34 (stating that Member States must ensure that the financial statements of firms are, when required, audited by approved auditors), and Article 19 (stating that the management report must include a fair review of the development and performance of the firm's business and of its positions, together with a description of the principal risks).

On September 3, 2024, the Applicant submitted the EU IFR/IFD Application requesting that the Commission conduct a Comparability Determination and issue a Comparability Order finding that compliance by Goldman Sachs Paris with the EU capital and the EU financial reporting requirements established pursuant to the IFR/IFD Framework and applicable to CFTC-registered nonbank SDs licensed as investment firms in France are comparable in purpose and effect with corresponding CFTC Capital Rules and CFTC Financial Reporting Rules applicable to a registered nonbank SD under Sections 4s(e) and 4s(f) of the CEA and Commission Regulations 23.101 and 23.105.[66] Goldman Sachs Paris is currently the only CFTC-registered nonbank SD organized and domiciled in France that is a licensed investment firm subject to the requirements established under the IFR/IFD Framework.[67]

Given that Goldman Sachs Paris is the only EU IFR/IFD nonbank SD that is currently registered with the Commission and subject to the IFR/IFD Framework, the Commission's analysis involved an assessment of how the relevant IFD framework was implemented into the national laws of France.[68] The Commission did not review how other EU Member States adopted and implemented the relevant IFD framework into their respective national laws. The Commission's review of the applicable supervisory framework was also limited to the

[66] The EU IFR/IFD Application.

[67] The Commission previously issued a Comparability Order on June 24, 2024 to nonbank SDs organized and domiciled in France that are licensed as credit institutions or investment firms and subject to, among other conditions, the capital and financial reporting requirements of CRR and CRD. *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,* 89 FR 58572 (July 18, 2024).
There are currently no MSPs registered with the Commission and the Applicant has not requested that the Commission issue a Comparability Order with respect to EU nonbank MSPs. Accordingly, the Commission's Comparability Determination and Comparability Order do not address EU nonbank MSPs.

[68] Goldman Sachs Paris was initially subject to the capital and financial reporting requirements of the CRR and CRD, however, at the direction of its national competent authority, the firm was informed that it would be subject to the IFR/IFD Framework effective March 31, 2024.

supervisory authority and practices of the *Autorité de contrôle prudentiel et de resolution* ("ACPR"), the French authority responsible for the prudential supervision of Goldman Sachs Paris.[69] Therefore, an entity organized and domiciled in an EU Member State other than France that seeks to register with the Commission as a nonbank SD and to comply with the Commission's capital and financial reporting rules via substituted compliance with the IFR/IFD Framework must submit an application under Commission Regulation 23.106.

II. General Overview of Commission and EU IFR/IFD Nonbank Swap Dealer Capital Rules

A. General Overview of the CFTC Nonbank Swap Dealer Capital Rules

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 Capital Approach ("Bank-Based Approach").[70]

(i) Tangible Net Worth Approach

Nonbank SDs that are "predominantly engaged in non-financial activities" may elect the TNW Approach.[71] The TNW Approach requires a nonbank SD to maintain a level of "tangible

[69] The ACPR (referred to in this Comparability Determination as the "competent authority" or the "relevant regulatory authority") is an independent "administrative authority" responsible for the oversight of the banking and insurance sectors in France, which includes the prudential supervision of investment firms. *See The ACPR at a Glance*, available at the ACPR's website here: *https://acpr.banque-france.fr/en/lacpr/about-us*.

[70] 17 CFR 23.101.

[71] 17 CFR 23.101(a)(2). The term "predominantly engaged in non-financial activities" is defined in Commission Regulation 23.100 and generally provides that: (i) the nonbank SD's, or its parent entity's, annual gross financial revenues for either of the previous two completed fiscal years represents less than 15 percent of the nonbank SD's, or the nonbank SD's parent's, annual gross revenues for all operations (*i.e.,* commercial and financial) for such years, and (ii) the nonbank SD's, or its parent entity's, total financial assets at the end of its two most recently completed fiscal years represents less than 15 percent of the nonbank SD's, or its parent's, total consolidated financial and nonfinancial assets as of the end of such years. 17 CFR 23.100.

net worth"[72] equal to or greater than the higher of: (i) $20 million plus the amount of the nonbank SD's "market risk exposure requirement"[73] and "credit risk exposure requirement"[74] associated with the nonbank SD's swap and related hedge positions that are part of the nonbank SD's swap dealing activities; (ii) 8 percent of the nonbank SD's "uncleared swap margin" amount;[75] or (iii) the amount of capital required by a registered futures association of which the nonbank SD is a member.[76] The TNW Approach is intended to ensure the safety and soundness of a qualifying nonbank SD by requiring the firm to maintain a minimum level of tangible net worth that is based on the nonbank SD's swap dealing activities to provide a sufficient level of capital to absorb losses resulting from its swap dealing and other business activities.

The TNW approach requires a nonbank SD to compute its market risk exposure requirement and credit risk exposure requirement using standardized capital charges contained in

[72] The term "tangible net worth" is defined in Commission Regulation 23.100 and generally means the net worth (*i.e.*, assets less liabilities) of a nonbank SD, computed in accordance with applicable accounting principles, with assets further reduced by a nonbank SD's recorded goodwill and other intangible assets. 17 CFR 23.100.

[73] The terms "market risk exposure" and "market risk exposure requirement" are defined in Commission Regulation 23.100 and generally mean the risk of loss in a financial position or portfolio of financial positions resulting from movements in market prices and other factors. 17 CFR 23.100. Market risk exposure is the sum of: (i) general market risks including changes in the market value of a particular asset that results from broad market movements, which may include an additive for changes in market value under stressed conditions; (ii) specific risk, which includes risks that affect the market value of a specific instrument but do not materially alter broad market conditions; (iii) incremental risk, which means the risk of loss on a position that could result from the failure of an obligor to make timely payments of principal and interest; and (iv) comprehensive risk, which is the measure of all material price risks of one or more portfolios of correlation trading positions.

[74] The term "credit risk exposure requirement" is defined in Commission Regulation 23.100 and generally reflects the amount at risk if a counterparty defaults before the final settlement of a swap transaction's cash flows. 17 CFR 23.100.

[75] 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. *See* 17 CFR 23.154.

[76] The National Futures Association ("NFA") is currently the only entity that is a registered futures association. The Commission will refer to NFA in this document when referring to the requirements or obligations of a registered futures association.

Securities and Exchange Commission ("SEC") Rule 18a-1[77] that are applicable to entities registered with the SEC as security-based swap dealers ("SBSDs") or standardized capital charges set forth in Commission Regulation 1.17 applicable to entities registered as FCMs or entities dually registered as an FCM and nonbank SD.[78] Nonbank SDs that have received Commission or NFA approval pursuant to Commission Regulation 23.102 may use internal models to compute market risk and/or credit risk exposures in calculating their capital requirements in lieu of applying the SEC and CFTC standardized capital charges.[79]

(ii) Net Liquid Asset Approach

A nonbank SD that elects the NLA Approach is required to maintain "net capital" in an amount that equals or exceeds the greater of: (i) $20 million; (ii) 2 percent of the nonbank SD's uncleared swap margin amount; or (iii) the amount of capital required by NFA.[80] The NLA Approach is intended to ensure the safety and soundness of a nonbank SD by requiring the firm to maintain at all times at least one dollar of highly liquid assets to cover each dollar of the nonbank SD's liabilities.

A nonbank SD is required to reduce the value of its highly liquid assets by the market risk exposure requirement and/or the credit risk exposure requirement in computing its net capital.[81] A nonbank SD that does not have Commission or NFA approval to use internal models must compute its market risk exposure requirement and/or credit risk exposure

[77] 17 CFR 240.18a-1.
[78] 17 CFR 23.101(a)(2)(ii)(A).
[79] *Id.*
[80] 17 CFR 23.101(a)(1)(ii)(A). "Net capital" consists of a nonbank SD's highly liquid assets (subject to haircuts) less the firm's liabilities, excluding certain qualified subordinated debt. 17 CFR 240.18a-1 (calculation of "net capital.")
[81] 17 CFR 240.18a-1(c) and (d).

requirement using standardized capital charges contained in SEC Rule 18a-1 as modified by the Commission's rule.[82]

A nonbank SD that has obtained Commission or NFA approval may use internal market risk and/or credit risk models to compute its market risk exposure requirement and/or credit risk exposure requirement in lieu of applying the standardized capital charges.[83] A nonbank SD that is approved to use models to compute its market risk exposure requirement or credit risk exposure requirement is further required to maintain a minimum of $100 million of "tentative net capital."[84] The Commission's NLA Approach is consistent with the SEC's capital rule for SBSDs and is based on the Commission's capital rule for FCMs and the SEC's capital rule for securities broker-dealers ("BDs"). The quantitative and qualitative requirements for NLA Approach internal market and credit risk models are also consistent with the quantitative and qualitative requirements under the Commission's Bank-Based Approach as described below.

(iii) Bank-Based Approach

The Commission's Bank-Based Approach for computing regulatory capital for nonbank SDs is based on certain capital requirements imposed by the Federal Reserve Board for bank holding companies.[85] The Bank-Based Approach also is consistent with the Basel Committee on

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[82] 17 CFR 23.101(a)(1)(ii). Commission modifications, for example, provide that a nonbank SD may recognize initial margin posted by a counterparty with a third-party custodian for its swap transactions with the nonbank SD in accordance with Commission Regulation 23.157(b) as funds held by the nonbank SD in computing any undermargined capital charges when computing its adjusted net capital notwithstanding SEC Rule 18a-1(c)(ix)(C) which requires a security-based swap dealer to exclude initial margin posted by its counterparty with third-party custodians in computing undermargined capital charges unless certain conditions are met, including that the dealer, custodian, and counterparty have executed a legally binding agreement that provides the dealer with the right to access the collateral in the event of the default of the counterparty. 17 CFR 23.101(a)(1)(ii)(C).

[83] 17 CFR 23.102.

[84] 17 CFR 23.101(a)(1)(ii)(A)(*1*). The term "tentative net capital" is defined in Commission Regulation 23.101(a)(1)(ii)(A)(*1)* by reference to SEC Rule 18a-1 and generally means a nonbank SD's net capital prior to deducting market risk and credit risk capital charges.

[85] 17 CFR 23.101(a)(1)(i).

Banking Supervision's ("BCBS") international framework for bank capital requirements ("BCBS framework" or "Basel standards").[86] The Bank-Based Approach requires a nonbank SD to maintain regulatory capital equal to or in excess of each of the following requirements: (i) $20 million of common equity tier 1 capital; (ii) an aggregate of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital (including qualifying subordinated debt) equal to or greater than 8 percent of the nonbank SD's risk-weighted assets (provided that common equity tier 1 capital comprises at least 6.5 percent of the 8 percent minimum requirement); (iii) an aggregate 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 uncleared swap margin amount; and (iv) an amount of capital required by NFA.[87] The Bank-Based Approach is intended to ensure the safety and soundness of a nonbank SD by requiring the firm to maintain at all times qualifying capital in an amount sufficient 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.

The terms used in the Commission's Bank-Based Approach are defined by reference to regulations of the Federal Reserve Board.[88] The term "common equity tier 1 capital" is defined for purposes of the CFTC Capital Rules to generally mean the sum of a nonbank SD's common stock instruments and any related surpluses, retained earnings, and accumulated other

[86] 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/.
[87] 17 CFR 23.101(a)(1)(i).
[88] *Id*. Commission Regulation 23.101(a)(1)(i) references Federal Reserve Board Rule 217.20 for purposes of defining the terms used in establishing the minimum capital requirements under the Bank-Based Approach. 17 CFR 23.101(a)(1)(i) and 12 CFR 217.20.

comprehensive income.[89] The term "additional tier 1 capital" is defined to include equity instruments that are subordinated to claims of general creditors and subordinated debt holders, but contain certain provisions that are not available to common stock, such as the right of nonbank SD to call the instruments for redemption or to convert the instruments to other forms of equity.[90] The term "tier 2 capital" is defined to include certain types of instruments that include both debt and equity characteristics (*e.g.*, certain perpetual preferred stock instruments and subordinated term debt instruments).[91] Subordinated debt also must meet certain requirements to qualify as tier 2 capital, including that the term of the subordinated debt instrument is 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 the debt instrument is an effective subordination of the rights of the lender to receive any payment, including accrued interest, to other creditors.[92] Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are unencumbered and generally long-term or permanent forms of capital that help ensure that a nonbank SD will be able to absorb losses resulting from its operations and maintain confidence in the nonbank SD as a going concern. In addition, in setting an equity ratio requirement, this limits the amount of asset growth and leverage a nonbank SD can incur, as a nonbank SD must fund its asset growth with a certain percentage of regulatory capital.

A nonbank SD must also compute its risk-weighted assets using standardized charges or, if approved, internal models. The process of risk-weighting assets involves adjusting the

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[89] 12 CFR 217.20(b).
[90] 12 CFR 217.20(c).
[91] 12 CFR 217.20(d).
[92] The subordinated debt must meet the requirements set forth in SEC Rule 18a-1d (17 CFR 240.18a-1d). 17 CFR 23.101(a)(1)(i)(B) provides that the subordinated debt used by a nonbank SD to meet its minimum capital requirement under the Bank-Based Approach must satisfy the conditions for subordinated debt under SEC Rule 18a-1d.

notional or carrying value of each asset based on the inherent risk of the asset. Less risky assets are adjusted to lower values (*i.e.*, they have less risk weight) than more risky assets. As a result, nonbank SDs are required to hold lower levels of regulatory capital for less risky assets and higher levels of regulatory capital for riskier assets.

Nonbank SDs not approved to use internal models to risk-weight their assets must compute market risk capital charges using the standardized charges contained in Commission Regulation 1.17 and SEC Rule 18a-1, and must compute their credit risk charges using the standardized capital charges set forth in regulations of the Federal Reserve Board for bank holding companies in Subpart D of 12 CFR Part 217.[93]

Standardized market risk charges are computed under Commission Regulation 1.17 and SEC Rule 18a-1 by multiplying, as appropriate to the specific asset schedule, the notional value or market value of the nonbank SD's proprietary financial positions (such as swaps, security-based swaps, futures, equities, and U.S. Treasuries) by fixed percentages set forth in the Regulation or Rule.[94] Standardized credit risk charges require the nonbank SD to multiply on-balance sheet and off-balance sheet exposures (such as receivables from counterparties, debt instruments, and exposures from derivatives) by predefined percentages set forth in the applicable Federal Reserve Board regulations contained in Subpart D of 12 CFR Part 217.

A nonbank SD also may apply to the Commission or NFA for approval to use internal models to compute market risk exposure and/or credit risk exposure for purposes of determining its total risk-weighted assets.[95] Nonbank SDs approved to use models for the calculation of credit risk or market risk, or both, must follow the model requirements set forth in Federal

[93] 17 CFR 23.101(a)(1)(i)(B), 17 CFR 23.100 (providing the definition of the term BHC risk-weighted assets).
[94] 17 CFR 1.17(c)(5) and 17 CFR 240.15c3-1(c)(2).
[95] 17 CFR 23.102.

Reserve Board regulations for bank holding companies (Subpart E and F, respectively, of 12 CFR Part 217). Credit risk and market risk capital charges computed with internal models require the estimation of potential losses, with a certain degree of likelihood, within a specified time period, of a portfolio of assets. Internal models allow for consideration of potential co-movement of prices across assets in the portfolio, leading to offsets of gains and losses. Internal credit risk models can also further include an estimation of the likelihood of default of counterparties.

B. General Overview of Capital Rules for EU IFR/IFD Nonbank Swap Dealers

The Applicant stated that the aim of IFR and IFD is to apply tailored prudential requirements and supervisory measures to the risk profile and business model of investment firms to ensure that such investment firms operate on a sound financial basis and are managed in an orderly manner, including in the best interest of their clients, while ensuring financial stability.[96] The Applicant further stated that the EU Investment Firms Capital Rules require each EU IFR/IFD nonbank SD to hold a sufficient amount of equity capital and qualifying subordinated debt, based on the firm's size, complexity, and activities, to absorb potential losses that the firm may incur if the firm were to experience financial distress.[97] In that regard, the EU Investment Firms Capital Rules impose capital requirements that are specific to firms which are not systemic by virtue of their size and interconnectedness with other financial and economic actors.[98] The capital requirements for such firms are intended to be proportionate to the size,

[96] EU IFR/IFD Application at 2. IFR Recital (10) and IFD Recital (4) (stating that the requirements of the CRR and CRD are designed to address risk faced by credit institutions (*i.e.*, banks) through economic cycles and to protect depositors from possible failure, and that the risks faced and posed by most investment firms are substantially different and such differences should be clearly reflected in the prudential framework for investment firms).
[97] EU IFR/IFD Application at 3; IFR Recitals (14)-(16) and (23)-(26) (stating minimum capital requirements for investment firms).
[98] IFR Recitals (9)-(16).

activities, and degree of interconnectedness of the firm and are calculated according to certain metrics which have been designed as proxies for the risks associated with the firm, its counterparties, and creditor obligations.[99]

The EU Investment Firms Capital Rules require EU IFR/IFD nonbank SDs to maintain regulatory capital in the form of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital[100] in an amount that equals or exceeds the highest of the EU IFR/IFD nonbank SD's "permanent minimum requirement" ("PMR"), "fixed overheads requirement" ("FOR"), and the sum of the firm's "K-factor requirements" ("KFR").[101] The resulting total minimum capital requirement ("total own funds requirement" or "TOFR") may also be supplemented with additional requirements imposed by the EU IFR/IFD nonbank SD's relevant regulatory authority.[102] Common equity tier 1 capital must comprise at least 56 percent of the EU IFR/IFD nonbank SD's TOFR and tier 1 capital must comprise at least 75 percent of TOFR.[103]

Under the EU Investment Firms Capital Rules, common equity tier 1 capital is composed of common equity capital instruments, retained earnings, accumulated other comprehensive income, and other unrestricted reserves of the EU IFR/IFD nonbank SD.[104] Additional tier 1 capital is composed of capital instruments other than common equity and retained earnings (*i.e.*, common equity tier 1 capital), and includes certain convertible debt securities and preferred

[99] EU IFR/IFD Application at 3; IFR Recitals (14)-(16) and (23)-(26).
[100] IFR Articles 9 and 11. As further discussed below, the EU Investment Firms Capital Rules incorporate the CRR for definitions of the categories of instruments that qualify as regulatory capital.
[101] IFR Article 11(1).
[102] IFR Article 11(3); IFD Articles 40-41.
[103] IFR Article 9.
[104] IFR Article 9. Common Equity Tier 1 capital is defined in accordance with Chapter 2 of Title I of Part Two of CRR.

stock.[105] Tier 2 capital instruments, which provide an additional layer of supplementary capital, includes other reserves, hybrid capital instruments, and certain subordinated debt.[106]

To qualify as tier 2 regulatory capital, capital instruments and subordinated debt must meet certain conditions including that: (i) the capital instruments are issued by the EU IFR/IFD nonbank SD and are fully paid-up; (ii) the capital instruments are not purchased by the EU IFR/IFD nonbank SD or its subsidiaries; (iii) the claims on the principal amount of the capital instruments rank below any claim from instruments that are "eligible liabilities,"[107] meaning that they are effectively subordinated to claims of all non-subordinated creditors of the EU IFR/IFD nonbank SD; (iii) the capital instruments have an original maturity of at least five years; and (iv) the provisions governing the capital instruments do not include any incentive for the principal amount to be repaid by the EU IFR/IFD nonbank SD prior to the capital instruments' respective maturity.[108]

As noted above, the amount of regulatory capital that an EU IFR/IFD nonbank SD is required to hold is the highest of the firm's PMR, FOR, or KFR. The PMR for an EU IFR/IFD nonbank SD is 750,000 euros ("EUR").[109] The FOR is an amount equal to one quarter of the firm's relevant expenditures (calculated by taking the firm's total expenditures before distribution of profits and deducting certain expenses) in the previous year.[110] As described in more detail below, the KFR is a mixture of activity-based and exposure-based capital

