19 March 2021

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Substituted Compliance Application for United Kingdom Security-Based Swap Dealers and Major Security-Based Swap Participants for Certain Requirements under Exchange Act Section 15F and Regulations Thereunder**

Dear Ms. Countryman,

We are submitting this application (the **Application**) to request that the Securities and Exchange Commission (**Commission** or **SEC**) make a determination that compliance with UK law requirements (relating to the risk control, recordkeeping and reporting, internal supervision and compliance, and counterparty protection requirements under United Kingdom (**UK**) law specified herein by market participants subject to the oversight of the UK Financial Conduct Authority (**FCA**) and/or UK Prudential Regulation Authority (**PRA**), as relevant), satisfies the analogous requirements applicable to a security-based swap dealer or major security-based swap participant (**SBS Entity**) under Section 15F of the Securities Exchange Act of 1934 (**Exchange Act**) and regulations thereunder.

The enclosed Application proceeds in the following Appendices, with each Appendix responsive to one or more of the elements of a substituted compliance application described in the Commission Staff's guidance:[1]

- **Appendix A** responds to Element 1 of the Staff's guidance, identifying the types of UK market participants who wish to use substituted compliance (including the UK authorities that directly oversee each type of market participant) and the specific Exchange Act provisions and rules for which we are requesting substituted compliance;

- **Appendix B** responds to Elements 2 and 3 of the Staff's guidance together by describing (i) the Exchange Act provisions and rules for which we are requesting substituted compliance and (ii) the UK requirements, including their regulatory objectives, that are comparable to these Exchange Act provisions and rules;

- **Appendix C** responds to Element 4 of the Staff's guidance, explaining how the FCA and PRA administer an effective supervisory compliance program and exercise effective enforcement authority with respect to UK requirements;

In connection with the requirements set out in Exchange Act Rule 3a71-6(c)(3), we acknowledge in relation to books and records that there are no laws or policies in the UK (see below with respect to the GDPR (as defined below)) that would impede the ability of an FCA-regulated SBS Entity from providing the Commission with prompt access to their books and records or submitting to on-site inspection and examination by the SEC. With regard to the UK General Data Protection Regulation (**GDPR**), we note that the UK Information Commissioner's Office has issued an analysis of the application of the GDPR

[1] *See* Staff Guidance—Elements of an Application for Substituted Compliance for Foreign Security-Based Swap Dealers and Major Security-Based Swap Participants, *available at* https://www.sec.gov/files/staff-guidance-elements-substituted-compliance-application_0.pdf.

to transfers of personal data from UK-based firms and branches regulated by the SEC, including SBS Entities.[2] Furthermore, the FCA would like to highlight the long history of close cooperation with the SEC and its staff in supervisory and enforcement matters in connection with the regulation of securities and derivatives markets.

As you know, we have separately been discussing with the Staff Element 6 of the Staff's guidance, relating to supervisory and enforcement arrangements between the Commission and the FCA and PRA.

We welcome the opportunity to discuss the application and its contents with Commission Staff in further detail. Please do not hesitate to speak to your usual contacts at the FCA International Department with any questions.

Yours sincerely,

Nausicaa Delfas, Executive Director of International
The Financial Conduct Authority

Enclosures

[2] The Information Commissioner's Office analysis can be found at: https://ico.org.uk/media/2619110/sec-letter-20200911.pdf

Appendix A: Scope of the Substituted Compliance Request

Covered Market Participants

As discussed in greater detail below, the Application covers "MiFID investment firms" and "third country investment firms," as such terms are defined in the FCA Handbook Glossary, that (1) have permission from the FCA or PRA under Part 4A of FSMA (as defined below) to carry on regulated activities relating to investment services and activities in the United Kingdom; and (2) are supervised by the FCA under the fixed supervision model and, if the firm is a PRA-authorised person, also supervised by the PRA as a Category 1 firm (together, **Covered Firms**). To provide greater detail and context on these matters, below we describe (i) the scope of relevant UK legislation, (ii) application of UK principles-based requirements, (iii) certain "Brexit" considerations, and (iv) the supervision of non-UK Covered Firms by UK authorities.

i. Scope of UK Legislation

The Financial Services and Markets Act 2000 (**FSMA**) is the framework primary legislation for the regulation of the UK financial services sector. It establishes an overarching framework for financial services legislation and regulation in the UK. It gives powers to HM Treasury to make financial-services related secondary legislation and gives the FCA and the PRA powers to make rules and guidance for firms within the scope of the FSMA regulatory regime (**UK Firms**).

The substantive activities of SBS Entities conducting business in the UK in relation to security-based swaps (insofar as relevant to this Application) is regulated in the UK primarily in accordance with four sets of legislation implemented under this framework as follows:

1. the Markets in Financial Instruments Regulation (**MiFIR**) and the UK's domestic implementation of the European Union's (**EU**) recast Markets in Financial Instruments Directive (**MiFID**) (also known as "MiFID II"): MiFIR is a regulation and MiFID is a directive which both entered into force on July 2, 2014, with recast MiFID having been transposed into UK law with effect from 3 January 2018.[3]

   MiFIR and MiFID apply to "investment firms" (**Investment Firms**), which comprise any legal person whose regular occupation or business is the provision of one or more investment services to third-parties and/or the performance of one or more investment activities on a professional basis. Investment services and activities means any of the services and activities listed in Section A of Annex I of MiFID (e.g. dealing as principal or agent, advising on transactions) relating to any of the instruments listed in Section C of Annex I of MiFID. Section C of Annex 1 refers explicitly to swaps as well as "other derivative financial instruments".

   Credit Institutions are also subject to MiFIR and MiFID when providing investment services or conducting investment activities and, accordingly, UK legislation that is

[3] This is achieved via provisions in the PRA Rulebook and the FCA Handbook (among others which are not relevant for the purposes of the charts below) – the PRA Fundamental Rules, FCA Principles and the Threshold Conditions do not expressly implement EU law but remain relevant as described in the introduction.

stated in this Application to apply to Investment Firms also applies to Credit Institutions.

Generally speaking, the FCA is responsible for supervising compliance with MiFIR and MiFID.

2. the European Market Infrastructure Regulation (**EMIR**): EMIR is a regulation which entered into force on August 16, 2012.

   EMIR implements various of the G20 commitments to reform 'over-the-counter' (**OTC**) derivatives markets in an effort to promote greater stability and transparency. EMIR applies a G20 mandatory clearing obligation and bilateral risk-management requirements for persons dealing in OTC derivatives and reporting requirements for derivatives contracts, as well as establishing requirements for central counterparties (**CCPs**), clearing members, trade repositories and, in some respects, trading venues. EMIR applies its requirements differently in certain respects to 'financial counterparties' (**FCs**) and 'non-financial counterparties' (**NFCs**).

   The FCA is generally responsible for supervising compliance with EMIR requirements by UK FCs and NFCs (with the exception of requirements in respect of exchange of collateral, where PRA-authorised firms are supervised by the PRA), and by non-UK entities in the limited cases where EMIR applies between two persons outside the European Economic Area (**EEA**) viz. where the contract in question has a direct, substantial or foreseeable effect in the EU or where it is necessary or appropriate to prevent the evasion of rules and obligations arising from EMIR.

3. the Capital Requirements Regulation (**CRR**) and the UK's domestic implementation of the EU's Capital Requirements Directive (**CRD IV**): CRR is a regulation and CRD IV is a directive, which entered into force on June 28, 2013 and July 17, 2013, respectively, with CRD IV having been transposed into UK law with effect from 31 December 2013.[4]

   CRR and CRD IV establish prudential and supervisory requirements for "institutions", which comprise "credit institutions" and certain "investment firms" (together **CRR Firms**). "Credit institutions" (**Credit Institutions**) are firms carrying on the regulated activity of accepting deposits. Relevant Investment Firms (i.e. those which are CRR Firms) include those with permission to deal on own account in and/or underwrite the placing of MiFID financial instruments. CRR and CRD IV together implement the Basel framework in the EU. In the UK, the term dealing on own account is captured in the definition of "dealing as principal", meaning "buying, selling, subscribing for or underwriting" certain types of investments (which will include securities based swaps) and includes dealing as matched or riskless principal. Any Investment Firm that will be party as principal to a security based swap will be dealing on own account.

[4] This is achieved via provisions in the PRA Rulebook and the FCA Handbook (among others which are not relevant for the purposes of the charts below) – the PRA Fundamental Rules, FCA Principles and the Threshold Conditions do not expressly implement EU law but remain relevant as described in the introduction.

UK Firms are supervised for prudential matters by the PRA (**Dual-Regulated Firms**) or, for Investment Firms (but not Credit Institutions) posing less prudential risk, by the FCA (**Solo-Regulated Firms**).[5]

4. the Market Abuse Regulation (**MAR**): MAR is a regulation which entered into force on July 2, 2014.

   MAR establishes restrictions on insider dealing and market manipulation and disclosure requirements for issuers of financial instruments. The FCA is responsible for supervising compliance with MAR.

In the UK's implementation of EU legislative requirements, the UK has in certain respects implemented UK rules in a more onerous manner, and/or imposed additional requirements (these enhancements are known as "gold-plating" of EU requirements).

For purposes of this Application, we would expect that SBS Entities would generally be treated by the UK regime as:

- ***For the purposes of CRR and the UK's implementation of CRD IV:*** CRR Firms (either Credit Institutions or Investment Firms, as appropriate – in the context of this Application, there are some limited cases where CRR distinguishes between Credit Institutions and Investment Firms: these points have been expressly noted in the relevant responses);

- ***For the purposes of MiFIR and the UK's implementation of MiFID:*** Investment Firms; and

- ***For the purposes of EMIR:*** Financial Counterparties.[6]

We have expressly noted in the relevant responses how MAR applies to SBS Entities.

In addition, for the rules discussed in this Application, we would expect security-based swaps to fall within the scope of MiFID financial instruments and that the provisions of EMIR would apply to security-based swaps. The various parts of UK legislation considered in this Application each apply where instruments are MiFID financial instruments, and each cover different topics in relation to the relevant subject matter and are designed to operate in conjunction with each other. Transactions will be subject to EMIR, MiFIR, UK implementation of MIFID, CRR, UK implementation of CRD IV, UK implementation of MAR except where a particular transaction is exempt from a particular regime as specifically noted in the Application. UK legislation does not vary on a product-specific basis (within the broader set of instruments falling within scope of MiFID financial instruments) – i.e. unlike Title VII of the Dodd-Frank Act, which distinguishes between, and applies different regulatory

[5] A firm which carries on dealing in investments as principal is subject to the PRA authorisation and prudential regulation and supervision if the firm is "designated" by the PRA. The PRA may only make such designations in respect of firms meeting certain criteria. In practice, the PRA will have regard to the following factors in determining whether a relevant firm should be designated: whether the firm's balance sheet exceeds an average of £15 billion total gross assets over four quarters, as reported on regulatory returns; whether the sum of the balance sheets of all relevant firms in a group exceeds an average of £15 billion total gross assets over four quarters; and where the firm is part of a group, whether the firm's revenues, balance sheet and risk-taking is significant relative to the group's revenues, balance sheet and risk-taking. The list of firms which are currently designated by the PRA is available at: https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/authorisations/which-firms-does-the-pra-regulate/2019/designated-firms-list-december-2019.pdf.

[6] Some obligations under EMIR are also affected by EMIR's so-called 'clearing threshold'. FCs that exceed the clearing threshold (**FC+s**) are subject to the mandatory clearing requirement, whereas FCs that do not exceed the clearing threshold (**FC-s**) are not. We have noted where this is relevant in this Application. Whether an SBS Entity would be a FC+ or an FC- will depend upon their individual trading activity and so no statement of general application can be made. How the clearing threshold applies to counterparties is dealt with in each relevant response.

frameworks to, swaps and security-based swaps, the UK regulatory framework does not apply differently to subsets of MiFID financial instruments.

ii. UK Principles-Based Requirements

In addition to the five sets of legislation noted above, Dual-Regulated Firms must also comply with the PRA's Fundamental Rules (set out in the PRA Rulebook for CRR Firms) and all UK Firms must comply with the FCA's Principles for Business (set out in the PRIN 2.1 to the FCA Handbook). These PRA Fundamental Rules and FCA Principles set high-level overarching principles-based requirements for firms that relate to their overall conduct and compliance with the PRA Rulebook and the FCA Handbook. These create a framework within which the PRA Rulebook and FCA Handbook should be read.

Similarly, Schedule 6 to FSMA sets out Threshold Conditions (**Threshold Conditions**) to be applied by the PRA and the FCA (as applicable for Dual-Regulated Firms and Solo-Regulated Firms).[7] These Threshold Conditions establish the minimum requirements to which UK Firms must adhere at all times. Guidance on how the FCA applies those Threshold Conditions that are allocated to it is set out in the COND Sourcebook to the FCA Handbook.

As such, the PRA Fundamental Rules, FCA Principles and the Threshold Conditions are relevant to all aspects of the Application and so should be read alongside the specific responses in the Application. Express reference has only been made to PRA Fundamental Rules and/or FCA Principles and/or the Threshold Conditions in instances where these are of more specific relevance to particular responses, but an omission of a reference to the PRA Fundamental Rules, FCA Principles or the Threshold Conditions should not be read as an indication that these are not relevant in any given response.

iii. Brexit Considerations

The UK left the EU on 31 January 2020 with an EU-UK withdrawal agreement. At that point, the UK ceased to be a member of the EU, although EU law remained binding in the UK on the basis of a Brexit implementation period agreed between the UK and the EU which operated until 31 December 2020. In accordance with the EU-UK withdrawal agreement, during the implementation period EU regulations remained binding with direct effect in the UK (i.e. no transposition into UK law was required to give effect to them). Similarly, the UK remained legally bound to implement the provisions of EU directives by transposing them into UK law – the sources of UK legislation, as well as the relevant Parts of the Rulebook of the PRA and the relevant Sourcebooks of the Handbook of the FCA are noted above in the footnotes to the corresponding legislation.

