In addition, liquidity risks are generally less significant to Japanese nonbank SDs than standalone U.S. SDs because, if a Japanese nonbank SD faces severe financial distress, it will be subject to an orderly resolution framework that is designed to provide the SD with sufficient liquidity to meet customer and counterparty obligations while winding down. Also, a Japanese SD will not be subject to liquidation as a commodity broker under the U.S. Bankruptcy Code.

Moreover, U.S. customer property should be at minimal risk if a Japanese nonbank SD were to experience financial distress, as a Japanese nonbank SD is required to segregate IM from its assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[19]

Financial Reporting Requirements. The Commission's financial reporting requirements under Section 4s(f) of the CEA and Rule 23.105(d)–(e) thereunder (the "Commission Financial Reporting Requirements") and the Japanese Financial Reporting Framework provide the relevant regulatory authorities with audited information at regular intervals about the financial and capital positions of an SD in order to ensure the safety and soundness of the SD. Both the Japanese Financial Reporting Framework and the Commission Financial Reporting Requirements require a firm to disclose financial statements containing information on the firm's financial condition and compliance with capital requirements. In each case, the reporting requirements under the regimes provide a comprehensive view of the financial condition of a firm, including the firm's compliance with applicable capital requirements and overall financial health.

III. Comparability Analysis

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

1. Comparability of Objectives

The Commission Capital Requirements and the Japanese Capital Framework have the same regulatory objectives. Both are aimed at ensuring the safety and soundness of nonbank SDs in order to protect counterparties and customers and the derivatives and financial markets more generally. The Bank-Based Approach, consistent with the Basel capital framework, achieves this goal by requiring a nonbank SD to maintain a sufficient cushion against losses. The Net Liquid Assets Approach, meanwhile, furthers safety and soundness by requiring a nonbank SD to maintain enough liquid assets to satisfy customer and counterparty claims in the event of a distress scenario.

The Japanese Capital Framework seeks to achieve the objectives of both the Bank-Based Approach and the Net Liquid Assets Approach.

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[19] Article 40 (ii) of the FIEA and Article 123 (1) (xxi)-11 (d) of the COO

comparable to the Net Liquid Assets Approach, which requires an SD to deduct from net capital unsecured receivables and certain other illiquid assets.[25]

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

a. Derivative Instruments and Marketable Securities

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

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

1. Market Risk

In terms of market risk, the Bank-Based Approach requires a nonbank SD to calculate additions to its RWAs for derivatives positions and marketable securities using either the Commission's standardized haircuts or, if approved to use models, market-risk models. In either case, the SD must multiply the market risk amount by 12.5. This effectively requires a nonbank SD subject to the Bank-Based Approach to hold capital equal to the full amount of the market risk amount. The Net Liquid Assets Approach similarly requires a nonbank SD to take certain net capital deductions for its derivatives positions and marketable securities using either standardized haircuts or, if approved to use internal models, market risk models. The Net Liquid Assets Approach, however, does not require the SD to multiply the market risk amount by 12.5, since the amount is directly deducted from the SD's net capital.

Consistent with the Commission Capital Requirements, the Japanese Capital Framework requires Japanese nonbank SDs to calculate a market risk equivalent amount using either a standardized approach or, if approved to use models, market risk models. In view of the requirement that Japanese nonbank SDs maintain a capital adequacy amount of 120 percent of the risk equivalent amount, the market risk equivalent amount is directly added to the risk equivalent amount (without any multiplier). This effectively requires that a Japanese nonbank SD hold regulatory capital equal to no less than 120 percent of its market risk equivalent amount, instead of 100 percent as under the Bank-Based Approach. This translates into an effective

[25] See CFTC Capital Final Rule Release, 85 Fed. Reg. at 57572.