[105] IFR Article 9. Additional Tier 1 capital is defined in accordance with Chapter 3 of Title I of Part Two of CRR.
[106] IFR Article 9. Tier 2 capital is defined in accordance with Chapter 4 of Title I of Part Two of CRR.
[107] "Eligible liabilities" are non-capital instruments, including instruments that are directly issued by the EU IFR/IFD nonbank SD and fully paid up with remaining maturities of at least a year. CRR, Articles 72a and 72b. In addition, the liabilities cannot be owned, secured, or guaranteed, by the EU IFR/IFD nonbank SD itself, and the EU IFR/IFD nonbank SD cannot have either directly or indirectly funded their purchase. CRR, Article 72b.
[108] IFR Article 9 and CRR Article 63.
[109] IFD Article 9.
[110] IFR Article 13. Expenses that may be deducted include staff bonuses and other compensation, to the extent the expenses depend on the net profit of the investment firm in the respective year.

requirements, including capital charges related to net position risk in trading positions ("K-NPR"), the value of the firm's daily trading flow ("K-DTF"), and the risk of trading counterparty default (including counterparties to over the counter ("OTC") derivatives) ("K-TCD").[111]

The Applicant represented that while the PMR, which is effectively the floor of an investment firm's minimum capital requirements, is relatively modest at EUR 750,000, in practice, an EU IFR/IFD nonbank SD's minimum capital requirement is likely to be greater – either the FOR or, more likely, the KFR.[112] The EU Investment Firms Capital Rules set forth three broad risk categories of "K-factors" that, as applicable and relevant to an individual EU IFR/IFD, are to be included in the calculation of total KFR:[113]

(1) "Risk-to-client" K-factors, which covers risks carried by an investment firm during its services, actions, or responsibilities, which could negatively impact clients. These relate to assets under management ("K-AUM"),[114] client money held ("K-CMH"),[115] assets safeguarded and administered ("K-ASA"),[116] and client orders handled ("K-COH");[117]

(2) "Risk-to-market" K-factors, which apply capital requirements against the impact an investment firm could have on the markets in which it operates, and on the

[111] IFR Article 15.
[112] EU IFR/IFD Application at 6.
[113] IFR Article 15.
[114] K-AUM is calculated on the first business day of each month as the rolling average of the value of the monthly assets under management measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values. IFR Article 17(1).
[115] K-CMH is calculated on the first business day of each month as the rolling average of the value of total daily money held measured at the end of each business day for the previous nine months, excluding the three most recent months. IFR Article 18(1).
[116] K-ASA is calculated on the first business day of each month as the rolling average of the value of the total daily assets safeguarded and administered measured at the end of each business day for the previous nine months, excluding the three most recent months. IFR Article 19(1).
[117] K-COH is calculated on the first business day of each month as the rolling average of the value of the total daily client orders handled, measured throughout each business day over the previous six months, excluding the three most recent months. IFR Article 20(1).

counterparties with which it trades. This relates to net position risk ("K-NPR")[118] or, where permitted by the relevant regulatory authority for specific types of investment firms that deal on own account through clearing members, to the total margins required by an investment firm's clearing member ("K-CMG");[119] and

(3) "Risk-to-firm" K-factors, which are intended to capture an investment firm's exposure to the default of its trading counterparties ("K-TCD"),[120] concentration risk in an investment firm's large exposures to specific counterparties ("K-CON"),[121] and operational risks from an investment firm's daily trading flow ("K-DTF").[122]

In computing its TOFR based on K-factors, an EU IFR/IFD nonbank SD would apply a K-factor coefficient calibration to the K-factors as follows: (i) K-AUM 0.02%; (ii) K-CMH (on

[118] K-NPR is calculated by using one of the permitted approaches to calculating market risk under CRR. IFR Article 22 (cross-referencing CRR with respect to the calculation methodologies for K-NPR) and Article 57 (setting out transitional provisions regarding the calculation methodologies applicable under CRR to market risk in the period before the methodologies referred to in IFR Article 22 become effective).

[119] K-CMG is calculated as the third highest amount of total margin required on a daily basis by a clearing member carrying the account and clearing the positions of the EU IFR/IFD nonbank SD at a qualified central counterparty ("QCCP") over the preceding three months, multiplied by a factor of 1.3. IFR Article 23(2). A "QCCP" is defined as a central counterparty that has been authorized or recognized by an appropriate regulatory authority.

[120] K-TCD is calculated by multiplying the exposure value, a risk factor ranging from 1.6 percent to 8 percent depending on the counterparty type, the credit valuation adjustment ("CVA"), and a factor of 1.2. IFR, Article 26. The exposure value equals the replacement cost plus the potential future exposure (for derivatives contracts) minus the value of eligible collateral, as determined in accordance with IFR Articles 28-30. IFR Article 27. The CVA is an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty to reflect the current market value of the credit risk of the counterparty and is determined in accordance with IFR Article 32.

[121] K-CON is calculated as an aggregate amount of a capital add-on requirement computed for each client or group of connected clients to whom the EU IFR/IFD nonbank SD has exposures exceeding certain thresholds specified in IFR Article 39. Article 39 of IFR sets out the circumstances that trigger a client-level add-on and the scope of exposures to be assessed; the add-ons for all affected clients/connected groups are then aggregated to produce the firms' K-CON amount.

[122] K-DTF is calculated on the first business day of each month as the rolling average of the value of the total daily trading flow for the investment firm's trades, executed for its own account or on behalf of clients, measured each business day over the previous nine months, excluding the three most recent months. The DTF is measured as the sum of the absolute value of buy and sell for both cash trades and derivatives transactions. For cash trades, the value is the amount paid or received on each trade. For derivatives, the value of the trade is the notional amount of the contract. IFR Article 33.

segregated accounts) 0.4%; (iii) K-CMH (non-segregated accounts) 0.5%; (iv) K-ASA 0.04%; (v) K-COH cash trades 0.1%; (vi) K-COH derivatives 0.01%; (vii) K-DTF cash trades 0.1%; and (viii) K-DTF derivatives 0.01%.[123] There is no coefficient calibration applied to the K-factor for K-NPR and K-CON.[124] The coefficients set forth in IFR were designed to reflect the inherent risk of each metric, based on historical data and benchmarking. In addition, the European Banking Authority ("EBA")[125] developed regulatory technical standards, adopted by the European Commission in the form of delegated regulations, to further specify certain elements of the K-factors calculation, including adjustments to K-DTF coefficients in stressed market conditions.[126]

The K-factor requirements that are potentially most relevant to investment firms, including EU IFR/IFD nonbank SDs, engaging in swap dealing activities include K-NPR, K-CMG, and K-TCD. The K-factor requirement for net position risk, K-NPR, is intended to capture market risk in an EU IFR/IFD nonbank SD's trading book, including positions in debt

[123] For example, if an EU IFR/IFD nonbank SD held customer funds on behalf of its clients that are required to be segregated as part of its Investment Activities, the firm would calculate its K-CMH as the rolling average of the value of total daily money held for customers at the end of each business day for the previous nine months (excluding the most recent three months) multiplied by a coefficient factor of .4%. Assuming that the EU IFR/IFD nonbank SD was holding 500 million EUR of customer funds, the K-CMH would be 2,000,000 EUR (500,000,000 x .004).

[124] IFR Article 15.

[125] The EBA is an independent EU authority that contributes to the stability and effectiveness of the European financial system through clear, consistent, transparent and fair regulation.

[126] *Commission Delegated Regulation (EU) 2022/76 of 22 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying adjustments to the K-factor "daily trading flow" (K-DTF) coefficients* (September 22, 2021). See also *Commission Delegated Regulation (EU); Commission Delegated Regulation (EU) 2022/25 of 22 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methods for measuring the K-factors referred to in Article 15 of that Regulation* (September 22, 2021) and *Commission Delegated Regulation (EU) 2022/244 of 24 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and the Council with regard to regulatory technical standards specifying the amount of total margin for calculation of the K-factor "clear margin given" (K-CMG)* (September 24, 2021). A list of implementing and delegated acts for IFR is available at the European Commission's website: *https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/investment-firms-regulation_en*.

instruments, equity instruments, and collective investment undertakings.[127] K-NPR also applies to positions that are not in the trading book but create foreign exchange or commodities risk.[128]

The K-NPR is calculated using the methodologies for determining risk-based capital amounts for market risk under the CRR.[129] For the purpose of calculating K-NPR, an EU IFR/IFD nonbank SD can either apply a standardized approach to market risk, or, if approved by the relevant regulatory authority, use an internal model.[130] Following the effective date of certain amendments to CRR, planned for January 1, 2027, the current model approach will be replaced by an alternative standardized approach and an alternative internal model approach, further discussed below.[131]

Standardized market risk charges are generally calculated by multiplying the notional or carrying amount of net positions or of adjusted net positions by risk-weighting factors, which are

[127] IFR Article 21(3). In addition, the term "trading book" is defined as all positions in financial instruments and commodities held by an institution either with trading intent or to hedge positions held with trading intent. IFR Article 4(54). The term "positions held with trading intent" is, in turn, defined as: (i) proprietary positions and positions arising from client servicing and market making; (ii) positions held to be resold in the short term; or (iii) positions intended to benefit from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations. IFR Article 4(55).

[128] IFR Article 21(4).

[129] IFR Articles 22 and 57. As noted, the CRR sets forth the calculating methodologies for the risk-based capital requirements for market risk applicable to larger and interconnected nonbank SDs that are considered as "credit institutions" (*i.e.*, treated as banks) for prudential requirements purposes. For reference, the Commission has considered the capital requirements for market risk under CRR in connection with its assessment of the capital requirements applicable to larger and interconnected nonbank SDs domiciled in the EU and subject to the CRR/CRD framework. The Commission has found the capital requirements applicable to nonbank SDs under CRR/CRD comparable to the capital requirements under the CFTC Capital Rules. *See 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*, 89 FR 58572 (July 18, 2024).

[130] IFR Articles 22 and 57 and CRR (as amended by Regulation (EU) 2019/630), Part Three, Title IV.

[131] IFR Articles 22 and 57. The standardized approach for market risk is set out in Chapters 2, 3 and 4 of Title IV of Part Three of CRR. The alternative standardized approach and the alternative internal model approach for market risk are set out in Chapter 1a and Chapter 1b, respectively, of Title IV of Part Three of CRR. The effective date of the provisions setting forth the alternative standardized approach and alternative internal model approach was postponed from June 26, 2026 (originally planned as set forth in IFR Article 57) to January 1, 2027. *See* European Commission's announcement of June 12, 2025, available here: *https://finance.ec.europa.eu/news/commission-proposes-postpone-one-additional-year-market-risk-prudential-requirements-under-basel-iii-2025-06-12_en*.

based on the underlying market risk of each asset or exposure. The sum of the calculated amounts comprises the portion of the risk exposure amount attributable to market risk.[132]

Standardized calculation of market risk exposures under the EU Investment Firms Capital Rules may follow one of three approaches. 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.[133] 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.[134]

The EU Investment Firms Capital Rules address the risk of derivatives positions by generally treating them as exposures on their underlying assets,[135] with options being delta-adjusted.[136] Positions in gold are subject to the same treatment as foreign exchange risk.[137] The standardized schedules of the EU Investment Firms Capital Rules provide a narrowly defined asset classification to assign risk-weighting factors, trading off more generous offsets within narrower sets of positions to which they apply. For instance, the maturity-based method for calculating market risk charges on debt instruments required by EU Investment Firms Capital Rules permits netting across maturity bands at increased capital charges.[138] EU IFR/IFD nonbank SDs may also apply to the relevant regulatory authority for permission to use an internal model to compute their market risk exposure (K-NPR).[139] The EU IFR/IFD Capital

[132] CRR, Part Three, Title IV, Chapter 2.
[133] CRR, Part Three, Title IV, Chapter 4, Article 360.
[134] CRR, Part Three, Title IV, Chapter 4, Articles 359 and 361.
[135] CRR, Part Three, Title II, Chapter 6, Section 5, Articles 276 – 278.
[136] CRR, Part Three, Title IV, Chapter 2, Section 1, Articles 328 – 330.
[137] CRR, Part Three, Title IV, Chapter 4, Articles 357 – 358.
[138] CRR, Part Three, Title IV, Chapter 2, Section 2, Subsection 2.
[139] For EU IFR/IFD nonbank SDs domiciled in France, such as Goldman Sachs Paris, the relevant regulatory authority is the ACPR.

Rules set forth quantitative and qualitative requirements that models must meet to receive approval.[140] Quantitative and qualitative requirements address, among other issues, governance, validation, monitoring, and review. Modeled market risk charges generally require the estimation of potential losses, with a certain degree of likelihood, within a specified period, of a portfolio of assets. Models allow for consideration of potential co-movement of prices across assets in the portfolio, leading to offsets of gains and losses.[141]

As noted above, following the effective date of certain amendments to CRR, planned for January 1, 2027, the current market risk model approach will be replaced. In addition to the existing standardized approach, the calculation methodologies for capital requirement for market risk will include an alternative standardized approach and an alternative model approach. The alternative standardized approach uses a sensitivities-based method that includes a residual risk add-on and a default risk charge.[142] The sensitivities-based method aggregates shocked factor losses across calibrated risk weights, buckets, and three correlation scenarios, and takes the most conservative result.[143] The alternative models approach incorporates an aggregate modellable risk charge, an expected-shortfall component, a stressed expected shortfall charge for non-modellable risk factors, a default risk charge, and a profit and loss (P&L) attribution add-on, but derives these charges from validated internal models subject to P&L attribution and back-testing and therefore depends on firm-specific model estimation subject to supervisory approval.[144]

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[140] IFR Article 22 and CRR, Articles 365-367 (as amended by Regulation (EU) 2019/630).
[141] The EU IFR/IFD Capital Rules require EU IFR/IFD nonbank SDs with internal model approval for market risk to use a VaR model with a 99 percent, one-tailed confidence interval with: (i) price change equivalent to 10 business-day movement in rates and prices; (ii) effective historical observation periods of at least one year; and (iii) at least monthly data set updates. CRR, Article 365(1).
[142] IFR Article 22(b) (cross-referencing CRR, Part III, Title IV, Chapter 1a, Article 325c-325ay).
[143] *Id*. CRR Articles 325d-325h.
[144] IFR Article 22(b) (cross-referencing CRR, Part III, Title IV, Chapter 1b, Articles 325az-325bp).

The EU IFR/IFD nonbank SD may also apply to the relevant regulatory authority for permission to use K-CMG, instead of K-NPR, to calculate its market risk requirement for specified positions, where clearing and settlement take place under the responsibility of a clearing member of a central clearing counterparty ("CCP").[145] To calculate K-CMG, an EU IFR/IFD nonbank SD needs to record its total margin required, as calculated by applying the margin model of the relevant clearing member or CCP, as applicable, on a daily basis for the previous three months, and using the third highest amount (the "total margin"). The total margin amount is then multiplied by a coefficient calibration factor of 1.3 to determine the firm's minimum total own funds requirement under K-CMG.[146]

EU IFR/IFD nonbank SDs' positions are also subject to charges for credit risk. More specifically, the trading counterparty default K-factor requirement, K-TCD, is designed to capture the risk of EU IFR/IFD nonbank SD's exposure to the default of its trading counterparties in respect to certain types of transactions that are recorded in the trading book of the EU IFR/IFD nonbank SD that trades in its own name, including OTC derivative contracts.[147] The capital requirements for K-TCD are calculated by using a formula that takes into account the transaction's exposure value, the risk factor that applies to the counterparty type, and the CVA.[148] The exposure value is determined by using replacement cost and potential future exposure, and takes into consideration collateral held against the exposure.[149] The risk factor is

[145] IFR Article 23.
[146] *Id*.
[147] But excluding derivative contracts directly or indirectly cleared through a CCP (provided various conditions are met), exchange-traded derivative contracts and derivatives contracts held for hedging a position of the firm resulting from an activity outside of the trading book. Furthermore, transactions with central government and central banks, where the underlying exposures receive a 0 percent risk weight under Article 114 of CRR, multilateral development banks listed in Article 117(2) of CRR and international organizations listed in Article 118 of CRR need not to be included when calculating K-TCD.
[148] IFR Article 26.
[149] IFR Articles 26 and 27.

either 1.6 percent for counterparties that are central governments, central banks, public sector entities, credit institutions or investment firms, or 8 percent for other counterparties.[150] The CVA, which is 1 or 1.5 depending on the transaction, makes an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty to reflect the current market value of the credit risk of the counterparty to the EU IFR/IFD nonbank SD.[151] As reflected in the calculation formula, the capital requirements for K-TCD are determined using a simplified application of the requirements for counterparty credit risk under CRR.[152] An EU IFR/IFD nonbank SD may also ask permission from the relevant competent authority to apply the standardized approach for measuring counterparty credit risk ("SA-CCR") to calculate the capital requirements for credit risk.[153]

Furthermore, in addition to the minimum capital requirement established by the PMR, FOR, or K-factors, the EU Investment Firms Capital Rules also impose separate liquidity requirements on EU IFR/IFD nonbank SDs to address liquidity risk. Specifically, under the EU

[150] IFR Article 26.
[151] IFR Articles 26 and 32.
[152] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU)_No 1093/2010*, (Dec. 20, 2017) at p. 5 ("IFR Proposal") at 13. For reference, the Commission has considered the capital requirements for counterparty risk under CRR in connection with its assessment of the capital requirements applicable to larger and interconnected nonbank SDs domiciled in the EU and subject to the CRR/CRD framework. The Commission has found the capital requirements applicable to nonbank SDs under CRR/CRD comparable to the capital requirements under the CFTC Capital Rules. *See 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*, 89 FR 58572 (July 18, 2024).
[153] IFR Article 25(4) (cross-referencing CRR, Part Three, Title II (Capital Requirements for Credit Risk), Chapter 6 (Counterparty Credit Risk), Sections 3 (Standardised Approach for Counterparty Credit risk), 4 (Simplified Standardised Approach for Counterparty Credit Risk), or 5 (Original Exposure Method)). Of the three methods cross-referenced in IFR Article 25(4), only SA-CCR is available to the EU IFR/IFD nonbank SD discussed in this Comparability Determination. CRR Article 237a (setting forth conditions for using simplified methods for calculating the exposure value depending on whether the size of the firm's on- and off-balance sheet derivatives business exceeds certain thresholds). As further discussed below, SA-CCR is a non-model, rule-based approach to calculating counterparty credit risk established by the BCBS framework and available under both the CFTC Capital Rules and CRR.

Investment Firms Capital Rules' "minimum liquidity requirement," an EU IFR/IFD nonbank SD is required to hold a minimum amount of high quality liquid assets generally equivalent to at least one third of the firm's fixed overheads requirement or FOR after applying appropriate haircuts to account for market risk.[154] The EU IFR/IFD Capital Rules' liquidity requirements are intended to help ensure that EU IFR/IFD nonbank SDs can fund the initial stages of a wind-down process, if wind-down becomes necessary. The objective of the "minimum liquidity requirement" is to ensure that investment firms can function in an orderly manner over time, without the need to set aside liquidity specifically for times of stress.[155]

In addition, under the internal capital adequacy and risk assessment ("ICARA") process requirements, an EU IFR/IFD nonbank SD is required to implement sound, effective, and comprehensive arrangements, strategies, and processes to assess and maintain on an ongoing basis the amounts, types, and distribution of capital and liquid assets that it considers adequate to cover the nature and level of risk which the firm may pose to others and to which the firm itself is or might be exposed.[156] The arrangements, strategies, and processes must be appropriate to the nature, scale and complexity of the activities of the EU IFR/IFD nonbank SD and subject to regular internal review.[157] An EU IFR/IFD nonbank SD determines through the ICARA process any additional capital and liquidity requirements it meet in addition to the minimum requirements.