The Brexit implementation period expired at 11pm on 31 December 2020 (**IP Completion Day**) and so EU law ceased to have effect in the UK from 1 January 2021.[8]

- **On-shoring:** The UK government implemented a programme of 'on-shoring' so that, from the end of the implementation period, directly applicable EU law (including EU Regulations) converted into UK domestic law and UK legislation implementing EU Directives was preserved.

[7] FSMA Schedule 6 Part 1B sets out Threshold Conditions for the FCA to apply to Solo-Regulated Firms; FSMA Schedule 6 Part 1C sets out Threshold Conditions for the FCA to apply to Dual-Regulated Firms; and FSMA Schedule 6 Part 1E sets out Threshold Conditions for the PRA to apply to Dual-Regulated Firms.
[8] The Brexit SIs then became applicable post-implementation period.

- **Policy**: As a general matter, there was no intent to make policy changes as part of the on-shoring process, other than to reflect the UK's new position outside the EU. Please refer to Annex III of Appendix B for a summary of the policy aims and approach adopted by the UK government in the on-shoring process used to retain EU law as a part of UK law.

- **Limitations**: Only EU law that applied in the UK prior to IP Completion Day was on-shored at the end of the implementation period. The UK government and regulatory authorities were able to diverge from EU law in respect of EU laws that might be final and even adopted as part of EU law but did not apply in the UK prior to IP Completion Date (so-called "in-flight" legislation). In some cases, the UK authorities stated an intention to diverge from this in-flight EU law. However, except where expressly noted otherwise, the currently stated scope of this proposed future divergence does not affect any matters discussed in this Application.

- **EU regulations:** This on-shoring programme will result in EU regulations being retained in UK law (and are referred to by the UK authorities as "retained EU law"). For the purposes of the current analysis, we continue to refer to EU regulations, such as MiFIR and EMIR, though references as from the end of the implementation period are to the on-shored (i.e. retained) UK versions of these regulations, which will have been amended as necessary to account for the effects of Brexit.

- **EU directives:** This Application does not refer to EU directives, as the UK has already implemented these into UK law and so we refer instead to the relevant UK law or regulation, though again some changes will be made where necessary to this UK implementation of EU directives as part of the Brexit process.

- **Continuing references to EU law:** Where necessary, this Application refers to EU regulations or directives as these take effect in EU (as opposed to UK) law with the prefix "EU", e.g. "EU EMIR".

- **Guidelines etc.:** This Application refers to a number of guidelines on EU law and other EU non-binding interpretive material, as well as recitals to EU law. Whilst there is no UK equivalent of these guidelines, the PRA and FCA have noted in their Approach to EU Non-Legislative Materials statements that these materials continue to be relevant in the UK following Brexit and that UK regulators will have regard to these as appropriate, and they expect UK Firms, market participants and stakeholders also to continue to do so, where relevant. In respect of the status of recitals in EU legislation post-Brexit, they may still be referred to for interpretative purposes. As such, we continue to reference such sources where relevant.

MiFIR, EMIR, CRR and MAR are so-called 'Level 1' legislation. These are supplemented by a range of subordinate 'Level 2' legislation and 'Level 3' guidance. All such legislation and guidance is referenced in this Application where relevant.

All of the legislation considered in this Application is currently in force. A limited number of provisions are changed by the Brexit process of on-shoring EU legislation. Changes as a result of on-shoring are presented in the form that they take effect, as described above post-Brexit (i.e. following the end of the Brexit implementation period). This Application does not address any other upcoming or potential future revisions to such legislation.

iv. Supervision of Non-UK Covered Firms by UK Authorities

Firms which are headquartered in an EEA state and which carry on regulated activities in the UK pursuant to so-called "passporting" rights under EU legislation, were - until the IP Completion Day - considered to be authorised in the UK, even though they were not separately authorised by the PRA or FCA in respect of their passported activity. They were subject to limited regulation and supervision by the PRA (in respect of EEA Credit Institutions and EEA Investment Firms which are designated by the PRA) and/or the FCA (in respect of conduct of business, and for firms other than Credit Institutions and PRA-designated Investment Firms, prudential requirements). Under the relevant EU legislation – CRD IV and CRR – the home state regulator generally retains responsibility for prudential regulation (which is harmonised at EU level in any event) and supervision. However, the FCA regulated and supervised passporting EEA firms largely to the same extent as with respect to UK firms.

For other (non-EEA) non-UK firms, the requirement to be authorised in order to carry on regulated activities in the UK also applies (e.g. US headquartered entities). In order to be authorised such entities would need to establish a UK branch. The authorised branch would then be regulated and supervised by the PRA and/or FCA (as for UK and EEA firms, according to their activity). The PRA and FCA generally defer to the home state regulator in respect of prudential supervision; however, the FCA regulates and supervises authorised branches of non-UK entities in respect of conduct of business largely to the same extent as with respect to UK firms.

Relevant Exchange Act Provisions and Rules

As set forth in greater detail in Appendix B, we are requesting substituted compliance with respect to the following Exchange Act provisions and rules:

- Risk Control:
    - *Capital*: Exchange Act section 15F(e) [15 U.S.C. 78o-10(e)] and Exchange Act rules 18a-1, 18a-1a, 18a-1b, 18a-1c, and 18a-1d [17 CFR 240.18a-1, 240.18a-1a, 240.18a-1b, 240.18a-1c, and 240.18a-1d]
    - *Margin*: Exchange Act section 15F(e) [15 U.S.C. 78o-10(e)] and Exchange Act rule 18a-3 [17 CFR 240.18a-3]
    - *Risk Management Systems*: Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)] and Exchange Act rules 15Fh-3(h)(2)(iii)(I), and 18a-1(f) [17 CFR 140.15Fh-3(h)(2)(iii)(I), and 240.18a-1(f)]
    - *Trade Acknowledgment and Verification:* Exchange Act section 15F(i) [15 U.S.C. 78o-10(i)] and Exchange Act rule 15Fi-2 [17 CFR 240.15Fi-2]
    - *Portfolio Reconciliation, Portfolio Compression and Trading Relationship Documentation*: Exchange Act section 15F(i) [15 U.S.C. 78o-10(i)] and Exchange Act rules 15Fi-3, 4 and 5 [17 CFR 240.15Fi-3, 4 and 5]
- Recordkeeping and Reporting:
    - *Record Creation*: Exchange Act section 15F(g) [15 U.S.C. 78a-10(hg)] and Exchange Act rule 18a-5 [17 CFR 240.18a-5]

- *Record Maintenance*: Exchange Act section 15F(g) [15 U.S.C. 78a-10(hg)] and Exchange Act rule 18a-6 [17 CFR 240.18a-6]

- *Reports*: Exchange Act rule 18a-7 [17 CFR 240.18a-7]

- *Notifications*: Exchange Act rule 18a-8 [17 CFR 240.18a-8]

- *Quarterly Security Counts:* Exchange Act rule 18a-9 [17 CFR 240.18a-9]

- Supervision and Chief Compliance Officer:

  - *Diligent Supervision*: Exchange Act sections 15F(h)(1)(B) and 15F(j)(4)(A) [15 U.S.C. 78o-10(h)(1)(B) and 78o-10(j)(4)(A)] and Exchange Act rule 15Fh-3(h) [17 CFR 240.15Fh-3(h)]

  - *Chief Compliance Officers*: Exchange Act section 15F(k) [15 U.S.C. 78o-10(k)] and Exchange Act rule 15Fk-1 [17 CFR 240.15Fk-1]

  - *Conflicts of Interest*: Exchange Act section 15F(j)(5) [15 U.S.C. 78a-10(j)(5)]

  - *Antitrust Considerations*: Exchange Act section 15F(j)(6) [15 U.S.C. 78o-10(j)(6)]

- Counterparty Protection

  - *Fair and Balanced Communication*: Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)] and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)]

  - *Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest*: Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)] and Exchange Act rule 15Fh-3(b) [17 CFR 240.15Fh-3(b)]

  - *Disclosure of Daily Marks*: Exchange Act section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)] and Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)]

  - *Know Your Counterparty*: Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)]

  - *Suitability*: Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)]

  - *Disclosure of Clearing Rights*: Exchange Act rule 15Fh-3(d) [17 CFR 240.15Fh-3(d)

Appendix B: Comparison of U.S. and UK Requirements

This Appendix describes (i) the Exchange Act provisions and rules for which we are requesting substituted compliance and (ii) the UK requirements, including their regulatory objectives, that are comparable to these Exchange Act provisions and rules. We present these descriptions first in narrative form, followed then by a comparison in tabular form that illustrates similarities or differences between U.S. and UK requirements (except with respect to capital requirements for dealers that do not have a Prudential Regulator, as defined by the Exchange Act, which we present solely in narrative form, in the side letter attached as Annex I to this Appendix).

This Appendix is organized by the regulatory categories set forth in Commission Staff's Guidance on Information Regarding Foreign Regulatory Requirements for Substituted Compliance Applications (**SEC Guidance**).[9] Column 1 of this Appendix's table sets out the relevant Commission requirements and a summary of the Commission's policy goals, generally tracking the descriptions set forth in the SEC Guidance. These are followed by the UK law requirements, and a summary of the UK's policy goals, that correspond to the Commission requirements (column 2).[10] Finally, an assessment of the comparability of outcomes (or of requirements, where appropriate) as against the UK position is set out in the third column.[11]

Throughout column 1 of this table, requirements applicable to (i) all dealers are denoted in standard text, (ii) only dealers without Prudential Regulators (i.e. nonbanks) are denoted in bold text, and (iii) only dealers with Prudential Regulators (i.e. banks) are denoted in italicized text. Although certain Commission requirements may apply differently to banks and nonbanks, unless otherwise stated in column 2 or column 3, the analogous UK requirements apply equally to both banks and nonbanks.

Annex I: Margin Haircuts (Category 1)
Annex II: Glossary
Annex III: Brexit On-Shoring Policy Overview Table
Annex IV: Summary of Scope of the UK's Senior Managers and Certification Regime
Annex V: Side Letter Addressing Capital Requirements

[9] SEC Staff Guidance (Dec. 23, 2019), *available at* https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf.
[10] Statements on UK law requirements and policy goals are drafted on the basis of requirements that apply to dealers when incorporated in the UK (i.e. a direct comparison is made between how the US regime applies to dealers and how the UK regime applies to equivalent types of UK firms).
[11] We note that comparability of outcomes alone is sufficient under the SEC's holistic approach to assessing substituted compliance because such approach "will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity." *See* SEC Guidance at p. 3 (quoting Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30074 (May 13,2016) (**Business Conduct Adopting Release**) *available at* https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf. Comparability of requirements is included, where applicable, for completeness.

FCA FINANCIAL CONDUCT AUTHORITY

ALLEN & OVERY

Comparability Assessment of Certain Securities and Exchange Commission and UK Requirements Applicable to Security-Based Swap Dealers pursuant to SEC Staff Guidance on Substituted Compliance Applications

Master Chart on Substituted Compliance for Security-Based Swap Dealers – SEC Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Determinations dated December 23, 2019[12] (the **SEC Guidance**)

The purpose of this chart is to facilitate application to the SEC for a substituted compliance determination with respect to the UK in relation to the SEC requirements contained in the SEC Guidance. The SEC Guidance provides detail on the approach by which SEC Staff will assess substituted compliance applications and poses questions for applicants to consider regarding the regulatory interests reflected in the relevant foreign requirements and asks how those are comparable to the interests associated with the analogous requirements under the Exchange Act. The chart below summarizes the relevant SEC requirements (including Exchange Act requirements) applicable to security-based swap dealers (**dealers**) without prudential regulators (i.e. nonbanks) and with prudential regulators (i.e. banks), in accordance with the discussion of these requirements in the SEC Guidance, and provides a summary of the relevant comparable UK requirements. The chart is organized by the regulatory categories set out in the SEC Guidance. This chart does not include capital requirements for Non-Bank Firms in category one (which will be addressed in a separate document) or any requirements in category five of the SEC Guidance.

Throughout column 1 of this chart, requirements applicable to (i) all dealers are denoted in standard text, (ii) only dealers without prudential regulators (i.e. nonbanks) are denoted in bold text, and (iii) only dealers with prudential regulators (i.e. banks) are denoted in italicized text. Although certain SEC requirements may apply differently to banks and nonbanks, unless otherwise stated in column 2 or column 3, the analogous UK requirements apply equally to both banks and nonbanks.

Terms used in the chart are defined in the Glossary in Annex II.

Approach

This chart is organized following the order of the questions in the SEC Guidance. Column 1 sets out the relevant SEC requirements and a summary of the SEC's policy goals, generally tracking the descriptions set forth in the SEC Guidance. These are followed by the UK law requirements, and a summary of the UK's policy goals, that correspond to the SEC requirements (column 2). Finally, an assessment of the comparability of outcomes (or of requirements, where appropriate) as against the UK position is set out in the third column.[13]

Statements on UK law requirements and policy goals are drafted on the basis of requirements that apply to dealers when incorporated in the UK (i.e. a direct comparison is made between how the US regime applies to dealers and how the UK regime applies to equivalent types of UK firms).

[12] SEC Staff Guidance (Dec. 23, 2019), *available at* https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf.