[154] IFR Article 43 and IFR Recital 28.
[155] IFR Recital 28. IFR Recital 28 provides that investment firms should have internal procedures to monitor and manage liquidity requirements. IFR Recital 28 further provides that investment firms should hold a minimum of one third of their FOR in high quality, liquid assets at all times.
[156] IFD Article 24; French MFC Article L. 533-2-2 and Order of November 3, 2014, on the prudential supervision and risk assessment process for banking service providers and investment firms other than portfolio management companies.
[157] IFD Article 24.

III. Commission Analysis of the Comparability of the EU Investment Firms Capital and the EU Investment Firms Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules

The following section provides a comparison and analysis of the regulatory requirements of the EU Investment Firms Capital Rules and EU Investment Firms Financial Reporting Rules with the CFTC Capital Rules and CFTC Financial Reporting Rules. Immediately following a description of the requirement(s) of the CFTC Capital Rules and CFTC Financial Reporting Rules for which a comparability determination was requested by the Applicant, the Commission provides a description of the EU's comparable laws, regulations, and rules. The Commission then provides a discussion of the comparability of, or differences between, the EU Investment Firms Capital Rules and the EU Investment Firms Reporting Rules with the corresponding CFTC Capital Rules and CFTC Financial Reporting Rules, including any material differences between the respective rules.

The Commission understands that EU IFR/IFD nonbank SDs, as of the date of this determination, are subject to risk-based capital requirements, which contain elements of the BCBS international framework for banking institutions while aiming to better align the applicable requirements to the EU IFR/IFD nonbank SDs' business model. As such, the Commission performed this Comparability Determination by primarily assessing the comparability of the EU Investment Firms Capital Rules with the Commission's Bank-Based Approach. For clarity, the Commission did not assess the comparability of the EU Investment Firms Capital Rules to the Commission's TNW Approach or NLA Approach.

The capital and financial reporting regimes are complex structures comprised of interrelated regulatory components. Differences in how jurisdictions approach and implement

these regimes are expected, even among jurisdictions that base their requirements on international principles and standards such as the those set forth in the BCBS international framework. Therefore, the Commission's comparability determination involves an assessment of the relevant requirements of the foreign jurisdiction and how those requirements, viewed in the aggregate, lead to an outcome that is comparable to the CFTC's corresponding requirements. Consistent with this approach, the Commission has grouped the CFTC's capital and financial reporting rules into key categories that help focus the analysis on whether the foreign jurisdiction's capital and financial reporting requirements are comparable to the Commission's in purpose and effect, and not whether the foreign jurisdiction's requirements meet every aspect or contain identical elements.

The key categories of the EU Investment Firms Capital Rules and EU Investment Firms Reporting Rules reviewed by the Commission and discussed below include: (i) the quality of the equity and debt instruments that qualify as regulatory capital, and the extent to which the regulatory capital represents committed and permanent capital that would be available to absorb unexpected losses or counterparty defaults; (ii) the process of establishing minimum capital requirements for an EU IFR/IFD nonbank SD and how such process addresses market risk and credit risk of the firm's on-balance sheet and off-balance sheet exposures; (iii) the financial reports and other financial information submitted by an EU IFR/IFD nonbank SD to its regulatory authority to effectively monitor the financial condition of the firm; and (iv) the regulatory notices and other communications between an EU IFR/IFD nonbank SD and the relevant regulatory authority that detail potential adverse financial or operational issues that may impact the firm.

A. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules and EU Investment Firms Capital Rules and the EU Financial Reporting Rules

1. Regulatory Objectives of CFTC Capital Rules and CFTC Financial Reporting Rules

The regulatory objectives of the CFTC Capital Rules and the CFTC Financial Reporting Rules are to further the Congressional mandate to ensure the safety and soundness of nonbank SDs to mitigate the greater risk to nonbank SDs and the financial system arising from the use of swaps that are not cleared.[158] A primary function of the nonbank SD's capital is to protect the solvency of the firm from decreases in the value of firm assets, increases in the value of firm liabilities, and firm losses, including losses resulting from counterparty defaults and margin collateral failures, by requiring the firm to maintain an appropriate level of quality capital, including qualifying subordinated debt, to absorb such losses without becoming insolvent. With respect to swap positions, capital and margin perform complementary risk mitigation functions by protecting nonbank SDs, containing the amount of risk in the financial system as a whole, and reducing the potential for contagion arising from uncleared swaps.

The objective of the CFTC Financial Reporting Rules is to provide the Commission with the means to monitor and assess a nonbank SD's financial condition, including the nonbank SD's compliance with minimum capital requirements. The CFTC Financial Reporting Rules are designed to provide the Commission and NFA, which, along with the Commission, oversees nonbank SDs' compliance with Commission regulations, with a comprehensive view of the financial health and activities of the nonbank SD. The Commission's rules require nonbank SDs

[158] 7 U.S.C. 6s(e)(3)(A).

to file financial information, including periodic unaudited and annual audited financial statements, specific financial position information, and notices of certain events that may indicate a potential financial or operational issue that may adversely impact the firm's ability to meet its obligations to counterparties and other creditors in the swaps market, or impact the firm's solvency.[159]

2. Regulatory Objective of the EU Investment Firms Capital Rules and the EU Investment Firms Reporting Rules

The regulatory objective of the EU Investment Firms Capital Rules is to ensure the safety and soundness of EU IFR/IFD nonbank SDs in order to protect counterparties and customers and the derivatives and financial markets more generally.[160] The EU Investment Firms Capital Rules are designed to preserve the financial stability and solvency of an EU IFR/IFD nonbank SD by requiring the firm to maintain sufficient equity and qualifying subordinated debt based on the EU IFR/IFD nonbank SD's activities and specific business practices.[161] The purpose of the EU Investment Firms Capital Rules is to impose prudential requirements that are calibrated in a manner proportionate to the type of investment firm, the best interests of the clients of that type of firm, and the promotion of the smooth and orderly functioning of the markets in which that type of firm operates.[162] The EU Investment Firms Capital Rules are also designed to ensure that EU IFR/IFD nonbank SDs have sufficient liquidity to meet their financial obligations to

[159] 17 CFR 23.105.
[160] IFR Recital 10, which provides that prudential requirements should be calibrated in a manner proportionate to the type of investment firm, the best interest of the clients of that type of investment firm and the promotion of the smooth and orderly functioning of the markets in which that type of investment firm operates. *See also Prudential Rules for Investment Firms*, Publication of the European Commission, *https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/financial-markets/prudential-rules-investment-firms_en*.
[161] *Id*.
[162] *Id*.

counterparties and other creditors in a distress scenario by requiring each firm to hold a minimum amount of high quality liquid assets based on the firm's FOR.[163]

With respect to financial reporting, the objective of the EU Investment Firms Reporting Rules is to enable the relevant regulatory authority to assess the financial condition and safety and soundness of EU IFR/IFD nonbank SDs.[164] The EU Investment Firms Reporting Rules aim to achieve this objective by requiring an EU IFR/IFD nonbank SD to provide financial reports and other capital information to its relevant regulatory authority on a regular basis.[165] The financial reporting by an EU IFR/IFD nonbank SD provides the relevant regulatory authority with information necessary to effectively monitor the EU IFR/IFD nonbank SD's overall financial condition and its ability to meet its regulatory obligations as a nonbank SD.

In addition, the Applicant represented that the ACPR has the power to require the EU IFR/IFD nonbank SD to provide all necessary information in order for the authorities to carry out their supervisory tasks;[166] examine the books and records of the EU IFR/IFD nonbank SD; obtain written and oral explanations from the EU IFR/IFD nonbank SD's management, staff, and other persons;[167] conduct all necessary inspections at the business premises of the EU IFR/IFD nonbank SD and other group entities;[168] and the power to impose sanctions on firms that breach their regulatory obligations, including the requirements imposed under the EU Investment Firms

[163] IFR Recital 28, which provides that investment firms should have internal procedures to monitor and manage liquidity requirements and help ensure that the firms can function in an orderly manner over time, without the need to set aside liquidity specifically for times of stress, and Article 43, which requires an investment firm to hold an amount of liquid assets equivalent to at least one third of its FOR.
[164] IFR Article 54, which requires investment firms to provide appropriate regulatory authorities with quarterly and annual financial reporting regarding the firm's balance sheet, revenue, capital, and liquidity. In France, the ACPR is the French regulatory authority with prudential supervision authority over French financial firms, including Goldman Sachs Paris.
[165] *Id*.
[166] French MFC, Article L.612-24.
[167] French MFC, Article L.612-24.
[168] French MFC, Articles L.612-23 and L.612-26.

Capital and Reporting Framework, such as public censure, financial penalties, and ultimately the cancellation of the EU IFR/IFD nonbank SD's permission to carry on regulated activities in the EU.[169]

3. Commission Analysis

The Commission has reviewed the EU IFR/IFD Application and the relevant EU laws and regulations, and has determined that the overall objectives of the EU Investment Firms Capital Rules and CFTC Capital Rules are comparable in that both sets of rules are intended to ensure the safety and soundness of nonbank SDs by establishing a regulatory regime that requires 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 firm becoming insolvent. While the EU Investment Firms Capital Rules impose prudential requirements tailored to the risks that investment firms, including EU IFR/IFD nonbank SDs, pose to market participants and the general market, both the EU Investment Firms Capital Rules and the CFTC Capital Rules are consistent with or have elements that are similar to the standards in the international bank capital framework adopted by the BCBS, which is also designed with the objective of requiring banking entities to hold sufficient levels of qualifying regulatory capital to absorb losses and decreases in the value of assets and increases in the value of liabilities without the banks becoming insolvent. The levels of regulatory capital that a nonbank SD is required to hold are based on the risks associated with the nonbank SD's on-balance sheet and off-balance sheet exposures under both the EU Investment Firms Capital Rules and CFTC Capital Rules.

[169] IFD Article 18 and seq.

The EU Investment Firms Capital Rules and CFTC Capital Rules also provide for the comparable calculation of the market risk exposures using standardized or model-based approaches that are also consistent with the BCBS framework, including provisions requiring a robust model risk management program. Both sets of rules also provide for the calculation of credit risk charges. While the EU Investment Firms Capital Rules differ from the CFTC Capital Rule in that they do not permit the use of credit risk models, both sets of rules provide for the computation of credit risk charges through comparable standardized approaches based on the standardized treatment of counterparty credit risk established by the BCBS Framework.[170]

In contrast with the CFTC Capital Rules, which do not have a distinct liquidity requirement, the EU Investment Firms Capital Rules impose specific liquidity requirements on EU IFR/IFD nonbank SDs. The EU Investment Firms Capital Rules, therefore, provide an additional layer of protection to help ensure that firms are capable of meeting their obligations to counterparties, including during periods of stressed market conditions.[171]

The EU Investment Firms Capital Rules and CFTC Capital Rules are also comparable in that both sets of rules limit the capital instruments that may qualify as regulatory capital to high quality equity capital and qualifying subordinated debt that satisfy specified conditions. High quality capital is determined by the degree to which the capital is permanently contributed or readily available on an unrestricted basis to the nonbank SD to absorb unexpected losses, including losses from swaps trading and other activities, without the nonbank SD becoming insolvent.

[170] 17 CFR 23.103 and IFR Article 26.
[171] IFR Recital 28 and Article 43.

With respect to financial reporting, both the EU Investment Firms Reporting Rules and the CFTC Financial Reporting Rules require nonbank SDs to file periodic financial reports, including periodic unaudited and annual audited financial reports, with the relevant regulatory authority, and further require nonbank SDs to file regulatory notices if certain defined conditions are met or limits breached. These financial reports and notices provide regulators, including the ACPR, Commission, and NFA with information necessary to comprehensively assess the financial condition and safety and soundness of the nonbank SDs, and to monitor their ongoing compliance with applicable minimum capital requirements. The monitoring of nonbank SDs by the appropriate regulators helps ensure that nonbank SDs do not disrupt the swaps market in general, and the financial markets more broadly, by failing to have capital to absorb losses to prevent the firm from becoming insolvent during a time of market stress.

Having compared the objectives of the EU Investment Firms Capital and Reporting Framework to the objectives of the Commission's capital and financial reporting requirements, and having considered those objectives in the broader context of the prudential oversight of EU IFR/IFD nonbank SDs' capital requirements, the Commission finds that the objectives of the EU Investment Firms Capital Rules and the EU Investment Firms Reporting Rules are comparable to the objectives of the CFTC Capital Rules and CFTC Financial Reporting Rules.

B. Nonbank Swap Dealer Qualifying Capital

1. CFTC Capital Rules: Qualifying Capital Under Bank-Based Approach

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.[172] Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are composed of certain defined forms of equity of the nonbank SD, including common stock, retained earnings, and qualifying subordinated debt.[173] The Commission's requirement for a nonbank SD to maintain a minimum amount of defined qualifying capital and subordinated debt is intended to ensure that the firm maintains a sufficient amount of regulatory capital to absorb decreases in the value of firm assets and increases in the value of firm liabilities, and to cover losses resulting from the business activities, including the firm's swap dealing activities.

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. Common equity tier 1 capital is a more conservative or permanent form of capital than additional tier 1 and tier 2 capital and is last in line to receive distributions in the event of the entity's insolvency.[174] 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.[175] Total tier 1 capital is composed of common equity tier 1 capital and further includes additional tier 1 capital.[176] Tier 2 capital includes certain types of instruments that include both debt and equity characteristics such as qualifying subordinated debt.[177]

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[172] 17 CFR 23.101(a)(1)(i).
[173] 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. *See* 12 CFR 217.20.
[174] 12 CFR 217.20.
[175] *Id.*
[176] *Id*.
[177] *Id*.

Subordinated debt must meet certain conditions to qualify as tier 2 capital under the CFTC Capital Rules. Specifically, subordinated debt instruments must have a term of at least one year (except for 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.[178]

2. EU Investment Firms Capital Rules: Qualifying Capital

The EU Investment Firms Capital Rules require an EU IFR/IFD nonbank SD to maintain regulatory capital in amounts that meet certain stated minimum requirements. An EU IFR/IFD nonbank SD's regulatory capital may be composed of: (i) common equity tier 1 capital, which generally include the EU IFR/IFD nonbank SD's common equity, retained earnings, and other comprehensive income;[179] (ii) additional tier 1 instruments, which include other capital instruments and certain long-term convertible debt instruments;[180] and (iii) tier 2 capital, which includes certain other reserves, hybrid capital instruments, and certain qualifying subordinated debt.[181]

Subordinated debt instruments must meet certain conditions to qualify as tier 2 capital under the EU Investment Firms Capital Rules, including that the: (i) loans are not granted by the EU IFR/IFD 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

[178] The subordinated debt must meet the requirements set forth in SEC Rule 18a-1d (17 CFR 240.18a-1d). 17 CFR 23.101(a)(1)(i)(B) (providing that the subordinated debt used by a nonbank SD to meet its minimum capital requirement under the Bank-Based Approach must satisfy the conditions for subordinated debt under SEC Rule 18a–1d).

[179] IFR Article 9. Common equity tier 1 capital is defined in accordance with Chapter 2 of Title I of Part Two of CRR.

[180] *Id*. Additional tier 1 capital is defined in accordance with Chapter 3 of Title I of Part Two of CRR.

[181] *Id*. Tier 2 capital is defined in accordance with Chapter 4 of Title I of Part Two of CRR.

they are effectively subordinated to claims of all non-subordinated creditors of the EU IFR/IFD nonbank SD; (iii) subordinated loans are not secured, or subject to a guarantee that enhances the seniority of the claim by the EU IFR/IFD 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 EU IFR/IFD nonbank SD prior to the loans' maturity.[182]

The EU Investment Firms Capital Rules also impose different ratios for the various components of regulatory capital that an EU IFR/IFD nonbank SD must hold. Specifically, common equity tier 1 capital must comprise at least 56 percent of the EU IFR/IFD nonbank SD's total minimum capital requirement and tier 1 capital must comprise at least 75 percent of the total minimum capital requirement.[183]

Common equity tier 1 capital, additional tier 1 capital, and tier 2 capital are permitted to be included in an EU IFR/IFD nonbank SD's regulatory capital and used to meet the firm's minimum capital requirement due to their characteristics of being permanent forms of capital that are subordinate to the claims of other creditors, which ensures that an EU IFR/IFD nonbank SD will have this regulatory capital to absorb decreases in the value of the firm's assets and increases in the value of the firm's liabilities, and to cover losses from business activities, including swap dealing activities.

3. Commission Analysis

The Commission has reviewed the EU IFR/IFD Application and the relevant EU laws and regulations, and has determined that the EU Investment Firms Capital Rules are comparable

[182] IFR Article 9, CRR Article 63.
[183] IFR Article 9.

in purpose and effect to the CFTC Capital Rule with regard to the type and characteristics of a nonbank SD's equity that qualifies as regulatory capital in meeting its minimum requirements. The EU Investment Firms 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 assets and increases in the value of the firm's liabilities without resulting in the firm becoming insolvent. Equity instruments that qualify as common equity tier 1 capital and additional tier 1 capital under the EU Investment Firms Capital Rules and the CFTC Capital Rules have similar characteristics (*e.g.*, the equity must be in the form of high-quality, committed, and permanent capital) and the equity instruments generally have no priority in distribution of firm assets or income with respect to other shareholders or creditors of the firm, which makes the equity available to a nonbank SD to absorb unexpected losses, including counterparty defaults.[184]

In addition, the Commission has determined that the conditions imposed on subordinated debt instruments under the EU Investment Firms Capital Rules and the CFTC Capital Rules are comparable and designed to ensure that the subordinated debt has qualities that support its recognition by a nonbank SD as equity for capital purposes. In both sets of rules, the conditions include a requirement that the debt holders have effectively subordinated their claims for repayment of the debt to the claims of other creditors of the nonbank SD.[185]

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[184] *Compare* 12 CFR 217.20(b) (defining capital instruments that qualify as common equity tier 1 capital under the rules of the Federal Reserve Board) and 12 CFR 217.20(c) (defining capital instruments that qualify as additional tier 1 capital under the rules of the Federal Reserve Board) with IFR Article 9 (referring to definitions of capital instruments in Chapter 2 of Title I of Part Two of CRR), CRR, Articles 26 and 28 (defining items and capital instruments that qualify as common equity tier 1 capital), and CRR, Article 52 (defining capital instruments that qualify as additional tier 1 capital).

[185] *Compare* 17 CFR 240.18a–1d with IFR Article 9 and CRR, Article 63(d).

Having reviewed the EU IFR/IFD Application and the relevant EU laws and regulations, the Commission has determined that the EU Investment Firms Capital Rules and CFTC Capital Rules impose comparable requirements on EU IFR/IFD nonbank SDs with respect to the types and characteristics of equity capital that must be used to meet minimum regulatory capital requirements.

C. Nonbank Swap Dealer Minimum Capital Requirement

1. CFTC Capital Rules: Nonbank Swap Dealer Minimum Capital Requirement

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 of regulatory capital; (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; and (iv) the amount of capital required by NFA.[186]

Prong (i) above requires each nonbank SD electing the Bank-Based Approach to maintain a minimum of $20 million of common equity tier 1 capital to operate as a nonbank SD. The requirement that each nonbank SD electing the CFTC Bank-Based Approach maintain a minimum of $20 million of common equity tier 1 capital is also consistent with the minimum

[186] 17 CFR 23.101(a)(1)(i). 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*.

capital requirement for nonbank SDs electing the NLA Approach and the TNW Approach.[187] 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.[188]

Prong (ii) above is a minimum capital requirement that is based on the Federal Reserve Board's capital requirements for bank holding companies and is consistent with the BCBS framework for banking institutions. As noted above, a nonbank SD under prong (ii) must 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. Risk-weighted assets are a nonbank SD's on-balance sheet and off-balance sheet exposures, including proprietary swap, security-based swap, equity, and futures positions, weighted according to risk. The Bank-Based Approach requires each nonbank SD to maintain regulatory capital in an amount that equals or exceeds 8 percent of the firm's total risk-weighted assets 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

[187] Nonbank SDs electing the NLA Approach are subject to a minimum capital requirement that includes a fixed minimum dollar amount of net capital of $20 million. 17 CFR 23.101(a)(1)(ii)(A)(1). Nonbank SDs electing the TNW Approach are required to maintain levels of tangible net worth that equals or exceeds $20 million plus the amount of the nonbank SDs' market risk and credit risk associated with the firms' dealing activities. 17 CFR 23.101(a)(2)(ii)(A).