[13] We note that comparability of outcomes alone is sufficient under the SEC's holistic approach to assessing substituted compliance because such approach "will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity." *See* SEC Guidance at p. 3 (quoting Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30074 (May 13,2016) (**Business Conduct Adopting Release**) *available at* https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf. Comparability of requirements is included, where applicable, for completeness.

Regulation of UK firms in a comparable position to dealers

Scope of UK legislation

The Financial Services and Markets Act 2000 (**FSMA**) is the framework primary legislation for the regulation of the UK financial services sector. It establishes an overarching framework for financial services legislation and regulation in the UK. It gives powers to HM Treasury to make financial-services related secondary legislation and gives the Financial Conduct Authority (**FCA**) and the Prudential Regulation Authority (**PRA**) powers to make rules and guidance for firms within the scope of the FSMA regulatory regime (**UK Firms**).

The substantive activities of dealers established in the UK in relation to security-based swaps (insofar as relevant to the charts below) is regulated in the UK primarily in accordance with four sets of legislation implemented under this framework as follows:

1. the Markets in Financial Instruments Regulation (**MiFIR**) and the UK's domestic implementation of the EU's recast Markets in Financial Instruments Directive (**MiFID**) (also known as "MiFID II"): MiFIR is a regulation and MiFID is a directive which both entered into force on July 2, 2014, with recast MiFID having been transposed into UK law with effect from 3 January 2018.[14]

   MiFIR and MiFID apply to "investment firms" (**Investment Firms**), which comprise any legal person whose regular occupation or business is the provision of one or more investment services to third-parties and/or the performance of one or more investment activities on a professional basis. Investment services and activities means any of the services and activities listed in Section A of Annex I of MiFID (e.g. dealing as principal or agent, advising on transactions) relating to any of the instruments listed in Section C of Annex I of MiFID. Section C of Annex 1 refers explicitly to swaps as well as "other derivative financial instruments".

   Credit institutions are also subject to MiFIR and MiFID when providing investment services or conducting investment activities and, accordingly, UK legislation that is stated in this chart to apply to investment firms also applies to Credit Institutions.

2. the European Market Infrastructure Regulation (**EMIR**): EMIR is a regulation which entered into force on August 16, 2012.

   EMIR implements various of the G20 commitments to reform OTC derivatives markets in an effort to promote greater stability and transparency. EMIR applies a G20 mandatory clearing obligation and bilateral risk-management requirements for persons dealing in 'over-the-counter' (**OTC**) derivatives and reporting requirements for derivatives contracts, as well as establishing requirements for central counterparties (**CCPs**), clearing members, trade repositories and, in some respects, trading venues. EMIR applies its requirements differently in certain respects to 'financial counterparties' (**FCs**) and 'non-financial counterparties' (**NFCs**).

[14] This is achieved via provisions in the PRA Rulebook and the FCA Handbook (among others which are not relevant for the purposes of the charts below) – the PRA Fundamental Rules, FCA Principles and the Threshold Conditions do not expressly implement EU law but remain relevant as described in the introduction.

3. the Capital Requirements Regulation (**CRR**) and the UK's domestic implementation of the EU's Capital Requirements Directive (**CRD IV**): CRR is a regulation and CRD IV is a directive, which entered into force on June 28, 2013 and July 17, 2013, respectively, with CRD IV having been transposed into UK law with effect from 31 December 2013.[15]

   CRR and CRD IV establish prudential and supervisory requirements for "institutions", which comprise "credit institutions" and certain "investment firms" (together **CRR Firms**). Relevant Investment Firms include those with permission to deal on own account in and/or underwrite the placing of MiFID financial instruments. CRR and CRD IV together implement the Basel framework in the EU. In the UK, the term dealing on own account is captured in the definition of "dealing as principal", meaning "buying, selling, subscribing for or underwriting" certain types of investments (which will include securities based swaps) and includes dealing as matched or riskless principal. Any Investment Firm that will be party as principal to a security based swap will be dealing on own account.

4. the Market Abuse Regulation (**MAR**): MAR is a regulation which entered into force on July 2, 2014.

   MAR establishes restrictions on insider dealing and market manipulation and disclosure requirements for issuers of financial instruments.

In the UK's implementation of EU legislative requirements, the UK has in certain respects implemented UK rules in a more onerous manner, and/or imposed additional requirements (these enhancements are known as "gold-plating" of EU requirements).

UK Principles-Based Requirements

UK Firms are supervised for prudential matters by the PRA (**Dual-Regulated Firms**) or, for Investment Firms (but not Credit Institutions) posing less prudential risk, by the FCA (**Solo-Regulated Firms**). All UK Firms are supervised for conduct matters by the FCA.

In addition to the five sets of legislation noted above, Dual-Regulated Firms must also comply with the PRA's Fundamental Rules (set out in the PRA Rulebook for CRR Firms) and all UK Firms must comply with the FCA's Principles for Business (set out in the PRIN 2.1 to the FCA Handbook). These PRA Fundamental Rules and FCA Principles set high-level overarching principles-based requirements for firms that relate to their overall conduct and compliance with the PRA Rulebook and the FCA Handbook. These create a framework within which the PRA Rulebook and FCA Handbook should be read.

[15] This is achieved via provisions in the PRA Rulebook and the FCA Handbook (among others which are not relevant for the purposes of the charts below) – the PRA Fundamental Rules, FCA Principles and the Threshold Conditions do not expressly implement EU law but remain relevant as described in the introduction.

Similarly, Schedule 6 to FSMA sets out Threshold Conditions (**Threshold Conditions**) to be applied by the PRA and the FCA (as applicable for Dual-Regulated Firms and Solo-Regulated Firms).[16] These Threshold Conditions establish the minimum requirements to which UK Firms must adhere at all times. Guidance on how the FCA applies those Threshold Conditions that are allocated to it is set out in the COND Sourcebook to the FCA Handbook.

As such, the PRA Fundamental Rules, FCA Principles and the Threshold Conditions are relevant to all aspects of the charts and so should be read alongside the specific responses in the charts. Express reference has only been made to PRA Fundamental Rules and/or FCA Principles and/or the Threshold Conditions in instances where these are of more specific relevance to particular responses, but an omission of a reference to the PRA Fundamental Rules, FCA Principles or the Threshold Conditions should not be read as an indication that these are not relevant in any given response.

Application of UK legislation and Brexit considerations

The various parts of UK legislation considered in this chart each apply where instruments are MiFID financial instruments, and each cover different topics in relation to the relevant subject matter and are designed to operate in conjunction with each other. Transactions will be subject to EMIR, MiFIR, UK implementation of MIFID, CRR, UK implementation of CRD IV, UK implementation of MAR except where a particular transaction is exempt from a particular regime as specifically noted in the chart below. UK legislation does not vary on a product-specific basis (within the broader set of instruments falling within scope of MiFID financial instruments) – i.e. unlike Title VII of the Dodd-Frank Act, which distinguishes between, and applies different regulatory frameworks to, swaps and security-based swaps, the UK regulatory framework does not apply differently to subsets of MiFID financial instruments.

The UK left the EU on 31 January 2020 with an EU-UK withdrawal agreement. At that point, the UK ceased to be a member of the EU, although EU law remained binding in the UK on the basis of a Brexit implementation period agreed between the UK and the EU which operated until 31 December 2020. In accordance with the EU-UK withdrawal agreement, during the implementation period EU regulations currently remained binding with direct effect in the UK (i.e. no transposition into UK law was required to give effect to them). Similarly, the UK remained legally bound to implement the provisions of EU directives by transposing them into UK law – the sources of UK legislation, as well as the relevant Parts of the Rulebook of the PRA and the relevant Sourcebooks of the Handbook of the FCA are noted above in the footnotes to the corresponding legislation.

The Brexit implementation period expired at 11pm on 31 December 2020 (**IP Completion Day**) and so EU law ceased to have effect in the UK from 1 January 2021.[17]

[16] FSMA Schedule 6 Part 1B sets out Threshold Conditions for the FCA to apply to Solo-Regulated Firms; FSMA Schedule 6 Part 1C sets out Threshold Conditions for the FCA to apply to Dual-Regulated Firms; and FSMA Schedule 6 Part 1E sets out Threshold Conditions for the PRA to apply to Dual-Regulated Firms.
[17] The Brexit SIs then became applicable post-implementation period.

- **On-shoring:** The UK government implemented a programme of 'on-shoring' so that, from the end of the implementation period, directly applicable EU law (including EU Regulations) converted into UK domestic law and UK legislation implementing EU Directives was preserved.
    - **Policy:** As a general matter, there was no intent to make policy changes as part of the on-shoring process, other than to reflect the UK's new position outside the EU. Please refer to Annex III for a summary of the policy aims and approach adopted by the UK government in the on-shoring process used to retain EU law as a part of UK law.
    - **Limitations:** Only EU law that applied in the UK prior to IP Completion Day was on-shored at the end of the implementation period. The UK government and regulatory authorities were able to diverge from EU law in respect of EU laws that might be final and even adopted as part of EU law but did not apply in the UK prior to IP Completion Date (so-called "in-flight" legislation). In some cases, the UK authorities stated an intention to diverge from this in-flight EU law. However, except where expressly noted otherwise, the currently stated scope of this proposed future divergence does not affect any matters discussed in this chart.

- **EU regulations:** This on-shoring programme resulted in EU regulations being retained in UK law (referred to by the UK authorities as "retained EU law"). For the purposes of the current analysis, we continue to refer to EU regulations, such as MiFIR and EMIR, though references as from the end of the implementation period are to the on-shored (i.e. retained) UK versions of these regulations, which will have been amended as necessary to account for the effects of Brexit.
- **EU directives:** We do not refer to EU directives, as the UK has already implemented these into UK law and so we refer instead to the relevant UK law or regulation, though again some changes will be made where necessary to this UK implementation of EU directives as part of the Brexit process.
- **Continuing references to EU law:** Where necessary, we refer to EU regulations or directives as these take effect in EU (as opposed to UK) law with the prefix "EU", e.g. "EU EMIR".
- **Guidelines etc.:** We refer to a number of guidelines on EU law and other EU non-binding interpretive material, as well as recitals to EU law. Whilst there is no UK equivalent of these guidelines, the PRA an FCA have noted in their Approach to EU Non-Legislative Materials statements that these materials continue to be relevant in the UK following Brexit and that UK regulators will have regard to these as appropriate, and they expect UK Firms, market participants and stakeholders also to continue to do so, where relevant. In respect of the status of recitals in EU legislation post-Brexit, they may still be referred to for interpretative purposes. As such, we continue to reference such sources where relevant.

MiFIR, EMIR, CRR and MAR are so-called 'Level 1' legislation. These are supplemented by a range of subordinate 'Level 2' legislation and 'Level 3' guidance. All such legislation and guidance is referenced in this chart where relevant.

All of the legislation considered in this Application is currently in force. A limited number of provisions are changed by the Brexit process of on-shoring EU legislation. Changes as a result of on-shoring are presented in the form that they take effect, as described above post-Brexit (i.e. following the end of the Brexit implementation period). This chart does not address any other upcoming or potential future revisions to such legislation.

Except where the UK column expressly notes a differing position post-Brexit, there is no current published proposal by the UK legislature or regulators which would vary the substantive outcomes described when on-shored post the Brexit implementation period, so that the Comparability Assessment should remain unchanged.

Application to dealers covered in this chart

We would expect that dealers would generally be treated by the UK regime as:

- ***For the purposes of CRR and the UK's implementation of CRD IV:*** CRR Firms (either Credit Institutions or Investment Firms, as appropriate – in the context of this chart, there are some limited cases where CRR distinguishes between Credit Institutions and Investment Firms: these points have been expressly noted in the relevant responses;

- ***For the purposes of MiFIR and the UK's implementation of MiFID:*** Investment Firms; and

- ***For the purposes of EMIR:*** Financial Counterparties.

We have expressly noted in the relevant responses how MAR applies to dealers.

Some obligations under EMIR are also affected by EMIR's so-called 'clearing threshold'. FCs that exceed the clearing threshold (**FC+s**) are subject to the mandatory clearing requirement, whereas FCs that do not exceed the clearing threshold (**FC-s**) are not. We have noted where this is relevant in the chart. Whether a dealer would be a FC+ or an FC- will depend upon their individual trading activity and so no statement of general application can be made. How the clearing threshold applies to counterparties is dealt with in each relevant response.

Scope of Instruments

Pursuant to Exchange Act section 3(68), the term "security-based swap" includes any agreement, contract or transaction that is a swap as defined under section 1a of the Exchange Act (without regard to paragraph (47)(B)(x) of such section) and is based on (i) an index that is a narrow-based security index, including any interests therein or on the value thereof; (ii) a single security or loan, including any interest therein or on the value thereof; or (iii) the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.[18]

[18] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c.pdf

For the rules discussed in this chart, we would expect security-based-swaps to fall within the scope of MiFID financial instruments and that the provisions of EMIR would apply to security-based-swaps.

Comparison with EU Analysis

For ease of reference, we have included in Annex V to this document a redline comparing the analysis for the UK in Columns 3 and 4 below against the equivalent analysis we prepared for the EU.

Annexes

Annex I: Margin Haircuts (Category 1)
Annex II: Glossary
Annex III: Brexit On-Shoring Policy Overview Table
Annex IV: Summary of scope of the UK's Senior Managers and Certification Regime
Annex V: Side Letter Addressing Capital Requirements

1. Category: Risk Control Requirements

a. Executive Summary

The risk control requirements of the Exchange Act promote market stability by requiring that registered entities have adequate financial resources and follow risk mitigation and documentation practices that are appropriate to manage the market, counterparty, operational and legal risks associated with their security-based swap business.

b. Subcategory: Capital Requirements for Nonbank[19] Firms

Please refer to page

[19] Note that the SEC's capital and margin rules (including certain risk-management system rules) only apply to dealers that do not have a prudential regulator, and that prudential regulators are responsible for capital and margin rules applicable to dealers that are banks. *See* Exchange Act section 15F(e)(1) [15 U.S.C. 78o-10(e)(1)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf.

c. Subcategory: Margin Requirements for Nonbank Firms

The SEC margin requirements help ensure, by providing adequate liquidity, that counterparty default does not impair the complying nonbank firm, and more generally help ensure that default does not result in wider issues within the market.

Overview of the scope of the UK margin rules

EMIR implements various G20 commitments to reform OTC derivatives markets in an effort to promote greater financial stability and transparency. Pursuant to EMIR, FCs and NFC+s are required to exchange margin in respect of OTC derivative contracts not cleared by a CCP (to the extent they transact with each other or non-UK equivalents and, in certain cases, if two non-UK equivalents transact with each other). EMIR, Article 11.

The detail of the EMIR margin requirements is set out in the EMIR Margin RTS which are designed to be consistent with the BCBS-IOSCO Global Standards on Margin.

The EMIR Margin RTS mandate the exchange of: (i) "variation margin" to reflect the results of the daily marking-to-market or marking-to-model of outstanding contracts, and (ii) "initial margin" to cover its current and potential future exposure in the interval between the last margin exchange and the liquidation of positions or hedging of market risk following a default of the other counterparty. EMIR Margin RTS, Articles 1(1) and 1(2).

Variation margin requirements have now been phased in for all in-scope entities. EMIR Margin RTS, Article 37.

Initial margin requirements are in the process of being phased in but will only apply if each counterparty's AANA outstanding on a group basis is above the relevant threshold. Phase-in has already occurred in respect of Phases 1 to 4 (i.e. in instances where the AANA of both counterparties on a group basis is greater than EUR 0.75 trillion). We note that, in respect of the EU EMIR rules, the Revised EMIR Margin RTS will amend the timeframe for Phase 5 implementation and include a new Phase 6 implementation date (where the AANA of both counterparties on a group basis is greater than EUR 50 billion and EUR 8 billion respectively) in line with recent revisions to the BCBS-IOSCO Global Standards on Margin. EU EMIR Margin RTS, Article 36 as amended by the Revised EMIR Margin RTS. To the extent that the Revised EMIR Margin RTS are in force and applicable prior to IP Completion Day, they will be on-shored in the UK. However, as the EMIR Margin RTS are currently drafted, Phase 5 and Phase 6 initial margin requirements will not form part of UK law (although the expectation is that the UK will ultimately wish to remain in line with the EU EMIR rules and the BCBS-IOSCO Global Standards on Margin).

As discussed further below (where relevant), there are various exceptions and derogations at a counterparty and transaction level.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
Models permitted: **The SEC's rules for nonbank dealers permit the nonbank dealer to calculate initial margin using either the standardized approach[20] to calculating initial margin or an approved model (including an industry standard model).**	**Models permitted**: Counterparties shall calculate the amount of initial margin to be collected using either a standardized approach or an initial margin model or both (but if both are used in relation to the same netting set, they must be applied consistently for each non-centrally cleared OTC derivative contract). If agreed with the other party, each party can apply a different approach. When one or both parties rely on an initial margin model, they shall agree on the model developed. EMIR Margin RTS, Article 11. The initial margin model may be developed by any of, or both, counterparties or by a third-party agent. EMIR Margin RTS, Article 14.	**<u>Comparability of outcomes</u>**: The UK margin requirements relating to minimum standards for models provide a comparable regulatory outcome to the SEC margin model requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(d)(2) and the EMIR Margin RTS are comparable in that each permit the use of models and impose comparable minimum standards on such models with the overarching aim of reducing risk. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below UK requirements are comparable to analogous SEC requirements in the following ways:

[20] Under the standardized approach, if the dealer is not also registered as a broker-dealer, it must calculate initial margin using standardized haircuts specified as part of the capital provisions of rule 18a-1. Exchange Act rule 18a-3(d)(1) [17 CFR 240.18a-3(d)(1)]. For credit default swaps, the stand-alone dealer must use the calculation method specified in Exchange Act rule 18a-1(c)(1)(vi)(B)(1) [17 CFR 240.18a-1(c)(1)(vi)(B)(1)]; for other security-based swaps, the standalone dealer must use the calculation method specified in Exchange Act rule 18a-1(c)(1)(vi)(B)(2) [17 CFR 240.18a-1(c)(1)(vi)(B)(2)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
Model authorization: **Firms seeking to use a model shall apply for authorization to use models (including an industry standard model) to calculate initial margin, subject to conditions addressing, inter alia, the associated confidence level, risk factors considered, and the use of empirical correlations.**	**Model authorization:** Upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. EMIR Margin RTS, Article 2(6). Currently, there is no UK requirement for regulators to validate initial margin models. However, we note that, in respect of the EU EMIR rules, new RTS mandated by EU EMIR Refit 2.1 which are expected to cover initial margin model approvals are expected to be published and to enter into effect during the course of 2020.[21] To the extent that the new RTS are in force and applicable prior to IP Completion Day, they will be on-shored in the UK.	**Model authorization:** We note that Exchange Act section 18a-3(d)(2) requires firms to apply for authorization to use models to calculate initial margin. The UK requirements currently do not require such an application. However, the UK requirements provide that, upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. EMIR Margin RTS, Article 2(6). While this is not the same as requiring specific pre-approval from a regulator, we note that the EC has represented to the CFTC in the context of the CFTC Substituted Compliance Decision on Margin on this point that competent authorities within the member state responsible for supervising (EU) FCs and (EU) NFC+s as part of their on-going prudential regulation and supervision will enforce applicable legislation and control whether the models adopted by these entities comply with the requirements under the EU margin rules and that Article 12 of EU EMIR grants the competent authorities in each member state the authority to impose fines if EU EMIR rules are infringed.

[21] In that regard, we note that recital (20) of EU EMIR Refit 2.1 provides that, "to avoid inconsistencies across the EU in the application of the risk mitigation techniques, due to the complexity of the risk management procedures requiring the timely, accurate and appropriately segregated exchange of collateral of counterparties which involve the use of internal models, regulators should validate those risk-management procedures or any significant change to those procedures, before they are applied".

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
		Consequently, the CFTC considered the rules to be comparable in outcome. *See* the CFTC Substituted Compliance Decision on Margin at 48403-48404. Whilst the UK has now left the EU, the position in the UK is expected to remain broadly the same. We note additionally that, in respect of the EU EMIR rules, a new RTS which is expected to include a requirement for certain initial margin model approvals is expected to be published and to enter into effect during the course of 2020. To the extent that new RTS are in force and applicable prior to IP Completion Day, they will be on-shored in the UK.
Model standards: **For security-based swaps other than equity security-based swaps for a dealer, an acceptable model must use a 99%, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices. The model further must use risk factors sufficient to cover all the material price risks inherent in the positions for which the**	**Model standards**: • Potential future exposure: Potential future exposure is an estimate of a one-tailed 99% confidence interval over an MPOR of at least ten days. EMIR Margin RTS, Article 15(1). • Initial margin models may only include non-centrally cleared OTC derivative contracts within the same netting set. Any diversification, hedging or risk offset within a netting set can only be applied to contracts within the same underlying asset class, not	**Model standards** • **Confidence level**. The confidence levels used to calculate the quantum of initial margin set forth in EMIR Margin RTS, Article 15(1) and Exchange Act rule 18a-3(d)(2)(i) are comparable. • **Account positions**. EMIR Margin RTS, Article 17(1) and (2) restrict models from including contracts with different underlying asset classes. These requirements are comparable to Exchange Act rule 18a-3(d)(2)(ii).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
initial margin amount is being calculated, including foreign exchange or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate. Empirical correlations may be recognized by the model within each broad risk category, but not across broad risk categories. *See* Exchange Act rule 18a-3(d)(2)(i) [17 CFR 240.18a-3(d)(2)(i)]. [22] **For equity security-based swaps, a dealer (other than as an OTC derivatives dealer) may apply for authorization to use models to calculate initial margin, subject to the above requirements, provided the counterparty's account does not hold equity security positions other than equity security-based swaps and equity swaps. *See***	across asset classes. EMIR Margin RTS, Articles 17(1) and (2). • Initial margin models should capture all significant risks arising from entering into non-centrally cleared OTC derivative contracts included in the netting set. The model performance should be continuously monitored, including back testing the model at least every three months. EMIR Margin RTS, Article 14. • Initial margin calculations: For the purposes of initial margin model calculations, any correlations between the value of the unsecured exposure and the collateral must not be taken into account. EMIR Margin RTS, Article 11. • Historical observation period requirements: (i) Equally weighted data from a period of three to five years, (ii) at least 25% of data must be representative of period of significant financial stress. EMIR Margin RTS, Articles 16(1) and 16(2).	• **Risk factors**. The risk factors required to be considered in creating models set forth in EMIR Margin RTS, Article 14 are comparable to those set forth in Exchange Act rule 18a-3(d)(2)(i).

[22] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
Exchange Act rule 18a-3(d)(2)(ii) [17 CFR 240.18a-3(d)(2)(ii)]. [23]	• Where stressed data referred to in Article 16(2) of the EMIR Margin RTS does not constitute at least 25% of the data used in the initial margin model, the least recent data of the historical data referred to in Article 16(1) of the EMIR Margin RTS shall be replaced by data from a period of significant financial stress, until the overall proportion of stressed data is at least 25% of the overall data used in the initial margin model. EMIR Margin RTS, Article 16(3). **Model Risk Management**: Counterparties are required to establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including all of the following: (a) an initial validation of the model by suitably qualified persons who are independent from the persons developing the model, (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually, and (c) a regular audit process to assess the following: (i) the integrity and reliability of	

[23] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
	the data sources, (ii) the management information system used to run the model, (iii) the accuracy and completeness of data used, and (iv) the accuracy and appropriateness of volatility and correlation assumptions. EMIR Margin RTS, Article 18(1). • The documentation of the risk management procedures relating to the initial margin model shall meet all of the following conditions: (a) it shall allow a knowledgeable third-party to understand the design and operational detail of the initial margin model, (b) it shall contain the key assumptions and the limitations of the initial margin model, and (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid. EMIR Margin RTS, Article 18(2). • Counterparties are required to document all changes to the initial margin model. That documentation shall also detail the results of the validations carried out after those changes. EMIR Margin RTS, Article 18(3). • Counterparties must establish, apply and document risk management procedures	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
1. To what extent are models permitted for calculating initial margin? What are the minimum standards required of acceptable models (e.g., required confidence levels and restrictions on the use of models in connection with equity security-based swaps)?		
	which include procedures providing for or specifying the calculation and collection of margin. Article 2(2)(b) of the EMIR Margin RTS.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
2. What are the prerequisites for netting agreements in connection with calculating margin?		
Dealers may account for netting agreements when calculating collection and delivery amounts so long as:	A "netting set" is a set of non-centrally cleared OTC derivative contracts between two counterparties that is subject to a legally enforceable bilateral netting agreement. EMIR Margin RTS, Article 1(3). The amount of variation margin to be collected by a counterparty shall be the aggregation of the values calculated in accordance with Article 11(2) of EMIR of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted. EMIR Margin RTS, Article 10.	**Comparability of outcomes**: The UK's requirements for netting agreements provide a comparable regulatory outcome to the netting agreement prerequisites to calculating margin set forth in the SEC's requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(5), the EMIR Margin RTS Articles 1(3), 2, 9, 10 and 11 and Annex IV and CRR Articles 295-298 are comparable in that each provides for margin calculations to be made by reference to netting agreements but only if such netting agreements are legally enforceable agreements documenting the key terms of the netting arrangement.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
2. What are the prerequisites for netting agreements in connection with calculating margin?		
	Counterparties shall calculate the amount of initial margin to be collected using either the standardized approach set out in Annex IV of the EMIR Margin RTS or initial margin models, in each case, by reference to netting sets. EMIR Margin RTS, Articles 9 and 11 and Annex IV.	While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below UK requirements are comparable to analogous SEC requirements in the following ways:
Enforceability: **(i) the netting agreement is enforceable in each relevant jurisdiction, including in insolvency proceedings;**	**Enforceability**: **<u>EMIR Margin RTS</u>** Where counterparties enter into a netting or exchange of collateral agreement, they must perform an independent legal review of the enforceability of those agreements (which shall be considered satisfied in relation to the netting agreement where the agreement is recognized in accordance with Article 296 of the CRR). That review may be conducted by an internal independent unit or an independent third-party. EMIR Margin RTS, Article 2(3). Counterparties must establish policies to assess on a continuous basis the enforceability of the netting and exchange of collateral agreements	**Enforceability**: The enforceability of netting agreements required by EMIR Margin RTS, Articles 2(3) and 2(4) and Articles 296(2)(b) and 297 CRR are together comparable to Exchange Act rule 18a-3(c)(5) as each requires netting agreements to be enforceable, including in insolvency proceedings.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
2. What are the prerequisites for netting agreements in connection with calculating margin?		
	that they enter into. EMIR Margin RTS, Article 2(4). **<u>CRR</u>** Investment Firms must obtain and provide to their regulator a written and reasoned legal opinion to the effect that, in the event of a legal challenge of the netting agreement, the relevant Investment Firm's claims and obligations would not exceed the single net sum determined under the netting agreement. The legal opinion must refer to the applicable law: (i) the jurisdiction in which the counterparty is incorporated; (ii) if a branch of an undertaking is involved, which is located in a country other than that where the undertaking is incorporated, the jurisdiction in which the branch is located; (iii) the jurisdiction whose law governs the individual transactions included in the netting agreement; and (iv) the jurisdiction whose law governs any contract or agreement necessary to effect the contractual netting. Article 296(2)(b) CRR. Investment Firms must establish and maintain procedures to ensure that the legal validity and enforceability of their contractual netting is reviewed in the light of changes in the law of	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
2. What are the prerequisites for netting agreements in connection with calculating margin?		
	relevant jurisdictions referred to in Article 296(2)(b) of the CRR. Article 297(1) CRR.	
Determinability: **(ii) the gross receivables and gross payables under the netting agreement are determinable at any time; and**	**Determinability:** **<u>EMIR Margin RTS</u>** The EMIR Margin RTS requires that the terms of all necessary agreements (including, as relevant, the terms of any netting agreement and the terms of any exchange of collateral agreement) must document (at least): (a) any payment obligations arising between counterparties, (b) the conditions for netting payment obligations, (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts, (d) all calculation methods used in relation to payment obligations, (e) the conditions for netting payment obligations upon termination, (f) the transfer of rights and obligations upon termination, and (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(2)(g). **<u>CRR</u>** Investment Firms must measure current exposure gross and net of collateral. Article 286(7) CRR.	**Determinability**: The risk management procedures for determining netting agreement terms and obligations set forth in EMIR Margin RTS, Article 2(2)(g) and CRR Article 286(7) are comparable to the determinability requirements set forth in Exchange Act rule 18a-3(c)(5)(ii) as each requires gross payment obligations and exposures to be determinable.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
2. What are the prerequisites for netting agreements in connection with calculating margin?		
Risk Management: **(iii) for internal risk management purposes, the dealer monitors and controls its exposure to the counterparty on a net basis. Exchange Act rule 18a-3(c)(5) [17 CFR 240.18a-3(c)(5)].**[24]	**Risk Management**: In order to recognize a derivatives netting agreement as being risk-reducing, Investment Firms must use a type of agreement that has been deemed suitable by their regulator. Article 295 CRR. Investment Firms must measure current exposure gross and net of collateral. Article 286(7) CRR. Investment Firms must factor the effects of netting into their measurement of each counterparty's aggregate credit risk exposure and must manage their CCR on the basis of those effects of that measurement. Article 297(3) CRR. The exposure value of a derivative instrument is determined by taking into account the netting arrangement. Articles 111 (2) and 298(1) CRR.	**Risk Management**: The internal risk management procedures required by CRR Articles 111(2), 295, 286(7), 297(3) and 298(1) are comparable to Exchange Act rule 18a-3(c)(5)(iii) as each requires that the dealer measures current exposures on a net basis, where permitted.