[188] 85 FR 57462 at 57492.

from business activities, including uncollateralized defaults from swap counterparties, without the nonbank SD becoming insolvent.

A nonbank SD must compute its risk-weighted assets amounts for market and credit risk using a standardized approach, unless the nonbank SD has been approved by the Commission or NFA to use internal models.[189] With respect to the calculation of standardized risk-weighted asset amounts for market risk, the Commission incorporated by reference the standardized market risk charges set forth in Commission Regulation 1.17 for FCMs and SEC Rule 18a-1 for nonbank SBSDs.[190] 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 to the market value or notional value increasing as the expected or anticipated risk of the positions increase.[191] 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.[192] 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.[193] The resulting total market risk-weighted 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 CFTC Capital Rules' minimum capital requirements described above. As

[189] *See* 17 CFR 23.101(a)(1)(i)(B) and the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.
[190] See paragraph (3) of the definition of the term *BHC equivalent risk-weighted assets* in 17 CFR 23.100.
[191] 17 CFR 1.17(c)(5) and 17 CFR 240.18a-1(c)(1).
[192] 17 CFR 1.17(c)(5)(iii).
[193] 17 CFR 1.17(c)(5)(v), referencing SEC Rule 15c3–1(c)(2)(vi) (17 CFR 240.15c3–1(c)(2)(vi)).

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.[194]

With respect to standardized risk-weighted asset amounts for credit risk, 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.[195] Standardized risk-weighted 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.[196] 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.[197]

With respect to counterparty credit risk for derivatives positions, a nonbank SD may compute standardized credit risk exposures, using either the current exposure method ("CEM")

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[194] 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 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)).

[195] 17 CFR 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.

[196] 17 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 for Economic Co-operation and Development (12 CFR 217.32(a)(2)).

[197] 17 CFR 217.33.

or the standardized approach for measuring counterparty credit risk ("SA-CCR").[198] Both CEM and SA-CCR are non-model, rules-based approaches to calculating counterparty credit risk exposures for derivatives positions. Credit risk exposure under the 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 derivative contract multiplied by a standard credit risk conversion factor set forth in the rules of the Federal Reserve Board.[199] 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.[200]

A nonbank SD also may obtain the approval of the Commission or NFA to use internal models to compute market risk and/or credit risk exposures. A nonbank SD seeking approval to use a model is required to submit an application to the Commission or NFA.[201] The application is required to include, among other things, a list of the categories of positions that the nonbank SD holds in its proprietary accounts and a brief description of the methods that the nonbank SD will use to calculate market risk and/or credit risk exposures for such positions.

A nonbank SD approved by the Commission or NFA to use models to compute risk-weighted amounts for market risk is required to comply with Subpart F of the Federal Reserve Board's Part 217 regulations ("Subpart F").[202] Subpart F is based on models that are consistent

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[198] 17 CFR 217.34. *See also* Commission Regulation 23.100 (17 CFR 23.100) defining the term *BHC risk-weighted assets,* which provides that a nonbank SD that does not have model approval may use either CEM or SA-CCR to compute its exposures for over-the-counter derivative contracts with regard to the status of its affiliate entities with respect to the use of a calculation approach under the Federal Reserve Board's capital rules.
[199] 12 CFR 217.34.
[200] 12 CFR 217.132(c).
[201] 17 CFR 23.102(c).
[202] *See* paragraph (4) of the definition of *BHC equivalent risk-weighted assets* in 17 CFR 23.100.

with the BCBS Basel 2.5 capital framework.[203] The Commission's qualitative and quantitative requirements for capital models also are comparable to the SEC's existing capital model requirements for broker-dealers in securities and SBSDs,[204] which are also broadly based on the BCBS Basel 2.5 capital framework.

A nonbank SD approved to use internal models to compute risk-weighted amounts for credit risk is required to perform such computation in accordance with Subpart E of the Federal Reserve Board's Part 217 regulations,[205] as if the nonbank SD were itself a bank holding company subject to Subpart E.[206] The internal credit risk modeling requirements are also based on the Basel 2.5 capital framework and the Basel 3 capital framework. A nonbank SD that computes its credit risk charges using internal models must multiply the resulting capital requirement by a factor of 12.5.[207]

In adopting the final Bank-Based Approach rules, the Commission also noted that in choosing an alternative calculation, the nonbank SD must adopt the entirety of the alternative. As such, if the nonbank SD is calculating its risk-weighted assets using the regulations in Subpart E of 12 CFR 217, the nonbank SD must include charges reflecting all categories of risk-weighted assets applicable under these regulations, which include among other things, charges for operational risk, CVA of OTC derivatives contracts, and unsettled transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement

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

[204] The SEC internal model requirements for SBSDs are listed in 17 CFR 240.18a-1(d).

[205] 12 CFR 217 Subpart E.

[206] *See* 85 FR 57462 at 57496.

[207] 12 CFR 217.131(e)(1)(iii), 217.131(e)(2)(iv), and 217.132(d)(9)(iii).

or delivery.[208] The capital charge for operational risk and CVA of OTC derivatives contracts calculated in accordance with Subpart E of 12 CFR 217 must also be multiplied by a factor of 12.5.[209]

Under the Basel 2.5 capital framework, nonbank SDs have flexibility in developing their models, but must follow certain minimum standards. Internal market risk and credit risk models must follow a Value at Risk ("VaR") structure to compute, on a daily basis, a 99th percentile, one-tailed confidence interval for the potential losses resulting from an instantaneous price shock equivalent to a 10-day movement in prices (unless a different timeframe is specifically indicated). The simulation of this price shock must be based on a historical observation period of minimum length of one year, but there is flexibility on the method used to render simulations, such as variance-covariance matrices, historical simulations, or Monte Carlo.

The Commission and the Basel standards for internal models also have requirements on the selection of appropriate risk factors as well as on data quality and update frequency.[210] One specific concern is that models must capture the non-linear price characteristics of options positions, including but not limited to, relevant volatilities at different maturities.[211] In addition, BCBS standards for market risk models include a series of additive components for risks for which the broad VaR is ill-suited or that may need targeted calculation. These include the calculation of a Stressed VaR measure (with the same specifications as the VaR, but calibrated to

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[208] Settlement risk for OTC derivatives contracts is addressed as part of the counterparty-credit risk calculation methodology described in 12 CFR 217.132.
[209] 12 CFR 217.162(c) (operational risk) and 217.132(e)(4) (CVA of OTC derivative contracts).
[210] *See* 17 CFR Appendix A to Subpart E of Part 23(i)(2)(iii), and Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), paragraph 718(Lxxvi)(e), available at: *https://www.bis.org/publ/bcbs193.pdf*.
[211] The Commission's requirement is set forth in paragraph (i)(2)(iv)(A) of Appendix A to Subpart E of 17 CFR part 23. *See also* Basel Committee on Banking Supervision, Revisions to the Basel II Market Risk Framework (2011), paragraph 718(Lxxvi)(h), available at: *https://www.bis.org/publ/bcbs193.pdf*.

historical data from a continuous 12-month period of significant financial stress relevant to the firm's portfolio); a Specific Risk measure (which includes the effect of a specific instrument); an Incremental Risk measure (which addresses changes in the credit rating of a specific obligor which may appear as a reference in an asset); and a Comprehensive Risk measure (which addresses risk of correlation trading positions).

Finally, prong (iii) of the CFTC Capital Rules' Bank-Based Approach is a minimum capital requirement that is based on the amount of initial margin for uncleared swap transactions entered into by the nonbank SD and is computed on a counterparty-by-counterparty basis. The requirement for a nonbank SD to maintain minimum capital equal to or greater than 8 percent of the firm's uncleared swap margin provides a capital floor based on a measure of the risk and volume of the swap positions, and the number of counterparties and the complexity of operations, of the nonbank SD. The intent of the minimum capital requirement based on a percentage of the nonbank SD's uncleared swap margin was to establish a minimum capital requirement that would help ensure that the nonbank SD meets all of 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.

2. The EU Investment Firms Capital Rules: EU IFR/IFD Nonbank Swap Dealer Minimum Capital Requirements

The EU Investment Firms Capital Rules impose risk-based capital requirements on an EU IFR/IFD nonbank SD that, consistent with the BCBS framework, require the firm to hold sufficient amounts of qualifying equity capital and subordinated debt based on the EU IFR/IFD nonbank SD's activities, to absorb decreases in the value of the firm's assets, increases in the value of the firm's liabilities, and to cover losses resulting from business activities, including

possible counterparty defaults without becoming insolvent. The EU Investment Firms Capital Rules require each EU IFR/IFD nonbank SD to maintain sufficient levels of common equity tier 1 capital, additional tier 1 capital, and tier 2 capital to meet its minimum capital requirement, which is the highest of the firm's permanent minimum requirement or PMR, fixed overheads requirement or FOR, or the sum of the firm's K-factor requirements or KFR. The EU IFR/IFD nonbank SD is required to hold sufficient capital to satisfy the following capital ratios, expressed as a percentage of the nonbank SD's minimum capital requirement: (i) common equity tier 1 capital ratio of 56 percent; (ii) common equity tier 1 and additional tier 1 capital ratio of 75 percent; and (iii) total capital ratio of 100 percent.[212]

Under the EU Investment Firms Capital Rules, the minimum capital requirement of an EU IFR/IFD nonbank SD is determined as the highest of the firm's PMR, FOR, or KFR. As represented by the Applicant, while the PMR, which is set at EUR 750,000 for EU IFR/IFD nonbank SDs subject to this Comparability Determination such as the Applicant, is relatively modest, in practice, an EU IFR/IFD nonbank SD's minimum capital requirement is likely to be greater — either the FOR or, more likely, the KFR.[213] As noted above, the KFR is a mixture of activity and exposure-based capital requirement that incorporates, among other risk categories, market risk (K-NPR) and credit risk (K-TCD).

An EU IFR/IFD nonbank SD's market risk is captured by the K-factor for net position risk, K-NPR. K-NPR applies to positions in the EU IFR/IFD nonbank SD's trading book, as well as to positions not in the trading book that give rise to foreign exchange or commodities risk. An EU IFR/IFD nonbank SD is required to compute market risk amounts using the

[212] IFR Article 9.
[213] IFR and IFD provide for different levels of PMR depending on the activities in which the firm engages. For investment firms that engage in swap dealing, the PMR is EUR 750, 000. IFR Article 14 and IFD Article 9.

methodologies set forth in the IFR, which, in turn, refers to CRR for the calculation approaches.[214] Currently, to calculate market risk charges, an EU IFR/IFD nonbank SD can either apply a standardized approach or, if approved by the relevant regulatory authority, a market risk model.[215] As discussed in Section III.C.3.b below, following the effective date of certain amendments to CRR, planned for January 1, 2027, the current model approach would be replaced by an alternative standardized approach and an alternative market risk model.[216]

EU IFR/IFD nonbank SDs calculate standardized market risk charges generally by multiplying the notional or carrying amount of net positions or of adjusted 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 increase. Market risk requirements for debt instruments and equity instruments are calculated separately under the standardized approach, and are each calculated as the sum of specific risk and general risk of the positions.[217] Securitizations are treated as debt instruments for market risk requirements,[218] whereas derivative positions are generally treated as exposures on their underlying assets,[219] with options being delta-adjusted.[220]

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[214] IFR Article 22.
[215] IFR Article 57 and CRR (as amended by Regulation (EU) 2019/630), Part Three, Title IV.
[216] IFR Articles 22 and 57. The standardized approach is set out in Chapters 2, 3 and 4 of Title IV of Part Three of CRR. The alternative standardized approach and the alternative internal model approach are set out in Chapter 1a and Chapter 1b, respectively, of Title IV of Part Three of CRR. The applicability of the alternative standardized approach and the alternative internal model approach, initially planned for June 26, 2026, was postponed to January 1, 2027. *See* European Commission's announcement of June 12, 2025, available here: *https://finance.ec.europa.eu/news/commission-proposes-postpone-one-additional-year-market-risk-prudential-requirements-under-basel-iii-2025-06-12_en*.
[217] CRR (as amended by Regulation (EU) 2019/630) Article 326. *See also id*., Articles 334– 340 (provisions related to debt instruments) and 341–343 (provisions related to equities).
[218] CRR (as amended by Regulation (EU) 2019/630) Article 326.
[219] CRR (as amended by Regulation (EU) 2019/630) Articles 328-330.
[220] CRR (as amended by Regulation (EU) 2019/630) Article 329.

The EU Investment Firms Capital Rules also require EU IFR/IFD nonbank SDs to include in their risk-based capital requirements for market risk, exposures to certain foreign currency and gold positions. An EU 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.[221] The capital requirement for foreign exchange risk under the standardized approach is 8 percent of the EU IFR/IFD nonbank SD's net positions in foreign exchange and gold.[222] The EU Investment Firms Capital Rules further require EU IFR/IFD nonbank SDs to include exposures to commodity positions in calculating the firm's risk-based capital requirements for market risk. 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.[223] 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.[224]

An EU IFR/IFD nonbank SD may also apply to the relevant regulatory authority for approval to use an internal model to calculate one or more of the following market risk categories: (i) general risk of equity instruments, (ii) specific risk of equity instruments, (iii) general risk of debt instruments, (iv) specific risk of debt instruments, (v) foreign exchange risk,

[221] CRR (as amended by Regulation (EU) 2019/630) Article 351.
[222] *Id*.
[223] CRR (as amended by Regulation (EU) 2019/630) Article 360.
[224] CRR (as amended by Regulation (EU) 2019/630) Articles 359-361.

or (vi) commodities risk,[225] along with interest rate on derivatives.[226] An EU IFR/IFD nonbank SD approved to use models must also obtain approval from the relevant authority to implement a material change to the model or make a material extension to the use of the model.[227] The EU Investment Firms Capital Rules' model-based methodology is based on the BCBS Basel 2.5 standard.[228] Accordingly, the EU Investment Firms Capital Rules incorporate relevant aspects of the BCBS framework[229] in terms of requiring firms with model approval to use a VaR model with a 99 percent, one-tailed confidence level with (i) price changes equivalent to a ten business-day movement in rates and prices, (ii) effective historical observation periods of at least one year and (iii) at least monthly data set updates,[230] as well as a requirement to calculate a "stressed" VaR.[231]

To obtain a permission for the use of a market risk model, an EU IFR/IFD nonbank SD must demonstrate to the satisfaction of the relevant regulatory authority that it meets certain conditions.[232] The conditions include specified model elements and controls including risk and stressed risk calculations,[233] back-testing and multiplication factors,[234] risk measurement

[225] CRR (as amended by Regulation (EU) 2019/630) Articles 363(1).
[226] CRR (as amended by Regulation (EU) 2019/630) Articles 331(1), using sensitivity models.
[227] CRR (as amended by Regulation (EU) 2019/630) Articles 363(3).
[228] Compare CRR (as amended by Regulation (EU) 2019/630) Article 362-377, with Revisions to the Basel 2 Market Risk Framework.
[229] The BCBS framework for measuring risk-weighted assets, and the controls around such measurements, are updated from time to time. These standards for measurement and controls are accepted and applied to financial risk modeling beyond banking entities. It has been the experience that EU and CFTC requirements are updated timely to reflect such updates to the BCBS framework, thus maintaining a common core of methodologies and control practices. The Commission expects that this convergence will continue.
[230] CRR (as amended by Regulation (EU) 2019/630) Article 365(1).
[231] *Id.*, Article 365(2). *See also* CFTC Capital Final Rule Release, 85 FR 57462 at n.332 (citing the BCBS' Revisions to the Basel 2 Market Risk Framework for an explanation of the implementation of the stressed VaR requirement).
[232] CRR (as amended by Regulation (EU) 2019/630) Part Three, Title IV, Chapter 5.
[233] CRR (as amended by Regulation (EU) 2019/630) Articles 364-365.
[234] *Id.*, Article 366.

requirements,[235] governance and qualitative requirements,[236] internal validation,[237] and specific requirements by risk categories.[238]

An EU IFR/IFD nonbank SD may apply to the relevant regulatory authority for permission to use K-CMG, instead of K-NPR, to compute market risk charges for specified positions, where clearing and settlement take place under the responsibility of a clearing member of a CCP.[239] To obtain permission to use K-CMG, the EU IFR/IFD nonbank SD must demonstrate that the margin requirements resulting from the clearing models are sufficient to cover losses that may result from at least 99 percent of the exposures movements over an appropriate time horizon with at least a two-business days' holding period.[240] The K-CMG market risk charge is determined by applying the margin model of the relevant clearing member or CCP, as applicable, to the cleared positions of the EU IFR/IFD nonbank SD for each day of the previous three months. The K-CMG market risk charge is then set equal to the third highest cleared margin amount over such three-month period, multiplied by a factor of 1.3.[241]

As noted in Section III.C.2 above, following the effective date of certain amendments to CRR, planned for January 1, 2027, the current market risk model approach will be replaced. Following the changes, the calculation methodologies for capital requirement for market risk will include an alternative standardized approach and an alternative model approach, in addition to the existing standardized approach discussed above. The alternative standardized approach uses a sensitivities-based method that includes a residual risk add-on and a default risk charge.[242] The

[235] *Id.*, Article 367.
[236] *Id.*, Article 368.
[237] *Id.*, Article 369.
[238] *Id.*, Part Three, Title IV, Chapter 5, Section 3.
[239] IFR Recital 21, Article 4(32), and Article 23.
[240] *Id*.
[241] IFR Article 23.
[242] IFR Article 22(b) (cross-referencing CRR, Part Three, Title IV, Chapter 1a, Article 325c *et seq*.).

method aggregates shocked factor losses across calibrated risk weights, buckets, and three correlation scenarios, and takes the most conservative result.[243] The alternative models approach incorporates an aggregate modellable risk charge, an expected-shortfall component, a stressed expected shortfall charge for non-modellable risk factors, a default risk charge, and a P&L attribution add-on, but derives these charges from validated internal models subject to P&L attribution and back-testing and therefore depends on bank-specific model estimation subject to supervisory approval.[244]

With respect to credit risk, the trading counterparty default K-factor requirement, K-TCD, is designed to capture the risk of an EU IFR/IFD nonbank SD to the default of its trading counterparty with respect to certain transactions, including OTC derivative contracts.[245] K-TCD takes into account the exposure value of the transaction, the risk factor that applies to the counterparty type, and the CVA.[246] The exposure value is determined using replacement cost and potential future exposure, and taking into consideration collateral held against the exposure.[247] The counterparty risk factor is either 1.6 percent for central governments, central banks, public sector entities, credit institutions and investment firms, or 8 percent for other counterparties.[248] The CVA, which is either 1 or 1.5 depending on the transaction, represents an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty to

[243] *Id*.
[244] IFR Article 22(b) (cross-referencing CRR, Part III, Title IV, Chapter 1b).
[245] However, derivative contracts directly or indirectly cleared through a CCP (provided various conditions are met), exchange-traded derivative contracts, and derivative contracts held for hedging a position of the firm resulting from an activity outside the trading book are excluded K-TCD calculation. Furthermore, transactions with central government and central banks, where the underlying exposures receive a 0 percent risk weight under Article 114 of CRR, multilateral development banks listed in Article 117(2) of CRR, and international organizations listed in Article 118 of CRR are not required to be included when calculating K-TCD. IFR Article 25.
[246] IFR Article 26.
[247] IFR Article 27.
[248] IFR Article 26.

reflect the current market value of the credit risk of the counterparty to the EU IFR/IFD nonbank SD.[249] An EU IFR/IFD nonbank SD may also ask permission from the relevant competent authority to apply SA-CCR to calculate the capital requirements for credit risk.[250]

The EU IFR/IFD Capital Rules' KFR also incorporates other risk categories, such as operational risk. In particular, the K-factor requirement for daily trading flow, K-DTF, is designed to capture the operational risks relating to the value of trading activity a firm conducts throughout each business day.[251] In addition, the capital charges for client money held (K-CMH) and safeguarded assets (K-ASA) seek to capture the operational, legal and other risks associated with holding margin provided by customers (where held as client assets).