[24] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
3. What is the required frequency for calculating and collecting/delivering margin?		
Calculating: **Nonbank dealers generally are required to calculate initial margin (or "potential future exposure") and variation margin (or "current exposure") as of the close of each business day for each counterparty account, although the calculations must be made more frequently "during periods of extreme volatility and for accounts with concentrated positions." Exchange Act rule 18a-3(c)(6) [17 CFR 240.18a-3(c)(6)].[25]**	**Calculating:** Counterparties must calculate variation margin at least on a daily basis. EMIR Margin RTS, Article 9(1). Counterparties are required to calculate initial margin no later than the business day following one of these events: (a) where a new non-centrally cleared OTC derivative contract is executed or added to the netting set, (b) where an existing non-centrally cleared OTC derivative contract expires or is removed from the netting set, (c) where an existing non-centrally cleared OTC derivative contract triggers a payment or a delivery other than the posting and collecting of margins, (d) where the initial margin is calculated in accordance with the standardized approach and an existing contract is reclassified in terms of the asset category referred to by the EMIR Margin RTS as a result of reduced time to maturity, or (e) where no calculation has been performed in the preceding ten business days. EMIR Margin RTS, Article 9(2). Where two counterparties are located in the same time zone, the calculation is based on the	**<u>Comparability of outcomes</u>**: **Calculating:** The UK margin requirements for calculating margin provide a comparable regulatory outcome to the SEC's margin calculation requirements. In particular, the regulatory outcomes pursued under the margin calculation requirements, Exchange Act rule 18a-3(c)(1) and EMIR Margin RTS, Article 9(1) are consistent in that each generally require variation margin calculations to be made daily with provision for counterparties in different time zones. • In respect of initial margin, the SEC rule also requires calculation on a daily basis but the EMIR Margin RTS do not. *See* EMIR Margin RTS, Article 9(2). In this regard, we note however, that the CFTC margin rules mirror the SEC rules on this point and in the CFTC Substituted Compliance Decision on Margin, the EC has confirmed that the EU EMIR Margin RTS requirement to recalculate whenever there is a change to the netting set will in practice require dealer counterparties to recalculate daily and because of this the EC views the ten day allowance under Article 9(2)(e) of the EU EMIR Margin RTS as a backstop only and one

[25] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
3. What is the required frequency for calculating and collecting/delivering margin?		
	netting set of the previous business day. EMIR Margin RTS, Article 9(3)(a). Where two counterparties are not located in the same time zone, the calculation is based on the transactions in the netting set which are entered into before 4:00 PM of the previous business day of the time zone where it is 4:00 PM. EMIR Margin RTS, Article 9(3)(b).	that is likely to be exercised only in the case of a static portfolio. As set out in the CFTC Substituted Compliance Decision on Margin, the EC believes that as a result of these entities exchanging variation margin, and thereby eliminating currency exposure, this difference will be mitigated. The CFTC has, therefore, determined that the EU rules are nonetheless comparable in outcome to the CFTC rules. *See* the CFTC Substituted Compliance Decision on Margin at 48405. Whilst the UK has now left the EU, the position in the UK remains the same.
Collecting & Delivering: **No later than the close of business of the first business day following the day of the calculation, the dealer must:** – **Variation margin collection: Collect collateral in an amount equal to the dealer's current exposure to the counterparty. Exchange Act rule 18a-3(c)(1)(ii)(A)(1)**	**Collecting & Delivering:** The amount of variation margin to be collected by a counterparty is the aggregation of the values calculated in accordance with Article 11(2) of EMIR of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted. EMIR, Article 11(2) and EMIR Margin RTS, Article 10. As already discussed above, counterparties calculate the amount of initial margin to be collected using either the standardized approach	**Collecting and Delivering**: The UK margin requirements for exchanging margin provide a comparable regulatory outcome to the SEC's margin collection and delivery requirements. In particular, the regulatory outcomes pursued under the initial and variation margin collection and delivery requirements, Exchange Act rules 18a-3(c)(1)(ii)(A) and 18a3(c)(1)(ii)(B), and EMIR Margin RTS Articles 10 to 13, are consistent in that each require that sufficient collateral be provided within a business day of calculation (where, in the context of calculation, we note different time zones are provided for).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
3. What is the required frequency for calculating and collecting/delivering margin?		
[17 CFR 240.18a-3(c)(1)(ii)(A)(1)].[26] – **Variation margin delivery: Deliver collateral in an amount equal to the counterparty's current exposure to the dealer, other than initial margin that the dealer collected. Exchange Act rule 18a-3(c)(1)(ii)(A)(2) [17 CFR 240.18a-3(c)(1)(ii)(A)(2)].[27]** – **Initial margin collection: Collect**	or initial margin models. EMIR Margin RTS, Article 11. The posting counterparty shall provide the variation margin as follows: (a) within the same business day of the calculation date; or (b) where certain conditions set out in Article 12(2) of the EMIR Margin RTS are met,[30] within two business days of the calculation date. EMIR Margin RTS, Article 12(1). In the event of a dispute over the amount of variation margin due, counterparties shall provide at least the part of the variation margin amount that is not being disputed within the original timeframe. EMIR Margin RTS, Article 12(3).	However, unlike the SEC rules, the EMIR Margin RTS, Articles 12(1) and 12(2) also allow for variation margin to be provided within two business days of the calculation date when certain conditions are met. In this regard, we note that the equivalent CFTC margin rule mirrors the SEC rule and that the CFTC has taken the view that while the EU EMIR Margin RTS conditions to a delay in the exchange of variation margin do not make the EU's rule in this area the same as the CFTC margin rule, they do serve to mitigate the potential risks by increasing the initial margin's MPOR by the corresponding number of days associated with a delay in the exchange of variation margin and are, thus, comparable. *See* the CFTC Substituted Compliance Decision on Margin at 48405. Whilst the UK has now left the EU, the position in the UK remains the same.

[26] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[27] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[30] The provision of variation margin within two business of the calculation date may only be applied to the following: (a) netting sets comprising derivative contracts not subject to initial margin requirements in accordance with the EMIR Margin RTS, where the posting counterparty has provided, at or before the calculation date of the variation margin, an advance amount of eligible collateral calculated in the same manner as that applicable to initial margins in accordance with Article 15 of the EMIR Margin RTS, for which the collecting counterparty has used a MPOR at least equal to the number of days in between and including the calculation date and the collection date; (b) netting sets comprising contracts subject to initial margin requirements in accordance with the EMIR Margin RTS, where the initial margin has been adjusted in one of the following ways: (i) by increasing the MPOR referred to in Article 15(2) of the EMIR Margin RTS by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) of the EMIR Margin RTS and the collection date determined in accordance with Article 12(1) of the EMIR Margin RTS; (ii) by increasing the initial margin calculated in accordance with the standardized approach referred to in Article 11 of the EMIR Margin RTS using an appropriate methodology taking into account a MPOR that is increased by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) of the EMIR Margin RTS and the collection date determined in accordance with Article 12(2) of the EMIR Margin RTS. For the purposes of point (a), in case no mechanism for segregation is in place between the two counterparties, those counterparties may offset the amounts to be provided.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
3. What is the required frequency for calculating and collecting/delivering margin?		
collateral in an amount equal to the initial margin amount. Exchange Act rule 18a-3(c)(1)(ii)(B) [17 CFR 240.18a-3(c)(1)(ii)(B)].[28] – **Initial margin delivery: The rule does not require dealers to deliver initial margin, but does not prohibit the practice.** **Margin can be collected or delivered on the second business day if the counterparty is located in another country and more than four time zones away. Exchange Act rule 18a-3(c)(1)(i) [17 CFR 240.18a-3(c)(1)(i)].[29]**	The posting counterparty shall provide the initial margin within the same business day of the calculation date. EMIR Margin RTS, Article 13(2). In the event of a dispute over the amount of initial margin due, counterparties shall provide at least the part of the initial margin amount that is not being disputed within the same business day of the calculation date determined in accordance with Article 9(3). EMIR Margin RTS, Article 13(3).	

[28] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[29] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
3. What is the required frequency for calculating and collecting/delivering margin?		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?		
Dealers must take prompt steps to liquidate positions in an account that does not meet the margin requirements to the extent necessary to eliminate the margin deficiency. Exchange Act rule 18a-3(c)(7) [17 CFR 240.18a-3(c)(7)].[31]	This is not discussed explicitly in requirements applicable to Investment Firms. However, Investment Firms' capital requirements are scaled to the volatility of collateral and CCR risk management requirements also apply. Additionally, the risk management requirements that apply to Investment Firms and obligations in respect of position management and margin use are relevant in this context. In this regard, we note the following: **Capital levels and collateral volatility**: • The volatility of collateral held by Investment Firms is reflected in their capital requirements for credit risk mitigation and CCR purposes. Articles 224 and 285 CRR. Investment Firms that have permission to use	**Comparability of outcomes:** The UK requirements relating to risk management, position management and margin use provide a more stringent regulatory outcome than the SEC requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(7) and CRR, EMIR, the FCA and the PRA Rules and the MiFID Org Reg are comparable in that the risk posed to a non-defaulting party by a counterparty in default is required to be mitigated through capital requirements and risk management. A position that does not meet the margin requirements would be in default (rather than following the approach in the SEC Rules which allow for a period during which a margin deficiency must be remedied). The SEC's requirement to take prompt

[31] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?		
	internal modelling to calculate their CCR capital requirements are subject to enhanced risk management requirements, in particular, must take into account liquidity risks arising from prescribed events and shocks. Articles 286 and 290 CRR. **Risk management requirements**: • Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the firm. Article 23(1) MiFID Org Reg. • Investment Firms must have robust governance arrangements, which include (among other matters), effective processes to identify, manage, monitor and report the risks they are or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures that are consistent with and promote sound and effective risk management. FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1.	steps to liquidate positions in default is focused on the need to eliminate the margin deficiency – i.e. to reduce the risk posed to the non-defaulting party by the defaulting party. Although UK law does not require the termination of a defaulted position, or set a fixed time following default for termination to occur, it adopts a comparable focus to Exchange Act rule 18a-3(c)(7) by requiring the appropriate risk management of a defaulted position. We also note that the absence of a requirement to liquidate positions in default does not negate the obligation to collect margin in respect of such positions and a failure to comply with such obligation would lead to regulatory breach – we assume in such a scenario the dealer would likely terminate or liquidate the positions in any event. In practice, to risk manage a defaulted position, the only options available to the non-defaulting party are to terminate (and realize the loss created in the margin shortfall) or to wait for additional margin to be provided. Whether an Investment Firm's risk management practices enable it to wait for additional margin to be provided will depend on its risk tolerance, the size of the position, the time since default and the circumstances of the situation. The UK law risk management requirements described would oblige an Investment Firm to terminate a position if