Furthermore, the EU Investment Firms Capital Rules impose separate liquidity requirements on an EU IFR/IFD nonbank SD to address liquidity risk. Specifically, an EU IFR/IFD nonbank SD must meet the IFR's "minimum liquidity requirement," which requires that the EU IFR/IFD nonbank SD hold a minimum amount of high quality liquid assets based on the firm's FOR.[252] The EU Investment Firms Capital Rules' liquidity requirements are intended to help ensure that EU IFR/IFD nonbank SDs can fund the primary stages of a wind-down process, if wind-down becomes necessary. The aim of the "minimum liquidity requirement" is to ensure that investment firms can function in an orderly manner over time, without the need to set aside liquidity specifically for times of stress.[253]

[249] IFR Article 32.
[250] IFR Article 25(4). SA-CCR is a non-model, rule-based approach to calculating counterparty credit risk established by the BCBS framework and available under both the CFTC Capital Rules and CRR.
[251] IFR Recitals 22 and 26.
[252] IFR Article 43.
[253] IFR Recital 28.

In addition, an EU IFR/IFD nonbank SD is required to have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain, on an ongoing basis, the amounts, types and distribution of internal capital and liquid assets that they consider adequate to cover the nature and level of risks which they may pose to others and to which the investment firms themselves are or might be exposed.[254] An EU IFR/IFD nonbank SD has to determine, through the internal capital adequacy and risk assessment (ICARA) process, any supplementary capital and liquid assets requirements, in addition to the minimum regulatory capital requirement and the liquid assets requirement, that may be necessary to manage risks that could result in a material harm.

3. Commission Analysis

The Commission has reviewed the EU IFR/IFD Application and the relevant EU laws and regulations and has determined that the EU Investment Firms Capital Rules are comparable in purpose and effect to the CFTC Capital Rules with regard to the establishment of the nonbank SD's minimum capital requirement and the calculation of the nonbank SD's amount of regulatory capital to meet that requirement.

Although there are differences between the EU Investment Firms Capital Rules and the CFTC Capital Rules, as discussed below, the Commission believes that the EU Investment Firms Capital Rules and the CFTC Capital Rules are aligned in their objectives to ensure the safety and soundness of a nonbank SD and, subject to the conditions discussed below, will achieve comparable outcomes by requiring the firm to maintain a minimum level of qualifying regulatory capital, including subordinated debt, to absorb losses from the firm's business activities,

[254] IFD Article 24, French MFC Article L. 533-2-2 and Order of November 3, 2014, on the prudential supervision and risk assessment process for banking service providers and investment firms other than portfolio management companies.

including swap dealing activities, and decreases in the value of the firm's assets and increases in the value of the firm's liabilities, without the nonbank SD becoming insolvent. The Commission's finding of comparability is based on a comparative analysis of the three minimum capital requirements thresholds of the CFTC Capital Rules' Bank-Based Approach (*i.e.*, the three prongs recited in Section III.C.1. above) and the respective elements of the EU Investment Firms Capital Rules' requirements, as discussed below.

a. Fixed Amount Minimum Capital Requirement

CFTC Capital Rules and the EU Investment Firms Capital Rules both require nonbank SDs to hold a fixed minimum amount of regulatory capital that is not directly activity-based and risk-based. 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.[255] The EU Investment Firms Capital Rules also contain a requirement that an EU IFR/IFD nonbank SD maintain a fixed amount of minimum initial capital of EUR 750,000.[256]

The Commission recognizes that the $20 million fixed-dollar minimum capital required under the CFTC Capital Rules is substantially higher than the EUR 750,000 minimum base capital required under the EU IFR/IFD Capital Rules and the Commission believes that the $20

[255] 85 FR 57462 at 57492.
[256] IFR Article 14 and IFD Article 9.

million represents a more appropriate level of minimum capital to help ensure the safety and soundness of the nonbank SD that is engaging in uncleared swap transactions. Accordingly, the Commission is requiring each EU IFR/IFD nonbank SD to maintain, at all times, a minimum level of $20 million regulatory capital in the form of common equity tier 1 items as defined in Article 26 of CRR.[257] The condition requires each EU IFR/IFD nonbank SD to maintain an amount of common equity tier 1 capital denominated in euro that is equivalent to the $20 million in U.S. dollars.[258] An EU IFR/IFD nonbank SD may convert the euro-denominated common equity tier 1 capital amount to the U.S. dollar equivalent based on a commercially reasonable and observable exchange rate.

b. Minimum Risk-based Capital Requirements

Prong (ii) of the CFTC Capital Rules' Bank-Based Approach requires each nonbank SD 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.[259]

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[257] Condition 8 of the Comparability Order. The Commission notes that the requirement that EU IFR/IFD nonbank SDs maintain a minimum level of the equivalent of $20 million of common equity tier 1 capital is consistent with the conditions set forth in the comparability orders for Japan, Mexico, the EU (for nonbank SDs domiciled in France or Germany and subject to the capital requirements established under CRR and CRD), and the UK (for PRA-designated UK nonbank SDs). *See Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan*, 89 FR 58470 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico*, 89 FR 58505 (July 18, 2024); *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*, 89 FR 58572 (July 18, 2024); and *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*, 89 FR 58535 (July 18, 2024).

[258] Goldman Sach Paris, the only EU IFR/IFD nonbank SD currently registered with the Commission, maintains common equity tier 1 capital in euros in excess of the equivalent of $20 million based on financial filings made with the Commission. Therefore, the Commission does not anticipate that the condition would have any material impact on an EU IFR/IFD nonbank SD registered with the Commission.

[259] 17 CFR 23.101(a)(1)(B).

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 international bank capital adequacy 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.

The EU Investment Firms Capital Rules contain capital requirements for EU IFR/IFD nonbank SDs that the Commission believes are comparable to the requirements contained in prong (ii) of the CFTC Capital Rules. Although the aim of the IFR/IFD Framework is to establish capital requirements that are better aligned to the investment firms' risk profile and business activities than the BCBS-based bank capital requirements, the EU Investment Firms Capital Rules retain certain key elements of the BCBS framework, including as it relates to the quality of regulatory capital, the calculation of market risk, and the treatment of counterparty credit risk.

The EU Investment Firms Capital Rules are comparable to the Bank-Based Approach as they require firms to hold sufficient regulatory capital to meet capital requirements that take into consideration the risks of the firm's activities and positions. The CFTC Capital Rules require a nonbank SD to maintain qualifying equity capital and qualifying subordinated debt in an amount

that equals or exceeds 8 percent of the nonbank SD's risk-weighted assets. The EU Investment Firms Capital Rules impose a comparable approach, requiring an EU IFR/IFD nonbank SD to maintain qualifying equity capital and qualifying subordinated debt in an amount that equals or exceeds the highest of the firm's PMR, FOR, or KFR. The KFR, which establishes the controlling minimum capital requirement for Goldman Sachs Paris, and is anticipated to be the controlling requirement for potential future EU IFR/IFD nonbank SDs that engage in swap dealing activities, is a mixture of an activity-based and exposure-based capital requirement that incorporates market and credit risk, among other risk categories.

The calculation of market risk charges is comparable under the EU Investment Firms Capital Rules and the CFTC Capital Rules. Both regimes require a nonbank SD to use standardized approaches to compute market risk, unless the firms are approved to use internal models. The standardized approaches follow the same structure that is now the common global standard: allocating assets to categories according to risk and assigning each a risk weight; calculating gross exposures based on valuation of assets; calculating a net exposure allowing offsets following well defined procedures and subject to clear limitations; and adjusting the net exposure by the market risk weights. The standardized risk weights contained in the EU Investment Firms Capital Rules and the CFTC Capital Rules result in comparable risk charges for comparable exposures. Both sets of rules require a nonbank SD to effectively maintain qualifying capital equal to or in excess of 100 percent of its market risk-weighted assets. The CFTC Capital Rules achieve this result by requiring the nonbank SD to multiply its market risk-

weighted assets by a factor of 12.5.[260] The EU Investment Firms Capital Rules achieve the same result by adding K-NPR directly to the KFR requirement.

Market risk models under the CFTC Capital Rules and the EU Investment Firms Capital Rules are based on the BCBS framework and contain comparable quantitative and qualitative requirements, which produce comparable market charges for comparable exposures. In that regard, both the CFTC Capital Rules and the EU Investment Firms Capital Rules aim to ensure that a nonbank SD holds sufficient capital to cover potential losses due to adverse market movements, particularly under stressed market conditions. The CFTC Capital Rules and the EU Investment Firms Capital Rules' requirement for net positions risk (K-NPR), consistent with the Basel 2.5 framework, both employ a Value-at-Risk (VaR) methodology with the following features: one-tailed 99 percent confidence level, 10-business-day price change horizon, historical observation period of at least one year, and monthly data updates (at minimum), as well as a stress VaR methodology which requires using data from a historical stress period. The requirements are designed to capture the tail risks of a firm's trading book during an extreme but plausible stress event.

The Commission believes that the CFTC Capital Rules and the EU Investment Firms Capital Rules are comparable in purpose and effect because they contain the same core elements: methodologies to distinguish and measure business activities, classification and measurement of risks arising from those activities, assignment of the appropriate corresponding capital

[260] 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)).

requirement, and policies and procedures for risk management (including setting and reviewing risk tolerances and mitigation of breaches). Each framework places governance at the center of effective risk management.

As noted in Section III.C.2 above, following the effective date of certain amendments to CRR, planned for January 1, 2027, the current market risk model approach will be replaced. Following the changes, the calculation methodologies for capital requirement for market risk will include an alternative standardized approach and an alternative model approach, in addition to the existing standardized approach.[261] The general approach of basing the minimum capital requirement on risk-weighted assets, however, will be maintained.

The new approaches—the alternative standardized approach and the alternative internal models approach —share the same regulatory purpose and produce broadly comparable effects for trading-book capital. The alternative standardized approach uses a sensitivities-based method that includes a residual risk add-on and a default risk charge.[262] The method aggregates shocked factor losses across calibrated risk weights, buckets, and three correlation scenarios, and takes the most conservative result.[263] The alternative models approach incorporates an aggregate modellable risk charge, a stressed expected-shortfall component (including a charge for non-modellable risk factors), a default risk charge, and a P&L attribution add-on, but derives these charges from validated internal P&L models subject to P&L attribution and back-testing and therefore depends on bank-specific model estimation subject to supervisory approval.[264]

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[261] IFR Article 22. The addition of the alternative standardized approach and an alternative model approach is consistent with revisions to the BCBS framework and is part of the finalization of the Basel III reforms. The implementation of the Basel III standards is in progress and remains subject to changes both in the EU and the U.S.
[262] IFR Article 22(b) (cross-referencing CRR, Part III, Title IV, Chapter 1a).
[263] *Id*.
[264] IFR Article 22(c) (cross-referencing CRR, Part III, Title IV, Chapter 1b).

Despite differences in methodology, complexity, and data requirements, both new approaches target the same core risk drivers—market sensitivities, residual/non-modellable exposures, and default risk—and seek to deliver comparable levels of protection against trading-book losses.

The EU Investment Firms Capital Rules and the CFTC Capital Rules also contain comparable requirements for the management of model risk, which depend on a series of controls, including the independence of validation, ongoing monitoring, and audit. The ongoing monitoring includes frequent tests, such as stress testing, back-testing, and benchmarking.

Notwithstanding the expected replacement of the current internal models approach with new approaches to calculating market risk under the EU Investment Firms Capital Rules, both the CFTC Capital Rules and the EU Investment Firms Capital Rules will continue to incorporate approaches to risk-weighted assets that rely on statistical processes to measure market price risk, account for default risk and non-modellable risk factors, and empower the relevant regulatory authority to ensure any remaining material risks are captured. Although statistical techniques will evolve, both regulatory regimes will continue to require rigorous model development, validation, and ongoing monitoring, thereby reducing differences in outcomes. For these reasons, the Commission believes that the EU Investment Firms Capital Rules' approach to calculating capital requirements for market risk, as administered by the relevant regulatory authority, will remain aligned with the CFTC Capital Rules as it regards the calculation of capital requirements for market risk. The Commission does not expect that the forthcoming changes designed to implement the Basel III standards in the EU Investment Firms Capital Rules will impact the Commission's conclusion. Given the coordination mechanisms established by the BCBS, the Commission expects that the CFTC Capital Rules and the EU Investment Firms

Capital Rules will continue to incorporate consistent, similarly calibrated, approaches to market risk.[265]

Separately, the EU Investment Firms Capital Rules' K-factor approach offers an alternative method for computing market risk capital requirements for certain approved positions that are subject to clearing, based on cleared margin requirements (K-CMG).[266] To compute K-CMG, an EU IFR/IFD nonbank SD must select the third-highest daily amount of margin required by the clearing member of a qualified CCP over the preceding three months and apply a 1.3x multiplier. The margin requirements resulting from the clearing member model must be sufficient to cover losses that may result from at least 99 percent of the exposures movements over an appropriate time horizon with at least a two-business day holding period. The Commission notes that no EU IFR/IFD nonbank SD currently registered with the Commission has elected to use K-CMG.[267]

Both the EU Investment Firms Capital Rules and the CFTC Capital Rules also provide for the calculation of counterparty credit risk charges for derivatives positions. Counterparty credit risk captures a nonbank SD's exposure to the risk of default by trading counterparties,

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[265] The Commission's conclusion applies also to the Commission's Comparability Determination regarding larger nonbank SDs domiciled in the EU that are subject to the capital requirements established by the CRR/CRD framework. See *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*, 89 FR 58572 (July 18, 2024).

[266] Subject to conditions, the relevant regulatory authority may permit specific types of firms that use the services of clearing members to calculate capital requirements for market risk using K-CMG. IFR Recital 21 and Article 23. Among other conditions, to obtain regulatory approval to use K-CMG, an EU IFR/IFD nonbank SD must demonstrate that the choice of calculating market risk requirements with K-CMG is justified by the nature of the main activities of the firm, which would generally be trading activities subject to clearing and margining under the responsibility of a clearing member of a CCP. IFR Article 23(1)(d).

[267] If an EU IFR/IFD nonbank SD obtains approval from the relevant regulatory authority and elects to use K-CMG, the Commission would assess the impact of such change with respect to the firm's reliance on the Comparability Order, taking into consideration the nature of the firm's activities. The Commission considers that a firm's election to use K-CMG is a material change to the information submitted in connection with the EU IFR/IFD Application that would necessitate a notice to the Commission under Condition 24 of this Comparability Order.

particularly when the value of the firm's derivative portfolio is increasing. Both the CFTC Capital Rules' approach to calculating counterparty credit risk and the EU Investment Firms Capital Rules' trading counterparty default K-fact (K-TCD) are based on the Standardized Approach to Counterparty Credit Risk (SA-CCR),[268] as developed under the BCBS framework. Both approaches use a formula that considers the transaction's exposure value calculated as the sum of the replacement cost and the potential future exposure, a risk factor/weight based on the type of counterparty, and an adjustment for collateral. Both the CFTC Capital Rules and the EU Investment Firms Capital Rules also include a CVA component where applicable.

Thus, K-TCD effectively mirrors the CFTC Capital Rules' treatment of counterparty risk, yielding comparable capital requirements for similarly situated exposures. Both the CFTC Capital Rules and EU Investment Firms Capital Rules leverage the standardized approach to counterparty credit risk (*i.e.*, SA-CCR) endorsed by BCBS, ensuring consistent and risk-sensitive outcomes. In addition, an EU IFR/IFD nonbank SD may also request permission from the relevant competent authority to actually apply SA-CCR, instead of the SA-CCR-based K-TCD, to calculate the capital requirements for credit risk.[269]

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

The EU Investment Firms Capital Rules differ from the CFTC Capital Rules in the approach that a nonbank SD must take to address risks other than market risk and credit risk. Specifically, as noted above, the CFTC Capital Rules require a nonbank SD to maintain regulatory capital that meets the following: (i) $20 million of common equity tier 1 capital; (ii) 8

[268] As reflected in the calculation formula for K-TCD, the capital requirements for K-TCD are determined using a simplified application of the requirements for counterparty credit risk under CRR. IFR Article 26. *See also* IFR Proposal at 13.
[269] IFR Article 25(4).

percent of its risk-weighted assets; (iii) 8 percent of its uncleared swap margin amount; and (iv) the amount of capital required by the NFA.

The Commission noted that the uncleared swap margin amount is intended to cover potential operational risk, legal risk, and liquidity risk of a nonbank SD in addition to the risks of its trading portfolio. The EU Investment Firms Capital Rules also require an EU IFR/IFD nonbank SDs to take into consideration operational and other risks in the calculation of capital requirements, but such charges are added as part of the EU IFR/IFD nonbank SD's risk exposure calculation under KFR and not a separate minimum requirement expressly tied to the uncleared swap margin amount as is the approach adopted by the Commission. Specifically, in addition to market risk (K-NPR) and credit risk (K-TCD), an EU IFR/IFD nonbank SD's KFR incorporates operational risk (in particular, K-DTF as well as K-CMH and K-ASA) and other risks based on the degree of activity associated with each K-factor engaged in by the firm. As such, unlike under the CFTC Capital Rules, where the uncleared swap margin amount determines a nonbank SD's minimum capital requirement only if it is the greatest of the four prongs, factoring operational risk under the EU Investment Firms Capital Rules results in an increase of an EU IFR/IFD nonbank SD's overall capital requirement in all circumstances.

While the CFTC Capital Rules incorporate operational risk into one component of its minimum capital requirement, the EU Investment Firms Capital Rules incorporate operational risk as an additional calculation factoring into its minimum capital requirement. Each regulatory framework, however, imposes operational risk-related capital requirements.

d. Finding of Comparability

The Commission has determined, subject to the condition below, that the EU Investment Firms Capital Rules and the CFTC Capital Rules are comparable in purpose and effect. In this

regard, the EU Investment Firms Capital Rules and the CFTC Capital Rules are both designed to require a nonbank SD to maintain sufficient qualifying regulatory capital and subordinated debt to absorb losses resulting from the firm's business activities, and decreases in the value of firm assets.

As noted above, both the CFTC Capital Rules and EU Investment Firms Capital Rules require nonbank SDs to maintain a minimum level of regulatory capital based on market risk, credit risk, and liquidity requirements of their respective business activities to be able to absorb decreases in the value of firm assets, increases in firm liabilities, and business losses, including losses due to counterparty defaults without the firm becoming insolvent. The composition of regulatory capital is also consistent under the CFTC Capital Rules and the EU Investment Firms Capital Rule, with a focus on common equity tier 1, additional tier 1, and defined tier 2 instruments that are unrestricted and permanent forms of capital and have no preference to other creditors in the event of the insolvency of the firm.

In setting the minimum capital requirement, the CFTC Capital Rules and EU Investment Firms Capital Rules both address risks that nonbank SDs face in their business activities. The CFTC Capital Rules include a market risk exposure requirement and a credit risk exposure requirement in the minimum capital requirement based on the nonbank SD's risk-weighted assets and separately address operational, legal, and liquidity risk by imposing a minimum capital requirement based on the firm's uncleared swap margin amount. The EU Investment Firms Capital Rules address the same risks through the K-factor requirements. The K-factor requirements also address additional risks that are specific to the business model of investment firms. More generally, the K-factor requirements were designed with the goal of providing a more effective prudential and supervisory framework, calibrated to the size and nature of

investment firms, than the than the previously applicable CRR/CRD framework which is largely geared towards banks.[270] As the European Commission noted, unlike banks, investment firms do not accept deposits or make loans and are, therefore, less exposed to credit risk and the risk of depositors withdrawing their money on short notice.[271] Instead, investment firm services primarily focus on financial instruments that fluctuate according to market movements.[272] To address this distinction, the European Commission proposed the K-factor requirements, asserting that they represent a more appropriate and risk-sensitive approach, better targeting the risk that investment firms actually pose and incur across different types of business models.[273]

In conducting its Comparability Determination, the Commission has focused on the market risk and counterparty credit risk components of the capital requirements calculation, which form the core of the Commission's capital requirements. The Commission considers that the CFTC Capital Rules and the EU Investment Firms Capital Rules both include methodologies for addressing these calculation components that are comparable in purpose and effect. In addition, the Commission has considered the separate K-factor requirement addressing operational risk and the separate liquidity requirement under the EU Investment Firms Capital Rules, and has concluded that subject to the conditions in the Comparability Order, the CFTC Capital Rules and EU Investment Firms Capital Rules are comparable in purpose and effect.

[270] IFR Proposal at 1-2.
[271] *Id.,* at 2.
[272] *Id*.
[273] IFR Proposal at 3-4 (stating, among other arguments, that of the eight investment services that investment firms are authorized to perform under MiFID 2, only two – dealing on own account and underwriting or placing instruments on a firm commitment basis – have clear corresponding requirements under CRR).

D. Nonbank Swap Dealer Financial Reporting Requirements

1. CFTC Financial Recordkeeping and Reporting Rules for Nonbank Swap Dealers

The CFTC Financial Reporting Rules impose financial recordkeeping and reporting requirements on nonbank SDs. The CFTC Financial Reporting Rules require each nonbank SD to prepare and keep current ledgers or similar records summarizing each transaction affecting the nonbank SD's asset, liability, income, expense, and capital accounts.[274] The nonbank SD's ledgers and similar records must be prepared in accordance with generally accepted accounting principles as adopted in the United States ("U.S. GAAP"), except that if the nonbank SD is not otherwise required to prepare financial statements in accordance with U.S. GAAP, the nonbank SD may prepare and maintain its accounting records in accordance with International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board.[275]

The CFTC Financial Reporting Rules also require each nonbank SD to prepare and file with the Commission and with NFA periodic unaudited and annual audited financial statements.[276] A nonbank SD that elects the TNW Approach is required to file unaudited financial statements within 17 business days of the close of each quarter, and its annual audited financial statements within 90 days of the end of its fiscal year.[277] A nonbank SD that elects either the NLA Approach or the Bank-Based Approach is required to file unaudited financial statements within 17 business days of the end of each month, and to file its annual audited financial statements within 60 days of the end of its fiscal year.[278]

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[274] 17 CFR 23.105(b).
[275] *Id*.
[276] 17 CFR 23.105(d) and (e).
[277] 17 CFR 23.105(d)(1) and (e)(1).
[278] *Id*.

The CFTC Financial Reporting Rules provide that a nonbank SD's unaudited financial statements must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement of changes in liabilities subordinated to claims of general creditors; (iv) a statement of changes in ownership equity; (v) a statement demonstrating compliance with and calculation of the applicable regulatory capital requirement; and (vi) such further material information necessary to make the required statements not misleading.[279] The annual audited financial statements must include: (i) a statement of financial condition; (ii) a statement of income/loss; (iii) a statement of cash flows; (iv) a statement of changes in liabilities subordinated to claims of general creditors; (v) a statement of changes in ownership equity; (vi) a statement demonstrating compliance with and calculation of the applicable regulatory capital requirement; (vii) appropriate footnote disclosures; and (viii) a reconciliation of any material differences from the unaudited financial report prepared as of the nonbank SD's year-end date and the annual audited financial statements.[280]

A nonbank SD that has obtained approval from the Commission or NFA to use internal capital models also must submit certain model metrics, such as aggregate VaR and counterparty credit risk information, each month to the Commission and NFA.[281] A nonbank SD also is required to provide the Commission and NFA with a detailed list of financial positions reported at fair market value as part of its monthly unaudited financial statements.[282] Each nonbank SD is also required 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

[279] 17 CFR 23.105(d)(2).
[280] 17 CFR 23.105(e)(4).
[281] 17 CFR 23.105(k) and (l) and appendix B to subpart E of part 23.
[282] 17 CFR 23.105(l) and appendix B to subpart E of part 23.

exposures by internal credit ratings, and the geographical distribution of derivatives exposures for the 10 largest countries.[283]

The CFTC Financial Reporting Rules also require 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 that the information contained in the financial report is true and correct.[284] 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.[285]

The CFTC Financial Reporting Rules further require a nonbank SD to make certain financial information publicly available by posting the information on its public website.[286] Specifically, a nonbank SD must post on its website a statement of financial condition and a statement detailing the amount of the nonbank SD's regulatory capital and the minimum required regulatory capital requirement based on its audited financial statements and based on its unaudited financial statements that are as of a date that is six months after the nonbank SD's audited financial statement. Such public disclosure is required to be made within 10 business days of the filing of the audited financial statements with the Commission, and within 30 calendar days of the filing of the unaudited statements with the Commission.[287] A nonbank SD also must obtain written approval from NFA to change the date of its fiscal year-end for financial reporting.[288]

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[283] 17 CFR 23.105(l) in Schedules 2, 3, and 4, respectively.
[284] 17 CFR 23.105(f).
[285] *Id.*
[286] 17 CFR 23.105(i).
[287] *Id*.
[288] 17 CFR 23.105(g).

The CFTC Financial Reporting Rules also require each nonbank SD to provide the Commission and NFA with information regarding the custodianship of margin for uncleared swap transactions ("Margin Report").[289] The Margin Report must contain: (i) the name and address of each custodian holding initial margin or variation margin that is required for uncleared swaps subject to the CFTC margin rules ("uncleared margin rules"), 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.[290] The Commission requires this information to monitor the use of custodians by nonbank SDs and their swap counterparties. Such information assists the Commission in monitoring the safety and soundness of a nonbank SD by verifying whether the firm is current with its swap counterparties with respect to the posting and collecting of margin required by the uncleared margin rules. By requiring the nonbank SD to report the required amount of margin to be posted and collected, and the amount of margin that is actually posted and collected, the Commission could identify potential issues with the margin practices and compliance by nonbank SDs that may hinder the ability of the firm to meet its obligations to market participants. The Margin Report also allows the Commission to identify custodians used by nonbank SDs and their counterparties, which may permit the Commission to assess potential market issues, including a concentration of custodial services by a limited number of banks.

[289] 17 CFR 23.105(m).
[290] *Id*.

2. EU IFR/IFD Nonbank Swap Dealer Financial Reporting Requirements

The EU Investment Firms Reporting Rules impose financial reporting requirements on an EU IFR/IFD nonbank SD that are designed to provide the relevant regulatory authority with a comprehensive view of the financial information and capital position of the firm. Specifically, the EU Investment Firms Reporting Rules require an EU IFR/IFD nonbank SD to report, on a quarterly basis, information regarding the firm's capital and financial condition, including information on the firm's level and composition of capital, capital requirements, and capital ratios; concentration risk; and liquidity requirements.[291] An EU IFR/IFD nonbank SD must follow the templates and instructions provided in the Reporting ITS under IFR.[292] An EU IFR/IFD nonbank SD is also required to provide balance sheet and income statement data, including calculations related to FOR and K-factor requirements.[293]

The regulatory authority overseeing an EU IFR/IFD nonbank SD organized and domiciled in France, the ACPR, further requires an EU IFR/IFD nonbank SD to submit certain reporting schedules, including a balance sheet and an income statement, as part of the unified reporting for banks and assimilated entities, referred to in France as "RUBA."[294]

In addition, the Applicant represented that the ACPR expects EU IFR/IFD nonbank SDs, such as Goldman Sachs Paris, to be able to produce additional details on how they have calculated the information they have provided upon request.[295]

[291] IFR Article 54; Reporting ITS Article 5 and Annex I.
[292] *Id*.
[293] *Id*.
[294] ACPR Instruction No. 2024-I-17 Related to the Implementation of Unified Reporting for Banks and Assimilated Entities, available here: *https://acpr.banque-france.fr/fr/publications-et-statistiques/publications/instruction-ndeg-2024-i-17-relative-la-mise-en-place-du-reporting-unifie-des-banques-et-assimiles*.
[295] EU IFR/IFD Application at 19.

Furthermore, with the exception of certain "small" entities, EU IFR/IFD nonbank SDs are required to prepare annual audited financial statements and a management report (together, "annual audited financial report") pursuant to the Accounting Directive.[296] The audit of the financial statements and management report is required to be performed by one or more statutory auditors or auditors approved by EU Member States to conduct audits of EU IFR/IFD nonbank SDs.[297] The annual audited financial report, together with the opinion and statements of the auditor, must be published.[298] The annual audited financial statements must comprise, at a minimum, a balance sheet, a profit and loss statement, and notes to the financial statements.[299] The auditor's audit report must include: (i) a specification of the financial statements 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 financial statements give a true and fair view in accordance with the relevant financial reporting framework; and (iv) a reference to any matters emphasized by the auditor without qualifying the audit opinion.[300] The management report is required to include a review of the development and performance of the EU IFR/IFD nonbank SD's business and of its position, with a description of the principal risks and uncertainties that the firm faces.[301] The auditors are required to express an opinion on whether

[296] Accounting Directive, Articles 4, 19 and 34; French MFC, Articles L.511–35, L.511-37, and L.511–38. The Accounting Directive provides that the audit requirement is not applicable to "small" entities defined as firms meeting the following criteria: (1) the firm's balance sheet is not more than EUR 4 million; (2) the firm's net turnover does not exceed more than EUR 8 million; or (3) the firm did not employ more than 50 employees during the financial year. Article 3(2) and Article 34 of the Accounting Directive. Goldman Sachs Paris, the only EU IFR/IFD nonbank SD currently registered with the Commission, does not meet the criteria to be classified as a "small" entity and, therefore, is required to prepare audited annual financial reports.
[297] Accounting Directive, Article 34(1).
[298] *Id*., Article 30.
[299] *Id*., Article 4(1).
[300] *Id*., Article 35.
[301] *Id*., Article 19.

the management report is consistent with the financial statements for the same financial year, and whether the management report has been prepared in accordance with applicable legal requirements.[302] The opinion also must state whether the auditor has identified material misstatements in the management report and, if so, describe the misstatement.[303]

Finally, EU IFR/IFD nonbank SDs are required to implement an internal capital adequacy and risk assessment process (ICARA process), which includes sound, effective, and comprehensive arrangements, strategies, and process, to assess and maintain on an ongoing basis the amounts, types, and distribution of internal capital and liquid assets that the firms consider adequate to cover the nature and level of risks which firms may pose to others and to which the firms themselves are or may be exposed.[304] The ACPR reviews and assesses the adequacy of the firm's ICARA process as part of its oversight.[305]

3. Commission Analysis

The Commission has reviewed the EU IFR/IFD Application and the relevant EU laws and regulations, and has determined that, subject to the conditions described below, the financial reporting requirements of the EU Investment Firms Financial Reporting Rules are comparable to CFTC Financial Reporting Rules in purpose and effect as they are intended to provide the relevant EU regulatory authorities, the 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.

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[302] *Id*.
[303] *Id*.
[304] French MFC, Article L.533-2-2 and *Final Report, Joint EBA and ESMA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) under Directive (EU) 2019/2034*, July 20, 2022 ("Joint EBA and ESMA Guidelines on SREP"), paragraphs 121-132.
[305] French MFC, Article L. 533-3-3.

The EU Investment Firms Financial Reporting Rules require EU IFR/IFD nonbank SDs to prepare and submit to the relevant regulatory authority on a quarterly basis unaudited financial information that includes a statement of financial condition and a statement of regulatory capital.[306] EU IFR/IFD nonbank SDs are also required to provide additional financial information, including: (i) revenue breakdown by activity and the applicable K-factor; (ii) concentration risk; and (iii) liquidity requirements.[307] EU IFR/IFD nonbank SDs domiciled in France also submit balance sheet and income statement data to the ACPR pursuant to the RUBA requirements.[308]

The EU Investment Firms Financial Reporting Rules further require an EU IFR/IFD nonbank SD to prepare and publish an annual audited financial report. The annual audited financial report is required to include a statement of financial condition and a statement of profit and loss, and must also include relevant notes to the financial statements.[309]

The Commission finds that the EU Investment Firms Financial Reporting Rules impose reporting requirements that are comparable with respect to overall form and content to the CFTC Financial Reporting Rules. In this regard, both the CFTC Financial Reporting Rules and the EU Investment Firms 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 relevant home country authority, the 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

[306] IFR Article 54 and Reporting ITS Article 5 and Annex I.
[307] *Id*.
[308] RUBA Templates 55 and 56.
[309] Accounting Directive Articles 4, 19, and 34; French MFC Articles L. 511-35 and L.511-38.

activities. Accordingly, the Commission has determined that an EU IFR/IFD nonbank SD may comply with the financial reporting requirements contained in Commission Regulation 23.105 by complying with the corresponding EU Investment Firms Financial Reporting Rule and applicable regulatory authority requirements, subject to the conditions set forth below.[310]

An EU IFR/IFD nonbank SD must provide the Commission and NFA with copies of the relevant templates of Annex I of the Reporting ITS and RUBA that correspond to the EU IFR/IFD 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 Templates I1, I2.1, I2.2, I3 and I4 of Annex I of the Reporting ITS and Templates 55 and 56 of the RUBA reporting. In addition, the Commission is requiring, as a condition to the Comparability Order, that EU IFR/IFD nonbank SDs provide additional details regarding the calculation of the K-factor requirements (*i.e.*, Templates I6.1 to I6.13, as applicable to the firm, of Annex I of the Reporting ITS) and information regarding concentration risk and liquidity requirements (*i.e.*, Templates I7, I8.1 to I8.6, and I9 of Annex I of the Reporting ITS, as applicable).[311]

As noted in Section D.2. of this Comparability Determination, EU Investment Firms Financial Reporting Rules require EU IFR/IFD nonbank SDs to submit the unaudited financial reporting templates to the relevant regulatory authority on a quarterly basis. 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

[310] An EU IFR/IFD nonbank SD that qualifies and elects to seek substituted compliance with the EU Investment Firms Capital Rules must also seek substituted compliance with the EU Investment Firms Financial Reporting Rules.
[311] Condition 11 of the Comparability Order.

Commission and NFA, on a monthly basis.[312] The financial statement reporting requirements are an integral part of the Commission's and NFA's oversight programs to effectively and timely monitor nonbank SDs' compliance with capital and other financial requirements, and for Commission and NFA staff to assess the overall financial condition and business operations of nonbank SDs. The Commission has extensive experience with monitoring the financial condition of registrants through the receipt of financial statements, including FCMs and, more recently, nonbank SDs. Both FCMs and nonbank SDs that elect the Bank-Based Approach or NLA Approach file financial statements with the Commission and NFA on a monthly basis. The Commission believes that receiving financial information from EU IFR/IFD nonbank SDs on a quarterly basis is not comparable with the CFTC Financial Reporting Rules and would impede the Commission's and NFA's ability to effectively and timely monitor the financial condition of EU IFR/IFD nonbank SDs for the purposes of assessing their safety and soundness, as well as their ability to meet obligations to creditors and counterparties without becoming insolvent. Therefore, the Commission is requiring EU IFR/IFD nonbank SDs to file the applicable templates of the Reporting ITS and the RUBA reporting with the Commission and NFA on a monthly basis.[313] The EU IFR/IFD nonbank SD must file the above-listed templates with the Commission and NFA within 35 calendar days of the end of each month.[314]

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[312] 17 CFR 23.105(d).

[313] Condition 11 of the Comparability Order.

[314] Condition 11 of the Comparability Order. The condition for EU IFR/IFD nonbank SDs to file monthly unaudited financial information with the Commission and NFA is consistent with the conditions in the comparability orders for Japan, Mexico, the EU (for nonbank SDs domiciled in France or Germany and subject to the capital requirements established under CRR and CRD), and the UK (for PRA-designated UK nonbank SDs). *See Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan*, 89 FR 58470 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital*

The Commission is further requiring that EU IFR/IFD nonbank SDs that are registered with the SEC as SBSDs and required to file a monthly Form X–17A–5 ("FOCUS Report") with the SEC or its designee, file a copy of the FOCUS Report with the Commission and NFA, within 35 calendar days after the end of each month.[315] Currently, no EU IFR/IFD nonbank SD is registered as an SBSD. The Commission, however, is including the condition in anticipation of potential dual registrants. Under the condition, an EU IFR/IFD nonbank SD that files a copy of the FOCUS Report would not be required to file the financial templates of the Reporting ITS or the RUBA reporting. The condition is consistent with Commission Regulation 23.105(d)(3), which mandates the filing of a FOCUS Report by dual registrants.[316]

In addition, an EU IFR/IFD nonbank SD must submit to the Commission and NFA copies of the EU IFR/IFD nonbank SD's annual audited financial report that is required to be prepared pursuant to provisions implementing the Accounting Directive.[317] The EU IFR/IFD nonbank SD is required to file the annual audited financial report with the Commission and NFA on the earliest of the date the report is filed with the relevant regulatory authority, the date the report is published, or the date the report is required to be filed with the relevant regulatory authority or the date the report is required to be published pursuant to the EU Investment Firms Financial Reporting Rules.

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and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico, 89 FR 58505 (July 18, 2024); *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*, 89 FR 58572 (July 18, 2024); and *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*, 89 FR 58535 (July 18, 2024).

[315] Condition 15 of the Comparability Order.

[316] 17 CFR 23.105(d)(3).

[317] Condition 12 of the Comparability Order. Accounting Directive Articles 4, 19, and 34; French MFC Articles L.511-35, L.511-37, and L.511-38.

The EU IFR/IFD nonbank SD must also translate the reports and statements into the English language with balances converted to U.S. dollar.[318] The Commission, however, recognizes that the requirement to translate accounts denominated in euro to U.S. dollars on the annual audited financial report may impact the opinion provided by the independent auditor. The Commission will therefore accept the annual audited financial report denominated in euro, provided that the report is translated into the English language.

The Commission is imposing these conditions as they are necessary to ensure that the CFTC Financial Reporting Rules and EU Investment Firms Financial Reporting Rules, supplemented by the conditions, are comparable and provide the Commission and NFA with appropriate financial information to effectively monitor the financial condition of EU IFR/IFD nonbank SDs. Frequent financial reporting is a central component of the Commission's and NFA's programs for monitoring and assessing the safety and soundness of nonbank SDs as required under Section 4s(e) of the CEA. Although, as further discussed in Section F.2. below, the Commission believes that the relevant regulatory authorities have the necessary powers to supervise and enforce compliance by EU IFR/IFD nonbank SDs with applicable capital and financial reporting requirements, the Commission is issuing the conditions to facilitate the timely access to information allowing the Commission and NFA to effectively monitor and assess the ongoing financial condition of all nonbank SDs, including EU IFR/IFD nonbank SDs, to help ensure their safety and soundness and their ability to meet their financial obligations to customers, counterparties, and creditors.

[318] Condition 12 of the Comparability Order. The translation of audited financial statements into the English language and the conversion of account balances from euro to U.S. dollars is not required to be subject to the audit of the independent auditor. An EU IFR/IFD nonbank SD must report the exchange rate that it used to convert balances from euro to U.S. dollars to the Commission and NFA as part of the financial reporting.