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?		
	Position management requirements: • Investment Firms must have internal methodologies that enable them to assess the credit risk of exposures. FCA IFPRU 2.2.18R, PRA Internal Capital Adequacy Assessment Rule 4.2. Investment Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must set and monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. Investment Firms must revalue their trading book positions at least daily. Article 105(3) CRR. Investment Firms' revaluation of trading book positions must account for valuation adjustments, including close-out costs and early termination. Article 105(10) CRR. **Margin use requirements for OTC derivatives**: • The non-defaulting counterparty must be able to liquidate assets collected as collateral as initial or variation margin in a sufficiently short time in order to protect against losses on non-centrally cleared OTC derivative contracts in the event of a counterparty default. These assets should therefore be highly liquid and should not be exposed to	this is required in order to give appropriate effect to these risk management principles. *See* FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1 and Article 23(1) MiFID Org Reg. The rigour with which these risk management requirements must be met is determined in part by the position management requirements. These ensure that the risk of defaulted positions is properly assessed. Investment Firms must closely, and at least daily, monitor their trading book positions, including in respect of credit risk, and that the costs of termination and closing out positions are taken into account as part of this position management. *See* Articles 103, 103(b)(ii), 105(3) and 105(10) CRR. Finally, the margin use requirements ensure that an Investment Firm is able to give effect to its risk management strategy for defaulted positions. The margin use requirements for OTC derivatives achieve this by enabling an Investment Firm to terminate positions (if and when required) with minimum loss. *See* Recital (31) EU EMIR Margin RTS and Articles 2(2)(i), 7(5) and 19(1)(g) EMIR Margin RTS.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?		
	excessive credit, market or foreign exchange risk. EU EMIR Margin RTS, Recital (31).[32] Counterparties shall not use assets as eligible collateral where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty. EMIR Margin RTS, Article 7(5). The risk management procedures shall include procedures providing for or specifying the timely re-appropriation of collateral in the event of default by the posting counterparty from the collecting counterparty. EMIR Margin RTS, Article 2(2)(i). The risk management procedures shall include procedures providing for or specifying that initial margin is freely transferable to the posting counterparty in a timely manner on the default of the collecting counterparty. EMIR Margin RTS, Article 19(1)(g). • The protections described above for OTC derivatives are not relevant for exchange-traded derivatives as these transactions must	

[32] See the Introduction regarding the on-going relevance of recitals in EU legislation post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
4. How much time is allowed to liquidate accounts in the event of margin shortfalls?		
	be cleared with a CCP and so the default of the counterparty has no direct effect on the non-defaulting party. Article 29 MiFIR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
5. What collateral haircuts are required in connection with the exchange of margin?		
Haircut applicability: **The value of collateral delivered pursuant to the rules is subject to standardized haircuts set forth in the applicable capital rules (Exchange Act rule 18a-3(c)(3)(i) [17 CFR 240.18a-3(c)(3)(i)]),[33] but a dealer can elect to apply the standardized CFTC haircut rules if the dealer applies those deductions consistently with respect to a particular counterparty. Exchange Act rule 18a-3(c)(3)(ii) [17 CFR 240.18a-3(c)(3)(ii)][34]**	**Haircut applicability**: Risk management procedures must provide for the daily valuation of collateral in accordance with Articles 21 and 22 of the EMIR Margin RTS. EMIR Margin RTS, Articles 2(2)(d) and 19(1)(a). Parties must apply haircuts when valuing collateral either using the standard methodology in Annex II to the EMIR Margin RTS or using their own estimates in accordance with Article 22 of the EMIR Margin RTS. EMIR Margin RTS, Article 21(1). There is a narrow exemption whereby counterparties may disregard the foreign exchange risk arising from positions in currencies	**<u>Comparability of outcomes</u>**: The UK collateral haircut requirements provide a comparable regulatory outcome to the SEC collateral haircut requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(3) and the standard methodology described in EMIR Margin RTS, Articles 21 and Annex II are consistent in that each require comparable levels of collateral haircuts across similar asset classes to reflect the risk and liquidity in relation to a given asset. We note that the SEC rules provide that dealers can comply by either (i) complying with standardized

[33] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[34] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
5. What collateral haircuts are required in connection with the exchange of margin?		
(cross referencing 17 CFR 23.156). There is no ability for dealers to apply their own haircut estimates.	which are subject to a legally binding intergovernmental agreement to limit their variation relative to other currencies covered by the same agreement. Article 21(2) of the EMIR Margin RTS.	haircuts set forth in the applicable capital rules, or (ii) complying with the standardized CFTC haircut rules. In respect of compliance with the standardized haircuts set forth in the applicable capital rules, we note that the SEC stated in the adopting release of the final rule on capital and margin that "the haircuts in proposed Rule 18a-3 (i.e., the standardized haircuts in the proposed nonbank SBSD capital rules) and the haircuts in the margin rules of the CFTC and the prudential regulators (which are based on the recommended standardized haircuts in the BCBS-IOSCO Paper are largely comparable." Exchange Act Release No. 86175 (Jun. 21, 2019), 84 FR at 43879 (Aug. 22, 2019) (**Capital and Margin Adopting Release**). As the SEC has already acknowledged this comparability we have therefore focused on comparability between the CFTC and UK haircuts.
Haircut amounts: **Initial margin (CFTC Haircut Rules (17 CFR 23.156(a))):[35]** **The value of any eligible collateral collected or posted to satisfy initial margin requirements shall be subject to**	**Haircut amounts**: **Standard methodology: Initial margin** The standard method set out in Annex II to the EMIR Margin RTS sets out haircuts delineated between debt security issuer/securitisation positions, credit quality step and residual maturity. The tables in Annex II to the EMIR	**Haircut amounts:** The CFTC Substituted Compliance Decision on Margin found that EU EMIR Margin RTS, Annex II sets forth haircuts specific to certain asset classes that are comparable in outcome to those set forth in the CFTC (and, consequently, the SEC) haircut rules, 7 CFR 23.156(c) and Exchange Act rule 18a-3(c)(3) respectively. Please see Annex I for the CFTC haircuts.

[35] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
5. What collateral haircuts are required in connection with the exchange of margin?		
the sum of the following discounts, as applicable: **(A) An 8% discount for initial margin collateral denominated in a currency that is not the currency of settlement for the uncleared swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement; and** **(B) The discounts set forth in the table found in Annex I hereto.**	Margin RTS setting out the haircuts for long term and short term credit quality assessments are set out in Annex I hereto. Equities in main indices, bonds convertible to such equities and gold shall have a haircut of 15%. For eligible units in UK UCITS the haircut is the weighted average of the haircuts that would apply to the assets in which the fund is invested. A currency mismatch haircut of 8% is applied to initial margin. For cash and non-cash initial margin, the 8% haircut applies where the collateral is posted in a currency other than the currency in which the payments in case of early termination or default have to be made in accordance with the single derivative contract, the relevant exchange of collateral agreement or the relevant credit support annex (**termination currency**). Each of the counterparties may choose a different termination currency. Where the agreement does not identify a termination currency, the 8% haircut shall apply to the market value of all the assets posted as collateral. EMIR Margin RTS, Annex II.	Moreover, the CFTC Substituted Compliance Decision on Margin found that the EU margin rules require larger haircuts on government, central bank, and corporate debt where a credit quality assessment indicates low credit quality for the debt. *See* the CFTC Substituted Compliance Decision on Margin at 48409. Whilst the UK has now left the EU, the position in the UK relating to the level of haircut for each asset type remains the same (although the haircuts that may apply to specific types of eligible collateral may differ as between the EU and the UK by virtue of the natural consequences of on-shoring (for example, EU member states becoming third countries under UK law, EU UCITS becoming UK UCITS, etc.).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
5. What collateral haircuts are required in connection with the exchange of margin?		
The value of initial margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all initial margin collateral is calculated as the sum of those values for each eligible collateral asset. **Variation Margin (CFTC Haircut Rules (17 CFR 23.156(b))):[36]** **The value of any eligible collateral collected or posted to satisfy variation requirements shall be subject to the sum of the following discounts, as applicable:** **(A) An 8% discount for variation margin collateral denominated in a currency that is not**	**Standard methodology: Variation margin** The same rules apply as for initial margin with the following differences: • There is no haircut for cash variation margin. • A currency mismatch haircut of 8% is applied to non-cash variation margin. • For non-cash variation margin, the 8% haircut applies where the non-cash collateral is posted in a currency other than those agreed in an individual derivative contract, the relevant governing master netting agreement or the relevant credit support annex. **Own estimates**: We have not included a discussion of the EU rules relating to the calculation of own volatility estimates for calculating haircuts as there is no corresponding requirement under the SEC rules.	

[36] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
5. What collateral haircuts are required in connection with the exchange of margin?		
the currency of settlement for the uncleared swap, except for immediately available cash funds denominated in U.S. cash funds or another major currency; and **(B) The discounts set forth in the table found in Annex I hereto.** **The value of variation margin collateral shall be computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable haircut expressed in percentage terms. The total value of all variation margin collateral shall be calculated as the sum of those values of each eligible collateral asset**		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
5. What collateral haircuts are required in connection with the exchange of margin?		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
Custodian requirements: **Collateral (initial margin or variation margin) must be either: (A) subject to the dealer's physical possession or control, and able to be liquidated promptly by the dealer without intervention by any other party; or (B) carried by an independent third-party custodian that is a bank or a registered U.S. clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign**	**Custodian requirements**: • **Initial margin**: Initial margin must be protected from the default or insolvency of the collecting counterparty by segregating it in either or both of the following ways: (a) on the books and records of a third-party holder or custodian, (b) via other legally binding arrangements. EMIR Margin RTS, Articles 19(3) and 19(1)(d). • **Variation margin**: Third-party custodians are permitted to hold variation margin although there is not a specific requirement for variation margin to be held by third-party custodians under EMIR or the EMIR Margin RTS. As discussed above, any exchange of collateral agreement must be legally	**Comparability of outcomes:** The UK third-party custodian requirements for counterparty collateral provide a comparable regulatory outcome to the SEC third-party custodian requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c) and the EMIR Margin RTS are consistent in that each permit, and in some cases under EMIR require, collateral to be held by third-party custodians to minimize credit risk. The SEC rules prohibit collateral from being held by an affiliate while the EMIR Margin RTS do not. We note that the CFTC margin rules mirror the SEC rules in this respect and that the CFTC Substituted Compliance Decision on Margin provides that the EC has highlighted that Article 19(3) of the EU EMIR Margin RTS provide equivalent finality and protection to that

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies. Exchange Act rule 18a-3(c)(4)(ii) [17 CFR 240.18a-3(c)(4)(ii)].[37] **There is a corresponding exception from the initial margin collection requirement when a counterparty delivers margin to an independent third-party custodian. *See* Exchange Act rule 18a-3(c)(1)(iii)(C) [17 CFR 240.18a-3(c)(1)(iii)(C)].[38]**	enforceable. EMIR Margin RTS, Article 2(3). In addition, variation margin must be held in accordance with all relevant provisions of the EMIR Margin RTS (for example, see further "Liquidity" below). **Eligible Collateral and Concentration Limits**: Counterparties may collect various types of "eligible collateral" to satisfy an initial margin obligation with the eligibility of some asset classes being subject to initial margin concentration limits. EMIR Margin RTS, Articles 4 and 8. In certain circumstances, if initial margin collateral collected from an individual counterparty exceeds EUR 1 billion then in respect of the excess over EUR 1 billion, the sum of values of initial margin collateral collected from that counterparty in the form of certain assets issued by a single issuer or by issuers domiciled in the same country must not exceed 50% of the initial margin collateral collected from that counterparty. The 50% limit also applies to risk exposures arising from a single third-party	offered under the CFTC regime because of the requirement that "initial margin shall be protected from the default or insolvency of the collecting counterparty." See CFTC Substituted Compliance Decision on Margin at 48410. Whilst the UK has now left the EU, the position in the UK remains broadly the same. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways: **Custodian requirements:** • **Initial Margin:** The EMIR Margin RTS require initial margin to be segregated in either or both of the following ways: (a) on the books and records of a third party-holder or custodian, (b) via other legally binding arrangements. The SEC rules

[37] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[38] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
	holder or custodian holding initial margin collected in cash. EMIR Margin RTS, Articles 8(2) and (3). Where a G-SII or O-SII collects initial margin in cash from a single G-SII or O-SII counterparty, the collecting party shall ensure that not more than 20% of the total initial margin is maintained in cash with a single third-party custodian. EMIR Margin RTS, Article 8(5). **Risk management procedures**: Risk management procedures for management and segregation of margin must provide (i) for the legal arrangements and collateral holding structure that allow access to collateral held by a third-party; and (ii) that non-cash collateral is transferable without encumbrance, including any otherwise imposed by the collecting party's liquidator or a third-party custodian (other than certain routine liens). EMIR Margin RTS Article 19(1)(b) and (h). Where initial margin is held by the collateral provider, collateral must be maintained in	require initial margin to either be subject to the dealer's physical possession or control (and subject to applicable segregation requirements under the SEC rules)[40] or carried by an independent third-party custodian that is a bank, clearing organization or depository that is not affiliated with the counterparty. • **Variation Margin:** Under the EMIR Margin RTS, third-party custodians are permitted to hold variation margin but there is not a specific requirement for it to be held in this manner. Likewise, the SEC rules permit third-party custodians to hold variation margin but there is not a specific requirement for it to be held in this manner.

[40] The SEC's segregation requirements are set-out at Exchange Act rule 15c3-3 and Exchange Act rule 18a-4. There is an exception from the SEC's segregation requirements for (i) uncleared security-based swap transactions between a non-US nonbank firm and a non-US person, and (ii) cleared security-based swap transactions between a non-US nonbank firm and a non-US person if the firm does not hold customer funds for any US customer.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
	insolvency-remote custody accounts. EMIR Margin RTS, Article 19(1)(c). **Segregation**: Counterparties shall ensure that non-cash collateral exchanged as initial margin is segregated as follows: (a) where collateral is held by the collecting counterparty on a proprietary basis, it shall be segregated from the rest of the proprietary assets of the collecting counterparty; (b) where collateral is held by the posting counterparty on a non-proprietary basis, it shall be segregated from the rest of the proprietary assets of the posting counterparty; (c) where collateral is held on the books and records of a custodian or other third-party holder, it shall be segregated from the proprietary assets of that third-party holder or custodian. EMIR Margin RTS, Articles 19(4) and 19(1)(d). If non-cash initial margin is to be held by the collecting party or a third-party holder or custodian, the posting counterparty must have the option for the collateral to be segregated from the collateral of other posting counterparties. EMIR Margin RTS, Articles 19(5).	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
	Cash collected as initial margin must be maintained in cash accounts at central banks or credit institutions which fulfil all of the following conditions: (i) they are authorized credit institutions which are CRR firms (within the definition in Article 4(1)(2A) of the CRR) or are authorized in a non-UK jurisdiction whose supervisory and regulatory arrangements have been found to be equivalent in accordance with Article 142(2) CRR; and (ii) they are neither the posting nor the collecting counterparties, nor part of the same group as either of the counterparties. The collecting counterparty must take into account the credit quality of such credit institution without relying "solely or mechanistically" on external credit quality assessments. EMIR Margin RTS, Articles 19(1)(e) and 19(8). Collateral protects the collecting counterparty in the event of the default of the posting counterparty. However, both counterparties are also responsible for ensuring that the manner in which collateral collected is held does not increase the risk of a loss of excess posted collateral for the posting counterparty in case the collecting counterparty defaults. For this reason, the bilateral agreement between the counterparties should allow both counterparties	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
	to access the collateral in a timely manner when they have the right to do so, hence the need for rules on segregation and for rules providing for an assessment of the effectiveness of the agreement in this respect, taking into account the legal constraints and the market practices of each jurisdiction. EU EMIR Margin RTS, Recital (34).[39] • Each party to perform an independent legal review in order to verify that the initial margin segregation arrangements meet the requirements set out in Articles 19(1)(g) and 19(3) to 19(5) of the EMIR Margin RTS, to provide evidence to the relevant competent authority of compliance in each relevant jurisdiction and, upon request by a competent authority, to establish policies ensuring the continuous assessment of compliance. EMIR Margin RTS, Articles 19(6) and 19(7).	

[39] See the Introduction regarding the on-going relevance of recitals in EU legislation post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
Liquidity: **Generally, margin collateral held by third-parties or otherwise must have a ready market and be readily transferrable.**[41] **Exchange Act rule 18a-3(c)(4)(i) [17 CFR 240.18a-3(c)(4)(i)].**[42]	**Liquidity**: Counterparties shall not use assets as eligible collateral[43]where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty. EMIR Margin RTS, Article 7(5). The collateral arrangements must ensure that the initial margin is freely transferable to the posting counterparty in a timely manner on the default of the collecting counterparty. EMIR Margin RTS, Article 19(1)(g).	**Liquidity:** The EMIR Margin RTS require that the initial margin is freely transferable to the posting counterparty in a timely manner on the default of the collecting counterparty. This is comparable to the requirement under the SEC rules that if the collateral is subject to the dealer's physical possession or control, it is able to be liquidated promptly by the dealer without intervention by any other party.
Enforceability: **The collateral must be subject to an agreement that is legally enforceable by the dealer**	**Enforceability**: Where counterparties enter into an exchange of collateral agreement, they shall perform an independent legal review of the enforceability of	**Enforceability**: The SEC rules require that collateral be subject to an agreement that is legally enforceable by the dealer against counterparty and any other parties to the

[41] Acceptable collateral consists of cash, securities, money market instruments, a major foreign currency, the settlement currency of the non-cleared security-based swap, or gold. The collateral cannot consist of securities and/or money market instruments issued by the counterparty, or by a party related to the dealer, or the counterparty.
[42] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[43] Eligible collateral consists of: (a) cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits; (b) gold; (c) debt securities issued by the central government of the UK or the Bank of England; (d) debt securities issued by UK regional governments or local authorities; (e) debt securities issued by UK public sector entities; (f) debt securities issued by certain multilateral development banks; (g) debt securities issued by certain international organizations; (h) debt securities issued by third countries' governments or central banks, regional governments or local authorities; (i) debt securities issued by credit institutions or investment firms including bonds admitted to the register of the regulated covered bonds maintained under Regulation 7(1)(b) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346); (j) corporate bonds; (k) the most senior tranche of a securitization, as defined in Article 4(61) of the CRR, that is not a re-securitization as defined in Article 4(63) of the CRR; (l) convertible bonds provided that they can be converted only into equities which are included in an index specified pursuant to point (a) of Article 197(8) of the CRR; (m) equities included in an index specified pursuant to point (a) of Article 197(8) of the CRR; and (n) units or shares in UK UCITS but only if the conditions set out in Article 5 of the EMIR Margin RTS are met.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
6. To what extent are third-party custodians permitted to hold counterparty collateral?		
against counterparty and any other parties to the agreement. Exchange Act rule 18a-3(c)(4)(i) [17 CFR 240.18a-3(c)(4)(i)].[44]	those agreements and assess this on a continuous basis. EMIR Margin RTS, Articles 2(3) and 2(4).	agreement. Similarly, the EMIR Margin RTS require an independent legal review of the enforceability of agreements governing the exchange of collateral.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
There is no obligation on the dealer to deliver initial margin to its counterparty but there is no prohibition on this practice. There are a number of targeted exceptions to the margin collection and delivery requirements, addressing:	The EMIR margin requirements only apply to *uncleared* OTC derivative contracts. EMIR and the EMIR Margin RTS provide for a number of exceptions and derogations including:	**Comparability of outcomes**: Overall the exceptions to the UK's margin requirement achieve a comparable regulatory outcome to the exceptions to the SEC's margin requirement. In particular, the regulatory outcomes pursued under Exchange Act rule 18a-3(c)(1)(iii) and EMIR and the EMIR Margin RTS are consistent in that each provides certain exceptions for (i) commercial end user/non-financial counterparty accounts, (ii) legacy transactions entered into prior to the start date of the applicable margin requirements, (iii) inter-affiliate transactions, (iv) multilateral development

[44] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
		banks, (v) sovereigns (in the case of the UK, if sovereigns are regarded as "non-undertakings"), and (vi) where the margin required to be transferred and/or exposure falls below certain thresholds. We note that the exceptions to the UK's margin requirement are not identical in all respects to the exceptions to the SEC's margin requirement and there are certain circumstances where an exception may apply under EMIR but would not apply under the SEC rules (for example, the conditional exemption relating to OTC derivatives contracts concluded by securitization special purpose entities in connection with certain securitizations whereby there will be (i) no obligation for a securitization special purpose entity to post variation margin (although it must collect variation margin from its counterparty in cash and return it when due), and (ii) no obligation for either party to post or collect initial margin – although we note that this EU exemption is not yet included in the current UK on-shoring legislation, as it is in force and applicable prior to IP Completion Day, we would expect this exemption to ultimately be on-shored into UK law). Likewise, there are exceptions under the SEC's rules which do not apply under EMIR (for example, there is no obligation on the dealer to deliver initial margin to its counterparty under the SEC's rules). Despite some differences in the scope of

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
		the exceptions the two regimes are comparable from an outcomes perspective. We note this approach is consistent with the approach taken by the CFTC in its Substituted Compliance Decision on Margin (as supplemented by the subsequent remarks of Chairman J. Christopher Giancarlo on January 19, 2018), where it found broad comparability between the CFTC and EU margin rules in the interests of providing "certainty to market participants" and ensuring that "global markets are not stifled by fragmentation, inefficiencies and higher costs" despite certain differences in the exceptions, including the fact that transactions with a counterparty that is an (EU) NFC- under EU EMIR would not be subject to the CFTC's margin rules even though it may be a financial end-user that would otherwise be subject to the CFTC's margin rules.[45] Whilst the UK has now left the EU, the position in the UK remains broadly the same. **Comparability of specific requirements:**
Commercial accounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin for**	**Commercial accounts**: If one or both parties is a non-financial counterparty below the "clearing threshold" (**NFC-**) or a non-UK equivalent, the EMIR variation	**Commercial accounts**: This UK exception is comparable to Exchange Act rule 18a-3(c)(1)(iii)(A) [17 CFR 240.18a-3(c)(1)(iii)(A)] because both exceptions provide that no variation

[45] https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo34#P127_31677

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
commercial end user accounts. Exchange Act rule 18a-3(c)(1)(iii)(A) [17 CFR 240.18a-3(c)(1)(iii)(A)];[46]	margin and initial margin requirements do not apply. EMIR Margin RTS, Article 24.	margin or initial margin is required to be exchanged with counterparties that are not subject to the clearing requirement under EMIR or the Exchange Act (as applicable).
Development banks: **Dealers need not collect initial margin, and need not collect or deliver variation margin for certain multilateral development banks, including the Bank for International Settlements and the European Stability Mechanism. Exchange Act rule 18a-3(c)(1)(iii)(E) [17 CFR 240.18a-3(c)(1)(iii)(E)];[47]**	**Development banks**: If one or both parties is an exempt entity set out in Article 1(4) or Article 1(5) of EMIR (namely, (i) the Bank of England and other public bodies in the UK charged with or intervening in the management of the public debt; (ii) the Bank for International Settlements; (iii) the central banks and public bodies charged with or intervening in the management of the public debt in Japan, United States of America, Australia, Canada, Hong Kong, Mexico, Singapore and Switzerland; (iv) certain multilateral development banks; (v) certain public sector entities within the meaning of Article 4(1)(8) of the CRR where they are owned by central governments and have explicit guarantee arrangements provided by central governments; (vi) the European Financial Stability Facility and the European Stability Mechanism); (vii) the European Central Bank, the central bank of a member state, a body in a member state	**Development banks**: This UK exception is comparable to the Exchange Act rule 18a-3(c)(1)(iii)(E) [17 CFR 240.18a-3(c)(1)(iii)(E)] because both exceptions cover substantially the same type of entities.

[46] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[47] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
	which performs similar functions to members of the ESCB or a body in a member state charged with, or intervening in, the management of public debt; and (viii) the central bank of Iceland or of Norway, a body in Iceland, Norway or Liechtenstein which performs similar functions to members of the ESCB or a body in Iceland, Norway or Liechtenstein charged with, or intervening in, the management of public debt), the EMIR variation margin and initial margin requirements do not apply.	
Financial market intermediary accounts: **Dealers need not collect initial margin, but still need to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(B) [17 CFR 240.18a-3(c)(1)(iii)(B)];[48]**	**Financial market intermediary accounts**: There is no such exception under EMIR.	**Financial market intermediary accounts**: EMIR does not contain an exception which is analogous to the financial market intermediary account exception under the SEC rules and therefore EMIR is stricter in this regard. However, we note that under the back-to-back model of client clearing used in the UK the transaction entered into between a client and its clearing member is not subject to the EMIR variation margin and initial margin requirements because the parties thereto are deemed to have fulfilled their clearing obligation with respect to such contract and therefore the EMIR risk-mitigation requirements applicable to uncleared contracts do not apply.[49]

[49] See General Question 2 in the ESMA Q&A on EMIR. See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
Affiliate accounts/intragroup transactions: **Dealers need not collect initial margin, but still need to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(G) [17 CFR 240.18a-3(c)(1)(iii)(G)];[50]**	**Affiliate accounts/intragroup transactions**: There are exemptions from the EMIR variation margin and initial margin requirements in respect of certain intragroup transactions. The conditions to this exemption depend on whether the parties are established in the UK or outside the UK and also on the classification of the parties. EMIR, Articles 11(5), 11(8) and 11(9), and the transitional provisions for intragroup transactions set out in Part 5 of the EMIR SI.	**Affiliate accounts/intragroup transactions**: The SEC rules are comparable to the CFTC margin rules in this respect (i.e. both state that initial margin does not need to be collected but that variation margin does need to be collected in respect of inter-affiliate transactions). We note that, notwithstanding differences between the EU and the CFTC margin rules on affiliate accounts/intragroup transactions, in the CFTC's Substituted Compliance Decision on Margin, the CFTC found that the treatment of inter-affiliate transactions under the CFTC margin rules is comparable to the treatment of inter-affiliate transactions under EU EMIR on an outcomes basis. Whilst the UK has now left the EU, the position in the UK relating to inter-affiliate transactions remains broadly the same as in the EU.
Sovereigns: **Dealers need not collect initial margin, but still need to collect and deliver variation margin for accounts of sovereigns with minimal credit risk. Exchange**	**Sovereigns**: Under EMIR, only "undertakings" are subject to the margin requirements. There is no explicit definition of the term 'undertaking' in EMIR. However, the EC Q&A on EMIR provide some guidance on the meaning of "undertaking".[52] Consequently, the UK analysis on whether a sovereign may benefit from an exemption from	**Sovereigns**: To the extent that a sovereign is not an "undertaking" for the purposes of EMIR the dealer will not be required to exchange initial margin or variation margin under the EMIR Margin RTS. Under Exchange Act rule 18a-3(c)(1)(iii)(F) [17 CFR 240.18a-3(c)(1)(iii)(F)] the dealer would not be required to