The Commission considers that its approach of requiring EU IFR/IFD nonbank SDs to provide the Commission and NFA with the selected quarterly reporting templates and the annual audited financial report that the firms currently file with the relevant regulatory authorities strikes an appropriate balance of ensuring that the Commission receives the financial reporting necessary for the effective monitoring of the financial condition of the nonbank SDs, while also recognizing the existing regulatory structure of the EU Investment Firms Financial Reporting Rules. Under the conditions, the EU IFR/IFD nonbank SD will not be required to prepare different financial reports and statements for filing with the Commission, but will be required to prepare selected reports and statements in the content and format used for submissions to the relevant regulatory authority and translate the reports and financial statements into the English language with balances converted to U.S. dollars so that Commission staff may properly understand and efficiently analyze the financial information. Although the Commission is requiring submission of certain reports (*i.e.*, selected Reporting ITS and RUBA templates) on a more frequent basis (monthly instead of quarterly as required by the EU Investment Firms Financial Reporting Rules), the conditions provide EU IFR/IFD nonbank SDs with 35 calendar days from the end of each month to translate the documents into English and to convert balances to U.S. dollars. The Commission believes that by requiring that EU IFR/IFD nonbank SDs file unaudited financial reports on a monthly basis instead of quarterly, it would help ensure that the CFTC Financial Reporting Rules and the EU Investment Firms Financial Reporting Rules achieve a comparable outcome.

For purposes of clarity, the Commission also notes that under the Comparability Order, an EU IFR/IFD nonbank SD is allowed to present the financial information required to be provided to the Commission and NFA in accordance with generally accepted accounting

principles that the EU IFR/IFD nonbank SD uses to prepare general purpose financial statements in its EU Member State. This clarification is consistent with Condition 10 of the Comparability Order, which requires an EU IFR/IFD nonbank SD to prepare and keep current ledgers and other similar records in accordance with accounting principles permitted by the relevant regulatory authority. In allowing EU IFR/IFD nonbank SDs to 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 exposures and capital ratios, in both the EU and the U.S., follow a rules-based approach generally 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. In this regard, the Commission notes that the only EU IFR/IFD nonbank SD presently registered with the Commission currently submits financial reports, including a statement of financial condition and a statement of regulatory capital, pursuant to CFTC Staff Letter 24–13.[319]

EU IFR/IFD nonbank SDs must also file with the Commission and NFA, on a monthly basis, the aggregate securities, commodities, and swap positions information set forth in Schedule 1 of Appendix B to Subpart E of Part 23.[320] The Commission is requiring that

[319] CFTC Staff Letter No. 24-13, *Extension of Time-Limited No-Action Position for Certain Foreign Based Nonbank Swap Dealers Domiciled in the United Kingdom and the European Union*, September 20, 2024.
[320] Condition 13 of the Comparability Order. Schedule 1 of Appendix B to Subpart E of Part 23 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, cleared and uncleared swaps, cleared and non-cleared security-based swaps, and cleared and uncleared mixed swaps in addition to other position information.

Schedule 1 be filed with the Commission and NFA as part of the EU nonbank SD's monthly submission of selected Reporting ITS and RUBA templates. 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 swap positions, which will allow the Commission and NFA to monitor the types of investments and other activities that the firm engages in and will enhance the Commission's and NFA's ability to monitor the safety and soundness of the firm.

An EU IFR/IFD nonbank SD must also submit with each set of selected Reporting ITS and RUBA templates, annual audited financial report, and the applicable Schedule 1, a statement by an authorized representative or representatives of the EU IFR/IFD 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 translation of the reports and statements into the English language and conversion of balances in the statements to U.S. dollars, as applicable.[321] The condition is based on Commission Regulation 23.105(f), which provides that a nonbank SD must attach to each unaudited and annual audited financial report filed with the Commission and NFA an oath or affirmation that to the best knowledge and belief of the individual making the oath or affirmation, the information in the financial reports is true and correct. Similar to the intent of Commission Regulation 23.105(f), the purpose of the condition is to obtain a formal attestation from a representative with appropriate knowledge and authority that the information provided in the requisite financial reports is accurate and properly translated. For clarity, the Commission notes that its choice of language in using the term "statement" is not intended to

[321] Condition 14 of the Comparability Order.

make a legal distinction between this term and the terms "oath" or "affirmation," but rather, to select a generic term that is universally understood across jurisdictions to reflect the above-referenced purpose.

The Commission is further requiring an EU IFR/IFD nonbank SD to file a Margin Report with the Commission and NFA.[322] The Margin Report contains: (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 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.[323]

The Commission believes that receiving the margin information from EU IFR/IFD nonbank SDs would assist the Commission and NFA in their assessment of the safety and soundness of the EU IFR/IFD nonbank SDs 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. 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 is further requiring an EU IFR/IFD 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 timeframe for the EU IFR/IFD nonbank SD to file the selected

[322] Condition 16 of the Comparability Order.
[323] 17 CFR 23.105(m).

Reporting ITS and RUBA templates.[324] The Commission is also requiring the Margin Report to be prepared in the English language with balances reported in U.S. dollars.[325]

The Commission notes that the conditions in the Comparability Order are consistent with the conditions in the comparability orders for other jurisdictions and reflect the Commission's approach of determining that non-U.S. nonbank SDs could meet their financial statement reporting obligations to the Commission by filing financial reports currently prepared for home country regulators, albeit in the case of certain financial reports under a more frequent submission schedule, provided such reports are translated into English language and, in certain circumstances, include balances expressed in U.S. dollars.[326] The Commission's conditions also include certain financial information and notices that the Commission believes are necessary for effective monitoring of EU IFR/IFD nonbank SDs that are not currently part of the relevant EU authority's supervision regime.

The Commission is not requiring that an EU IFR/IFD nonbank SD file with the Commission or NFA the model metrics and counterparty credit exposure information required by Commission Regulations 23.105(k) and (l).[327] The Commission is making this determination in recognition that the relevant regulatory authorities in the EU, which will be conducting the initial

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[324] *Id.*
[325] *Id.*
[326] *See Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan*, 89 FR 58470 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico*, 89 FR 58505 (July 18, 2024); *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*, 89 FR 58572 (July 18, 2024); and *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*, 89 FR 58535 (July 18, 2024).
[327] 17 CFR 23.105(k) and (l).

approval and ongoing assessment of the performance of the EU IFR/IFD nonbank SDs' internal models under a regulatory framework that the Commission finds comparable, have access to information that the home country authorities deem relevant in the conduct of such approval and assessment. In addition to having broad powers to request any information necessary for the exercise of their functions, the relevant regulatory authorities receive information regarding the EU IFR/IFD nonbank SD's risk exposure amounts, including K-factor requirements amounts accounting for credit risk, through the Reporting ITS templates, which EU IFR/IFD nonbank SDs are required to file on a quarterly basis.[328] Among other reporting elements, the Reporting ITS templates include: (i) details on the calculation of K-NPR, including a breakdown by calculation methodology and, for products excluded from the internal model approach, a breakdown by category of instruments, reflecting the corresponding standardized capital charge; (ii) details on the calculation of K-TCD, including a breakdown by counterparty of the capital requirement, exposure value, replacement cost of the position, potential future exposure, and associated collateral; (iii) details on the calculation of K-CON, including exposures for the top five counterparties by percentage of exposure with respect to the firm's capital; and (iv) details on liquidity requirements, including the total liquidity requirement amount and total liquid assets held by the firm with a breakdown by asset type.[329]

[328] IFD Article 19; French MFC, Articles L.612-23 to L.612-26; IFR Article 54; Reporting ITS Article 5 and Annex I.

[329] Reporting ITS, Annex I, Templates I.06.09. (K-Net position risk – K-NPR additional details); I.06.11 (Trading counterparty default – K-TCD additional details); and I.07.00 (K-CON – additional detail), I.08.01 (Level of concentration risk – Client money held), I.08.02. (Level of concentration risk – Assets safeguarded and administered), I.08.03. (Level of concentration risk – Total own cash deposited), I.08.04. (Level of concentration risk – Total earnings), I.08.05 (Trading book exposures), I.08.06. (Non-trading book and off-balance sheet items), and I.09.00 (Liquidity Requirements). Among other details, template I.08.05 (Trading book exposures) includes a

Further, the relevant regulatory authorities review the firm's risk model metrics as part of their assessment of the firm's ICARA process.[330] In assessing firms' compliance with model requirements, the ACPR considers, in particular, changes in the firm's business and the application of models to new products, and ensures that firms take remedial measures for any identified material deficiencies in the coverage of risk.[331]

Finally, the Commission is including a condition in the Comparability Order that an EU IFR/IFD nonbank SD must file a notice with the Commission and NFA within 24 hours of being informed by the ACPR or another relevant regulatory authority that the firm is not in compliance with any component of the EU Investment Firms Capital Rules[332] or if it is required to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Article 39 of IFD as implemented in the national laws of France.[333] The Commission believes that the conditions will provide sufficient notice to the Commission about potential issues with an EU IFR/IFD nonbank SD's implementation of risk models and prompt it to request additional information if deemed necessary.

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list of the top 5 trading book exposures by type of counterparty and percentage of capital represented by the exposure.
By comparison, the information required to be filed pursuant to Commission Regulation 23.105(k) 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 10 countries to which the nonbank SD is exposed. 17 CFR 23.105(k)(1).

[330] IFD Article 37, French MFC, Article L.533-2-3, and Joint EBA and ESMA Guidelines on SREP, paragraphs 121-132.

[331] IFD Article 37 and French MFC, Article L. 533-2-3.

[332] Condition 17 of the Comparability Order.

[333] Condition 19 of the Comparability Order.

E. Notice Requirements

1. CFTC Nonbank Swap Dealer Notice Reporting Requirements

The CFTC Financial Reporting Rules require nonbank SDs to provide the Commission and NFA with written notice of certain defined events.[334] The notice provisions are intended to provide the Commission and NFA with an opportunity to assess whether the information contained in the notices indicates the existence of actual or potential financial and/or operational issues at a nonbank SD, and, when necessary, allow the Commission and NFA to engage with the nonbank SD in an effort to minimize potential adverse impacts on swap counterparties and the larger swaps market. The notice provisions are part of the Commission's overall program for helping to ensure the safety and soundness of nonbank SDs and the swaps markets in general.

The CFTC Financial Reporting Rules require a nonbank SD to provide written notice within specified timeframes if the firm is: (i) undercapitalized; (ii) fails to maintain capital at a level that is in excess of 120 percent of its minimum capital requirement; or (iii) fails to maintain current books and records.[335] A nonbank SD is also required to provide written notice if the firm experiences a 30 percent or more decrease in excess regulatory capital from its most recent financial report filed with the Commission.[336] A nonbank SD also is required to provide notice if the firm fails to post or collect initial margin for uncleared swap and non-cleared security-based swap transactions or exchange variation margin for uncleared swap or non-cleared security-based swap transactions as required by the Commission's uncleared swaps margin rules or the SEC's non-cleared security-based margin rules, respectively, if the aggregate is equal to or greater than: (i) 25 percent of the nonbank SD's required capital under Commission Regulation

[334] 17 CFR 23.105(c).
[335] 17 CFR 23.105(c)(1), (2), and (3).
[336] 17 CFR 23.105(c)(4).

23.101 calculated for a single counterparty or group of counterparties that are under common ownership or control; or (ii) 50 percent of the nonbank SD's required capital under Commission Regulation 23.101 calculated for all of the firm's counterparties.[337]

The CFTC Financial Reporting Rules further require a nonbank SD to provide notice two business days prior to a withdrawal of capital by an equity holder that would exceed 30 percent of the firm's excess regulatory capital.[338] Finally, a nonbank SD that is dually registered with the SEC as an SBSD or major security based swap participant ("MSBSP") must file a copy of any notice that the SBSD or MSBSP is required to file with the SEC under SEC Rule 18a-8 (17 CFR 240.18a-8).[339] SEC Rule 18a-8 requires SBSDs and MSBSPs to provide written notice to the SEC for comparable reporting events as in the CFTC Capital Rules in Commission Regulation 23.105(c), including if an SBSD or MSBSP is undercapitalized or fails to maintain current books and records.

2. EU IFR/IFD Nonbank Swap Dealer Notice Requirements

The EU Investment Firms Capital and Reporting Framework requires an investment firm, including an EU IFR/IFD nonbank SD, to provide notice to its relevant regulatory authority as soon as it becomes aware that it no longer satisfies or will no longer satisfy the capital requirement.[340] EU IFR/IFD nonbank SDs are also required to monitor the value of their K-factors for trends that could leave them with materially different capital requirement for the following reporting period and must notify the relevant regulatory authority of that materially different capital requirement.[341]

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[337] 17 CFR 23.105(c)(7).
[338] 17 CFR 23.105(c)(5).
[339] 17 CFR 23.105(c)(6).
[340] IFR Article 11(4).
[341] IFR Article 15(3).

In addition, the relevant regulatory authorities, including the ACPR, possess wide-ranging investigation, enforcement, and disciplinary tools to detect and address deterioration in a firm's capital condition. These tools include the power to obtain information and to conduct or order investigations[342] and the power to impose sanctions on investment firms that breach their regulatory obligations, including public censure, financial penalties, and the cancellation of an investment firm's permission to carry on regulated activities in the EU Member State.[343]

3. Commission Analysis

The Commission has reviewed the EU IFR/IFD Application and the relevant EU laws and regulations, and has determined that the EU Investment Firms Financial Reporting Rules related to notice provisions, subject to the conditions specified below, are comparable to the notice provisions of the CFTC Financial Reporting Rules. The Commission is therefore issuing a Comparability Order providing that an EU IF/IFD nonbank SD may comply with the notice provisions required under EU laws and regulations in lieu of certain notice provisions required of nonbank SDs under Commission Regulation 23.105(c),[344] subject to the conditions set forth below.

The notice provisions contained in Commission Regulation 23.105(c) are intended to provide the Commission and NFA with information in a prompt manner regarding actual or potential financial or operational issues that may adversely impact the safety and soundness of a nonbank SD by impairing the firm's ability to meet its obligations to counterparties, creditors, and the general swaps market. Upon receipt of a notice from a nonbank SD under Commission Regulation 23.105(c), the Commission and NFA initiate reviews of the facts and circumstances

[342] IFD Article 19 and French MFC Articles L.612-2, L.612-23 to L.612-26.
[343] IFD Article 18 and seq.
[344] 17 CFR 23.105(c).

that resulted in the notice being filed including, as appropriate, communicating with personnel of the nonbank SD. The review of the facts and the interaction with the personnel of the nonbank SD provide the Commission and NFA with information to develop an assessment of whether it is necessary for the nonbank SD to take remedial action to address potential financial or operational issues, and whether the remedial actions instituted by the nonbank SD properly address the issues that are the root cause of the operational or financial issues. Such actions may include the infusion of additional capital into the firm, or the development and implementation of additional internal controls to address operational issues. The notice filings further allow the Commission and NFA to monitor the firm's performance after the implementation of remedial actions to assess the effectiveness of such actions.

The EU Investment Firms Financial Reporting Rules require EU IFR/IFD nonbank SDs to provide notice to the relevant regulatory authority if they no longer satisfy or will no longer satisfy the capital requirement, indicating that the firm may be experiencing a financial deterioration.[345] The EU Investment Firms Capital and Financial Reporting Rules also require EU IFR/IFD nonbank SDs to monitor the value of their K-factors for trends that could leave them with materially different capital requirement for the following reporting period and to notify the relevant regulatory authority of that materially different capital requirement.[346]

The EU Investment Firms Financial Reporting Rules' notice provisions are comparable to the Commission's notice requirements in that both sets of rules require a nonbank SD to provide notice to the respective authorities if the firm fails to meet its minimum capital requirement.[347] Both the EU Investment Firms Financial Reporting Rules and the CFTC

[345] IFR Article 11.
[346] IFR Article 15.
[347] Compare 17 CFR 23.105(c)(1) and IFR Article 11.

Financial Reporting Rules are intended to provide notice of potential financial or operational issues that could adversely impact a nonbank SD's ability to meet its financial obligations to customers, counterparties, creditors, and general market participants.

The Commission has concluded, however, that the EU Investment Firms Financial Reporting Rules differ from the CFTC Financial Reporting Rules in that the EU Investments Firms Financial Reporting Rules do not provide for an "early warning" notice requirement that is sufficiently comparable to the CFTC notice provisions contained in Commission Regulation 23.105(c)(2) and (4), which require a nonbank SD to provide notice to the Commission and NFA if the firm's regulatory capital falls below 120 percent of its minimum capital requirement or if the firm experiences a 30 percent or more decrease in its excess regulatory capital as compared to the firm's last reported excess regulatory capital.[348] The EU Investment Firms Financial Reporting Rules also do not contain an explicit requirement for an EU IFR/IFD nonbank SD to notify its regulatory authority if the firm fails to maintain current books and records, experiences a defined decrease in capital over levels previously reported, or fails to collect or post initial margin with uncleared swap counterparties that exceed certain threshold levels.[349] An EU IFR/IFD nonbank SD also is not required to provide the relevant regulatory authority with advance notice of equity withdrawals initiated by equity holders that exceed defined amounts or percentages of the firm's excess regulatory capital.[350]

To ensure that the Commission and NFA receive prompt information concerning potential operational or financial issues that may adversely impact the safety and soundness of an

[348] 17 CFR 23.105(c)(2) and (4).
[349] 17 CFR 23.105(c)(3), (4), and (7).
[350] 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 would exceed 30 percent of the nonbank SD's excess regulatory capital. 17 CFR 23.105(c)(5).

EU IFR/IFD nonbank SD, the Commission is requiring EU IFR/IFD nonbank SDs to file certain notices required under the CFTC Financial Reporting Rules with the Commission and NFA. The Commission, therefore, is requiring that an EU IFR/IFD 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 amount of excess regulatory capital last reported.[351] The requirement for a nonbank SD to file notice with the Commission and NFA 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.[352] The Commission believes that the condition will provide a timely opportunity to the Commission and NFA to initiate conversations and fact finding with an EU IFR/IFD 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. The Commission is also requiring an EU IFR/IFD nonbank SD to file with the Commission and NFA a notice if the firm is informed by the ACPR or another relevant regulatory authority that the firm is not in compliance with any component of the EU Investment Firms Capital Rules and if the firm fails 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

[351] Condition 20 of the Comparability Order. For clarity, by "excess regulatory capital," the Commission refers to the amount of capital by which the firm's capital exceeds the core total minimum capital requirement (or TOFR) of the firm.

[352] *See* Commission Regulation 23.105(c)(4), which requires a nonbank SD to file notice with the Commission and NFA if it experiences decrease in excess capital of 30 percent or more from the excess capital reported in its last financial filing with the Commission. 17 CFR 23.105(c)(4).

million.[353] The conditions are consistent with conditions imposed in comparability orders that the Commission has issued with respect to other jurisdictions.[354]

An EU IFR/IFD nonbank SD must provide the Commission and NFA with notice if the firm fails to maintain current books and records with respect to its financial condition and financial reporting requirements.[355] For avoidance of doubt, in this context the Commission believes that 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 EU IFR/IFD nonbank SD's asset, liability, income, expense and capital accounts in accordance with the accounting principles accepted by the relevant regulatory authorities.[356] The Commission believes 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. Therefore, the Comparability Order requires an EU IFR/IFD nonbank SD to provide the Commission and NFA with a written notice within 24 hours if the firm fails to

[353] Conditions 17 and 18 of the Comparability Order.
[354] *See Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan*, 89 FR 58470 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico*, 89 FR 58505 (July 18, 2024); *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*, 89 FR 58572 (July 18, 2024); and *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*, 89 FR 58535 (July 18, 2024).
[355] Condition 21 of the Comparability Order.
[356] 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).

maintain books and records on a current basis.[357] The Comparability Order also requires that an EU IFR/IFD nonbank SD file a notice with the Commission and NFA of a change in its fiscal year-end approved or permitted to go into effect by the relevant regulatory authority.[358]

The Comparability Order also requires an EU IFR/IFD nonbank SD to file 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 EU IFR/IFD nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU IFR/IFD nonbank SD for uncleared swap and security-based swap positions that, in the aggregate, exceeds 50 percent of the EU IFR/IFD nonbank SD's minimum capital requirement; (iii) an EU IFR/IFD 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 EU IFR/IFD nonbank SD's minimum capital requirement; and (iv) an EU IFR/IFD 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 EU IFR/IFD nonbank SD's minimum capital requirement.[359] The Commission is requiring this notice so that it and the NFA may commence communication with the EU IFR/IFD nonbank SD and the relevant regulatory authority 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 rules, and to

[357] Condition 21 of the Comparability Order.
[358] Condition 23 of the Comparability Order.
[359] Condition 22 of the Comparability Order.

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.[360]

The Comparability Order will not require the EU IFR/IFD nonbank SD to file notices with the Commission concerning withdrawals of capital as such information will be reflected in the financial statement reporting filed with the Commission and NFA as conditions of the Order, and because EU IFR/IFD nonbank SD's capital levels are monitored by the ACPR making separate reporting to the Commission and NFA superfluous.

The Comparability Order requires an EU IFR/IFD nonbank SD to file all notices with the Commission and NFA in English and, where applicable, to reflect any balances in U.S. dollars.[361] Each notice required by the Comparability Order must be filed in accordance with instructions issued by the Commission or NFA.[362]

[360] The conditions for EU IFR/IFD nonbank SDs to file a notice with the Commission and NFA if the firm fails to maintain current books and records or fails to collect or post margin with uncleared swap counterparties that exceed the above-referenced threshold levels are consistent with the conditions in the comparability orders for Japan, Mexico, the EU (for nonbank SDs domiciled in France or Germany and subject to the capital requirements established under CRR and CRD), and the UK (for PRA-designated UK nonbank SDs). *See Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealers Subject to Regulation by the Financial Services Agency of Japan*, 89 FR 58470 (July 18, 2024); *Order Granting Conditional Substituted Compliance in Connection With Certain Capital and Financial Reporting Requirements Applicable to Nonbank Swap Dealer Subject to Regulation by the Mexican Comision Nacional Bancaria y de Valores and Banco de Mexico*, 89 FR 58505 (July 18, 2024); *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*, 89 FR 58572 (July 18, 2024); and *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*, 89 FR 58535 (July 18, 2024).

[361] Condition 25 of the Comparability Order.

[362] *Id*.

F. Supervision and Enforcement

1. Commission and NFA Supervision and Enforcement of Nonbank SDs

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. 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.[363] In this regard, 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.[364]

The financial reports filed by a nonbank SD provide the Commission and NFA with information necessary to ensure the firm's compliance with minimum capital requirements and to assess the firm's overall safety and soundness and its ability to meet its financial obligations to customers, counterparties, and creditors. A nonbank SD is also required to provide written notice to the Commission and NFA if certain defined events occur, including that the firm is undercapitalized or maintains a level of capital that is less than 120 percent of the firm's minimum capital requirements.[365] The notice provisions, as stated in Section E.1 above, are intended to provide the Commission and NFA with information of potential issues at a nonbank

[363] Section 17(p)(2) 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. 7 U.S.C. 21(p)(2). Section 17(p)(2) further provides that NFA's capital and financial requirements may not be less stringent than the capital and financial requirements imposed by the Commission.
[364] 7 U.S.C. 21(p).
[365] 17 CFR 23.105(c).

SD that may impact the firm's ability to maintain compliance with the CEA and Commission regulations. The Commission and NFA also have the authority to require a nonbank SD to provide any additional financial and/or operational information on a daily basis or at such other times as the Commission or NFA may specify to monitor the safety and soundness of the firm.[366]

The Commission also has authority to take disciplinary actions against a nonbank SD for failing to comply with the CEA and Commission regulations. Section 4b-1(a) of the CEA[367] provides the Commission with exclusive authority to enforce the capital requirements imposed on nonbank SDs adopted under Section 4s(e) of the CEA.[368]

2. Supervision and Enforcement of EU IFR/IFD Nonbank SDs

Prudential supervision of EU IFR/IFD nonbank SDs domiciled in the EU is conducted by the regulatory authority designated as "competent authority" by the EU Member State in which the EU IFR/IFD nonbank SD is domiciled (the "relevant regulatory authority").[369] For an EU IFR/IFD nonbank SD domiciled in France, such as the Applicant, the relevant regulatory authority is the ACPR.[370]

Each prudential regulatory authority in the EU, including the ACPR, has a wide range of investigative, disciplinary, and enforcement powers, which include the power to require EU IFR/IFD nonbank SDs domiciled and registered in an EU Member State to provide all necessary information for the authority to carry out its supervisory tasks;[371] examine the books and records of EU IFR/IFD nonbank SDs; obtain written and oral explanations from the EU IFR/IFD

[366] 17 CFR 23.105(h).
[367] 7 U.S.C. 6b-1(a).
[368] 7 U.S.C. 6s(e).
[369] IFD Article 12. "Competent authority" is defined in IFD as "a public authority or body of [an EU Member State] that is officially recognised and empowered by national law to supervise investment firms in accordance with [IFD], as part of the supervisory system in operation in that Member State." IFD Article 3(5).
[370] French MFC, Article L.612-2.
[371] IFD Article 19; French MFC, Articles L.612-23 to L.612-26.

nonbank SD's management, staff, and other persons;[372] conduct all necessary inspections at the business premises of EU IFR/IFD nonbank SDs and other group entities;[373] and impose sanctions on firms that breach their regulatory obligations, including the requirements imposed under the EU Investment Firms Capital and Reporting Framework, such as public censure, financial penalties, and ultimately the cancellation of an EU IFR/IFD nonbank SD's permission to carry on regulated activities in the EU.[374]

The relevant regulatory authorities, including the ACPR, also monitor the capital adequacy of EU IFR/IFD nonbank SDs through supervisory measures on an ongoing basis. The monitoring includes assessing the notices discussed in Section E.2. above, including potential notices that the firm no longer satisfies or will no longer satisfy the capital requirement. In addition, the relevant regulatory authorities are empowered with a variety of measures to address an EU IFR/IFD nonbank SD's financial deterioration. Specifically, if an EU IFR/IFD nonbank SD fails to meet its capital or liquidity thresholds or if the relevant regulatory authority has evidence that the EU IFR/IFD nonbank SD is likely to breach its capital or liquidity thresholds in the next 12 months, the authority may order an EU IFR/IFD nonbank SD 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 EU IFR/IFD nonbank SD submit a plan to restore compliance with applicable capital or liquidity requirements; (iii) imposing restrictions on the business or operations of the EU IFR/IFD 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

[372] *Id*.
[373] IFD Article 19; French MFC, Articles L.612-23 and L.612-26.
[374] IFD Article 18 and seq.; French MFC, Articles L.612-30 to L.612-42.

reporting requirements; and (vi) imposing additional specific liquidity requirements.[375] The ACPR may also withdraw the authorization of an EU IFR/IFD nonbank SD domiciled in France to operate if the firm no longer meets its minimum capital requirements.[376]

Although the relevant regulatory authority generally has broad discretion as to what powers it may exercise, the EU Investment Firms Capital Rules and the EU Investment Firms Financial Reporting Rules specifically address the authority's prudential powers to require EU IFR/IFD nonbank SDs to hold increased capital when: (i) the EU IFR/IFD nonbank SD is exposed to risks or elements of risks, or poses risks to others that are material and are not covered or sufficiently covered by the capital requirements imposed by the EU Investment Firms Capital Rules; (ii) the EU IFR/IFD nonbank SD lacks robust governance arrangements or effective processes to assess and maintain on an ongoing basis the amounts, types and distribution of capital and liquid assets that they consider adequate to cover the nature and level of risks to which they might be exposed and it is unlikely that other supervisory measures would sufficiently improve the arrangements or processes within an appropriate timeframe; (iii) the EU nonbank SD repeatedly fails to establish or maintain an adequate level of additional capital to cover the guidance communicated by the relevant regulatory authorities; (iv) adjustments in relation to the prudent valuation of the trading book are insufficient to enable the EU IFR/IFD nonbank SD to sell or hedge out its positions within a short period without incurring material losses under normal market conditions; or (v) a regulatory review shows that non-compliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital.[377]

[375] IFD Article 39; French MFC Articles L.533-4-3 and L.612–31 to L.612–33.
[376] French MFC Articles L.532–6 and L.612–40.
[377] IFD Article 40; French MFC, Article L.533-4-4.

3. Commission Analysis

Based on the above, the Commission finds that the ACPR, in its capacity of relevant regulatory authority, has the necessary powers to supervise, investigate, and discipline EU IFR/IFD 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 capital and financial reporting requirements in France. The Commission also finds that IFD mandates EU Member States to provide the relevant regulatory authorities with the necessary supervision, investigative, and enforcement powers. Any future determination that a specific relevant regulatory authority has powers that are comparable to those of the Commission, however, would be subject to verification that the EU Member State in which the relevant regulatory authority is established has effectively implemented the IFD provisions.

The Commission expects to communicate and consult, to the fullest extent permissible under applicable law, with the ACPR regarding the supervision of the financial and operational condition of Goldman Sachs Paris, or any other EU IFR/IFD nonbank SD domiciled in France, if such entity is to register with the Commission. An appropriate MOU or similar arrangement with the ACPR would facilitate cooperation and information sharing in the context of supervising EU IFR/IFD nonbank SDs domiciled in France. Such an arrangement would enhance communication with respect to entities within the arrangement's scope ("Covered Firms"), as appropriate, regarding: (i) general supervisory issues, including regulatory, oversight, or other related developments; (ii) issues relevant to the operations, activities, and regulation of Covered Firms; and (iii) any other areas of mutual supervisory interest, and would anticipate periodic meetings to discuss relevant functions and regulatory oversight programs. The arrangement would provide for the Commission and the ACPR to inform each other of certain

events, including any material events that could adversely impact the financial or operational stability of a Covered Firm, and would provide a procedure for any on-site examinations of Covered Firms.[378]

In the absence of an MOU or similar information sharing arrangement, the Commission is including a condition in the Comparability Order that an EU IFR/IFD nonbank SD domiciled in France must provide notice to the Commission and NFA if the ACPR has required the EU IFR/IFD nonbank SD to: (i) maintain additional capital in excess of the minimum requirements; (ii) require that the EU IFR/IFD nonbank SD submit a plan to restore compliance with applicable capital or liquidity thresholds; (iii) impose restrictions on the business or operations of the EU IFR/IFD nonbank SD; (iv) impose restrictions or prohibitions on distributions or interest payments to shareholders or holders of additional tier 1 capital instruments; (v) require additional or more frequent reporting requirements; or (vi) impose additional specific liquidity requirements.[379] Upon receipt of such notice, the Commission and NFA would communicate with the EU IFR/IFD nonbank SD to obtain further information regarding the underlying issues that prompted the ACPR to direct the EU IFR/IFD nonbank SD to take such actions and would obtain information regarding how the EU IFR/IFD nonbank SD would address the underlying issues.

[378] In an enforcement-related context, the Commission is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("MMOU," revised May 2012). The French Autorité des Marchés Financiers ("AMF") (the French market conduct regulatory authority with which the ACPR shares supervision authority over French financial firms, including EU IFR/IFD nonbank SDs domiciled in France, as it regards business conduct matters) is also a signatory to the MMOU.

[379] Condition 19 of the Comparability Order.

IV. Comparability Order

A. The Commission's Comparability Determination

The Commission's view, based on the EU IFR/IFD Application and the Commission's review of applicable EU laws and regulations, is that the EU Investment Firms Capital Rules and the EU Investment Firms 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 the CFTC Financial Reporting Rules. In reaching this conclusion, the Commission recognizes that there are certain differences between the EU Investment Firms Capital Rules and CFTC Capital Rules and certain differences between the EU Investment Firms Financial Reporting Rules and the CFTC Financial Reporting Rules. The Comparability Order is subject to conditions that the Commission deems 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 will not be inconsistent with providing a substituted compliance framework for EU IFR/IFD nonbank SDs subject to the conditions specified in the Order below.

Furthermore, the Comparability Order is limited to the comparison of the EU Capital Rules to the Bank-Based Approach contained within the CFTC Capital Rules. The Applicant has not requested, and the Commission has not performed, a comparison of the EU Investment Firms Capital Rules to the Commission's NLA Approach or TNW Approach.

B. Order Providing Conditional Comparability Determination for Certain EU IFR/IFD 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") organized and domiciled in the French Republic ("France") and 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)) 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 European Union ("EU") 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 domiciled in and organized under the laws of France;

(3) The SD is licensed as an investment firm in France ("EU IFR/IFD nonbank SD");

(4) The EU IFR/IFD nonbank SD is subject to and complies with: *Regulation (EU) 019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014* ("Investment Firms Regulation" or "IFR") and *Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU* ("Investment Firms Directive" or "IFD") as implemented in the national laws of France (collectively, the "EU Investment Firms

Capital Rules"), and the EU IFR/IFD nonbank SD is not a "small and non-interconnected firm" as set out in Article 12 of IFR;

(5) The EU IFR/IFD nonbank SD is subject to and complies with: *Commission Implementing Regulation (EU) 2021/2284 of 10 December 2021 laying down implementing technical standards for the application of Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to supervisory reporting and disclosures of investment firms, as amended* ("Reporting ITS"); and *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC* ("Accounting Directive") as implemented in the national laws of France, and the unified reporting for banks and assimilated entities ("RUBA") applicable to EU IFR/IFD nonbank SDs organized and domiciled in France, (collectively and together with IFR and IFD as implemented in the national laws of France, "EU Investment Firms Financial Reporting Rules");

(6) The EU IFR/IFD nonbank SD satisfies at all times the applicable capital and liquidity requirements set forth in Articles 11 and 43 of IFR;

(7) The EU IFR/IFD nonbank SD is subject to prudential supervision by the Autorité de contrôle prudentiel et de resolution ("ACPR") or a successor supervisory authority with jurisdiction to enforce requirements set forth in the EU Investment Firms Capital Rules and the EU Investment Firms Financial Reporting Rules as implemented in the national laws of France;

(8) The EU IFR/IFD 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 *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"), equal to or in excess of the equivalent of $20 million in United States dollars ("U.S. dollars"). The EU IFR/IFD nonbank SD shall use a commercially reasonable and observable euro/U.S. dollar exchange rate to convert the value of the euro-denominated common equity tier 1 capital to U.S. dollars;

(9) The EU IFR/IFD nonbank SD has filed with the Commission a notice stating its intention to comply with the EU Investment Firms Capital Rules and the EU Investment Firms Financial Reporting Rules in lieu of the CFTC Capital Rules and the CFTC Financial Reporting Rules. The notice of intent must include the EU IFR/IFD nonbank SD's representation that the firm is organized and domiciled in France, is licensed as an investment firm, and is subject to and complies with the EU Investment Firms Capital Rules and the EU Investment Firms Financial Reporting Rules. An EU IFR/IFD 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 EU IFR/IFD nonbank SD may comply with the applicable EU Investment Firms Capital Rules and EU Investment Firms Financial Reporting Rules in lieu of the CFTC Capital Rules and CFTC Financial Reporting Rules. Each notice filed pursuant to this

condition must be prepared in the English language and submitted to the Commission via email to the following address: *MPDFinancialRequirements@cftc.gov*;

(10) The EU IFR/IFD nonbank SD prepares and keeps current ledgers and other similar records in accordance with accounting principles permitted by the ACPR;

(11) The EU IFR/IFD nonbank SD files with the Commission and with the National Futures Association ("NFA") as of the end of each month a copy of templates I1 (Own Funds), I2.1 (Own Funds Requirements), I2.2 (Capital Ratios), I3 (Fixed Overheads Requirements Calculation), I4 (Total K-Factor Requirement Calculations), I6.1 to I6.13 (K-Factor Requirements – Additional Details) as applicable, I7, I8.1 to I8.6 (Concentration Risk) as applicable, and I9 (Liquidity Requirements) of Annex I to Reporting ITS, and templates 55 (Balance Sheet) and 56 (Income Statement) of RUBA. The Reporting ITS and RUBA templates must be translated into the English language and balances must be converted to U.S. dollars, using a commercially reasonable and observable euro/U.S. dollar spot rate as of the date of the report. The templates must be filed with the Commission and NFA within 35 calendar days of the end of each month;

(12) The EU IFR/IFD nonbank SD files with the Commission and with NFA a copy of its annual audited financial statements and management report (together, "annual audited financial report") that are required to be prepared and published pursuant to Articles 4, 19, 30 and 34 of the Accounting Directive as implemented in the national laws of France. The annual audited financial report must be translated into the English language and balances may be reported in euro. The annual audited financial report must be filed with the Commission and NFA on the earliest of the date the report is filed with the relevant home country authority, the date the report is published, or the

date the report is required to be filed with the relevant home country authority or the date the report is required to be published pursuant to the EU Investment Firms Financial Reporting Rules;

(13) The EU IFR/IFD 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 in the English language with balances reported in U.S. dollars, using a commercially reasonable and observable euro/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;

(14) The EU IFR/IFD nonbank SD submits with each set of Reporting ITS and RUBA 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 EU IFR/IFD nonbank SD that to the best knowledge and belief of the representative or representatives the information contained in the reports, including the translation of the reports into English and conversion of balances in the reports to U.S. dollars, is true and correct. The statement must be prepared in the English language;

(15) An EU IFR/IFD nonbank SD that is a registered securities-based swap dealer with the U.S. Securities and Exchange Commission ("SEC") and is required to file a monthly Form X–17A–5 ("FOCUS Report") with the SEC, or its designee, must file a copy of the FOCUS Report in the manner and format specified by the SEC, if applicable, with the Commission and NFA within 35 calendar days after the end of each month. An EU IFR/IFD nonbank SD that files a FOCUS Report with the Commission and NFA

pursuant to this condition is not required to file the financial reports and schedules specified in Conditions 11 and 13 of this Comparability Order;

(16) The EU IFR/IFD 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 must be in the English language with balances reported in U.S. dollars, using a commercially reasonable and observable euro/U.S. dollar spot rate as of the date of the report;

(17) The EU IFR/IFD nonbank SD files a notice with the Commission and NFA within 24 hours of being informed by the ACPR or another relevant regulatory authority that the firm is not in compliance with any component of the EU Investment Firms Capital Rules. The notice must be prepared in the English language;

(18) The EU IFR/IFD 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 CRR, equal to or in excess of the U.S. dollar equivalent of $20 million using a commercially reasonable and observable euro/U.S. dollar exchange rate. The notice must be prepared in the English language;

(19) The EU IFR/IFD nonbank SD provides the Commission and NFA with notice within 24 hours if it is required by the ACPR or another relevant regulatory authority to maintain additional capital or additional liquidity requirements, or to restrict its business operations, or to comply with other requirements pursuant to Article 39 of IFD as implemented in the national laws of France. The notice filed with the Commission and NFA must be prepared in the English language;

(20) The EU IFR/IFD 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 11. The notice must be prepared in the English language and filed within two business days of the firm experiencing the 30 percent or more decrease in excess regulatory capital;

(21) The EU IFR/IFD 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. The notice must be prepared in the English language;

(22) The EU IFD/IFD 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 EU IFR/IFD nonbank SD on uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 25 percent of the EU IFR/IFD nonbank SD's minimum capital requirement; (ii) counterparties fail to post required initial margin or pay required variation margin to the EU IFR/IFD nonbank SD for uncleared swap and non-cleared security-based swap positions that, in the aggregate, exceeds 50 percent of the EU IFR/IFD nonbank SD's minimum capital requirement; (iii) the EU IFR/IFD 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 EU IFR/IFD nonbank SD's minimum capital requirement; or (iv) the EU 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 EU IFR/IFD nonbank SD's minimum capital requirement. The notice must be prepared in the English language;

(23) The EU IFR/IFD 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 relevant home country authority. 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 prepared in the English language and filed with the Commission and NFA at least 15 business days prior to the effective date of the EU IFR/IFD nonbank SD's change in fiscal year-end;

(24) The EU IFR/IFD 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 EU Investment Firms Capital Rules or EU Investment Firms Financial Reporting Rules and proposed and final material changes to the relevant EU Member State authority's supervisory authority or supervisory regime over EU IFR/IFD nonbank SDs. The notice must be prepared in the English language; and

(25) Unless otherwise noted in the conditions above, the reports, notices, and other statements required to be filed by the EU IFR/IFD 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 16, 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 May 12, 2026, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.