[50] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[52] See the Introduction regarding the on-going relevance of EC Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
Act rule 18a-3(c)(1)(iii)(F) [17 CFR 240.18a-3(c)(1)(iii)(F)];[51]	margin requirements will depend on the activities carried out by the sovereign in question and whether it is, therefore, an undertaking. If a sovereign is not acting as a commercial entity and is entering into derivative contracts solely for hedging purposes, there may be an argument that this is the proper exercise of public authority or powers which does not constitute economic activity and, consequently, that the sovereign is not an undertaking. Article 1(5) of EMIR (as further discussed above) may also be relevant.	collect initial margin but would be required to exchange variation margin with such an entity.
Legacy accounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(D) [17 CFR 240.18a-3(c)(1)(iii)(D)].[53]**	**Legacy accounts**: The EMIR Margin RTS apply to uncleared OTC derivative contracts entered into or novated on or after the relevant margin start date. Initial margin requirements do not apply to contracts concluded from January in a given year if the AANA of either party was below EUR 8 billion for the months of March, April and May of the previous year. EMIR Margin RTS, Article 28.	**Legacy accounts**: The UK requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(D) [17 CFR 240.18a-3(c)(1)(iii)(D)] as both specify that dealers do not need to collect initial margin or exchange variation margin in respect of transactions entered into before the compliance date of the relevant margin requirement.
Initial margin threshold:	**Initial margin threshold**:	**Initial margin threshold**:

[51] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[53] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
Dealers need not collect initial margin to the extent the amount of initial margin would be below the USD 50 million threshold but this does not impact the obligation to collect and deliver variation margin. Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H)];[54] and	Counterparties may provide in their risk management procedures that initial margin collected is reduced by an amount up to EUR 50 million where neither counterparty belongs to any group or the counterparties are part of different groups, or EUR 10 million where both counterparties belong to the same group. EMIR Margin RTS, Article 29(1).	The UK requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(H) [17 CFR 240.18a-3(c)(1)(iii)(H) as both set a comparable threshold (EUR 50 million and USD 50 million respectively). We note that the SEC requirement is the same in this regard as the CFTC margin rules, and the CFTC has found that the USD 50 million threshold in the CFTC margin rules is comparable with the threshold under EU EMIR, notwithstanding the possibility that fluctuating exchange rates may mean the EU threshold may be greater than that under the CFTC margin rules and vice versa. Whilst the UK has now left the EU, the position in the UK remains the same.
Minimum transfer amounts: **Dealers need not collect initial margin, and need not collect or deliver variation margin until the total amount of collateral that needs to be collected with respect to the counterparty is greater than USD 500,000. Exchange Act rule 18a-**	**Minimum transfer amounts**: Counterparties may provide in their risk management procedures that no collateral is collected from a counterparty where the amount due from the last collection of collateral is equal to or lower than the amount agreed by the counterparties. The minimum transfer amount shall not exceed EUR 500,000 or the equivalent amount in another currency. EMIR Margin RTS, Article 25(1).	**Minimum transfer amounts**: The UK requirement is analogous to Exchange Act rule 18a-3(c)(1)(iii)(I) [17 CFR 240.18a-3(c)(1)(iii)(I)] as both set a comparable minimum transfer amount (EUR 500,000 and USD 500,000 respectively). We note that the SEC requirement is the same in this regard as the CFTC margin rules, and the CFTC has found that the USD 500,000 minimum transfer amount in the CFTC margin rules is comparable with the minimum transfer amount under EU EMIR, notwithstanding the possibility that fluctuating

[54] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Margin Requirements for Nonbank Firms		
7. To what extent are there exceptions to the margin requirement?		
3(c)(1)(iii)(I) [17 CFR 240.18a-3(c)(1)(iii)(I)].[55]		exchange rates may mean the EU minimum transfer amount may be greater than that under the CFTC margin rules and vice versa. Whilst the UK has now left the EU, the position in the UK remains the same.

[55] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

d. Subcategory: Internal Risk Management Requirements

Dealers are obligated to follow policies and procedures reasonably designed to assist them in managing the risks associated with their business activities.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
Firms must "establish robust and professional risk management systems adequate for managing [their] day-to-day business." Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)].[56] Firms are generally required, as part of their supervisory systems, to establish, maintain and enforce written policies and procedures addressing the obligations to, *inter alia*, monitor trading, establish a day-to-day business risk management system, disclose trading information to the SEC, establish internal recordkeeping systems, and implement systems to safeguard against conflicts of interest. Exchange Act rule 15Fh-	**Threshold Conditions** The Threshold Conditions require: (a) a Dual Regulated Firm to conduct its business in a prudent manner and to have appropriate non-financial resources. A Dual-Regulated Firm must be willing and able to value its assets and liabilities appropriately; have resources to identify, monitor, measure and take action to remove or reduce risks to its safety and soundness and the accuracy of its valuation of its assets and liabilities; ensure that its business is managed to a reasonable standard of effectiveness competition (as appropriate to the particular UK Firm, and accounting for its group context). Threshold Conditions at paragraph 5D. (b) a Dual-Regulated Firm to have appropriate non-financial resources in relation to the regulated activities that it carries on and the FCA's objectives in respect of consumer protection, integrity and competition (as	**Comparability of outcomes**: The UK requirements to implement internal risk management controls provide a similar regulatory outcome to the SEC requirements for risk management controls. In particular, the regulatory outcomes pursued under Exchange Act section 15F(j)(2) and the UK requirements are consistent in that each require Investment Firms to establish robust internal risk management systems to manage risks associated with their business activities. While we believe that the SEC as a market regulator regulating derivatives activity should find the directly equivalent UK requirements alone sufficient, we have, for background, also listed additional risk management requirements relevant UK regulated entities are subject to, as they contribute to the regulatory landscape on the topic of risk management. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules

[56] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[57] **The capital rule for nonbank firms imposes a requirement that firms comply with a separate rule related to internal risk management control systems that requires firms to establish, document, and maintain a system of internal risk management controls to assist them in managing the risks associated with their business activities. Exchange Act rule 18a-1(f) [17 CFR 240.18a-1(f)].**[58] **Firms must comply with Exchange Act rule 15c3-4 [17 CFR 240.15c3-4][59] as if they were an OTC derivatives dealer, with the exclusion of select provisions. Dealers must comply**	appropriate to the particular UK Firm, and accounting for its group context).[61] Threshold Conditions at paragraph 3C and sections 1B – 1D FSMA. (c) a Solo-Regulated Firm to have appropriate resources (which includes non-financial resources) in relation to the regulated activities that it carries on (as appropriate to the particular UK Firm, and accounting for its group context).[62] Threshold Conditions at paragraph 2D. **PRA Fundamental Rules and FCA Principles** A UK Firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. FCA PRIN 2.1.1.R(3). A Dual-Regulated Firm must have effective risk strategies and risk management systems. PRA Fundamental Rule 5. **MiFID**	in order to be deemed comparable, we note the comparability of specific UK requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways: • **Policies and procedures**. Article 23 MiFID Org Reg. requires Investment Firms to establish and maintain policies and procedures to identify risk, set risk tolerance levels, and monitor the effectiveness of such policies and procedures and address deficiencies in them, while Article 23(2) MiFID Org Reg. requires an independent risk management function to be established to implement risk management policies and procedures. Counterparties are required to establish a thorough and dynamic internal governance processes to assess the appropriateness of the initial margin model on a continuous basis and document associated risk

[57] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[58] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=sg17.4.240_117ad_622.sg51&rgn=div7
[59] https://www.govinfo.gov/content/pkg/CFR-2011-title17-vol3/pdf/CFR-2011-title17-vol3-sec240-15c3-4.pdf
[61] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.
[62] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
with rule 15c3-4 with respect to all of their business activities. **The margin rule requires that dealers must monitor the risk of each account and establish, maintain and document procedures and guidelines for monitoring the risk of accounts as part of their required risk management and control systems. The rule specifies minimum requirements for associated policies and procedures including, *inter alia*, requirements related to the review or monitoring of financial information, counterparty credit limits and credit risk exposure, the use of stress tests, determinations regarding the need to collect collateral, and the maintenance of sufficient equity in each counterparty account. Exchange Act rule 18a-3(e) [17 CFR 240.18a-3(e)].**[60]	An Investment Firm must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. The requirement goes beyond this to encompass monitoring the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. Article 23 MiFID Org Reg. A specific risk management function is required where appropriate and proportionate that must: (i) operate independently, (ii) implement the Investment Firm's risk management policies and procedures, and (iii) provide required reports and advice to senior management. Article 23(2) MiFID Org Reg. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective	management procedures under RTS, Articles 1, 18(2) and 18(3). FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1 require CRR Firms to establish robust internal risk management systems, including internal administrative and accounting procedures. FCA SYSC 7.1.4R requires management bodies of CRR Firms to review and approve internal risk management strategies and policies. FCA SYSC 7.1.18R(1), PRA Risk Control Rule 3.1(1) requires CRR Firms that are sufficiently large and complex to establish a risk committee which we would expect to encompass most dealers. The FCA and the PRA Rules (FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1) require Investment Firms to establish robust internal risk management assessment procedures. These requirements are consistent with the policy and procedure requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(I). • **Internal risk management systems**. The Threshold Conditions require UK Firms to have adequate non-financial resources, which will include risk management systems and suitable staff to operate these systems. Dual-Regulated Firms are additionally required to conduct their

[60] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
	procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1. **<u>EMIR Margin RTS</u>** Counterparties must establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(1). The risk management procedures must include procedures providing for or specifying the following: (a) the eligibility of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 2 of Chapter 1 of the EMIR Margin RTS; (b) the calculation and collection of margins for non-centrally cleared OTC derivative contracts in accordance with Section 3 of Chapter 1 of the EMIR Margin RTS; (c) the management and segregation of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 5 of Chapter 1 of the EMIR Margin RTS; (d) the calculation of the adjusted value of collateral in accordance with Section 6 of Chapter 1 of the EMIR Margin RTS;	business in a prudent manner and to meet specific requirements regarding risk management. The FCA and the PRA Rules (FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1) require Investment Firms to establish robust internal risk management assessment procedures. Article 23 MiFID Org Reg. requires Investment Firms to establish and maintain policies and procedures to identify risk, set risk tolerance levels, and monitor the effectiveness of such policies and procedures and address deficiencies in them, while Article 23(2) MiFID Org Reg. requires an independent risk management function be established to implement risk management policies and procedures. These requirements are comparable to the internal risk management requirements set forth in Exchange Act rules 15c3-4, 15F(j)(2) and 18a-1(f). Furthermore, FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1 require CRR Firms to establish robust internal risk management systems, including internal administrative and accounting procedures. FCA SYSC 7.1.4R and PRA Risk Control Rule 2.3 require management bodies of CRR Firms to review and approve internal risk management strategies and policies. FCA SYSC 7.1.18R(1), PRA Risk Control Rule 3.1(1) require CRR Firms that are sufficiently

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
	(e) the exchange of information between counterparties and the authorisation and recording of any exceptions to the risk management procedures; (f) the reporting of the exceptions in Chapter II of the EMIR Margin RTS to senior management; (g) the terms of all necessary agreements to be entered into by counterparties before the time in which a non-centrally cleared OTC derivative contract is concluded, including the terms of the netting agreement and the terms of the exchange of collateral agreement in accordance with Article 3 of the EMIR Margin RTS; (h) the periodic verification of the liquidity of the collateral to be exchanged; (i) the timely re-appropriation of the collateral in the event of default by the posting counterparty from the collecting counterparty; and (j) the regular monitoring of the exposures arising from OTC derivative contracts that are intragroup transactions and the timely settlement of the obligations resulting from those contracts. EMIR Margin RTS, Article 2(2). Risk management procedures must be tested, reviewed and updated as necessary and at least annually. EMIR Margin RTS, Article 2(5). Upon request, counterparties using initial margin models shall provide the competent authorities	large and complex, which we would expect to encompass most dealers, to establish a risk committee. • **Managing account risk**. CRR Firms are obliged by FCA IFPRU 2.2.18R(1), PRA Internal Capital Adequacy Assessment Rule 4.2 to monitor the risk of accounts as part of their assessment of the credit risk of exposures. More specifically: • Article 103 and 103(b)(ii) CRR require CRR Firms to have policies and procedures for the active management of trading book positions, which must include the monitoring of position limits for such positions. – Account risk is also managed by stress testing of exposures when using models for the purpose of credit risk, CCR, market risk, as well as for exposures to CCPs and credit risk concentrations, including in relation to the realizable value of any collateral taken. – The EMIR Margin RTS requires an account level review to be taken in the calculation, collection and adjustment of the value of collateral for non-centrally cleared OTC derivative contracts and the management

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
	with any documentation relating to the risk management procedures regarding the calculation and collection of margins for non-centrally cleared OTC derivative contracts at any time. EMIR Margin RTS, Article 2(6). Counterparties shall establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including all of the following: (a) an initial validation of the model by suitably qualified persons who are independent from the persons developing the model; (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually; and (c) a regular audit process to assess the following: (i) the integrity and reliability of the data sources; (ii) the management information system used to run the model; (iii) the accuracy and completeness of data used; and (iv) the accuracy and appropriateness of volatility and correlation assumptions. EMIR Margin RTS, Article 18(1). The documentation of the risk management procedures relating to the initial margin model needs to meet all of the following conditions: (a) it shall allow a knowledgeable third-party to understand the design and operational detail of	and segregation of collateral for such contracts. Taken together these requirements are comparable to the account risk requirements set forth in Exchange Act rule 18a-3(e).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
	the initial margin model, (b) it shall contain the key assumptions and the limitations of the initial margin model, and (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid. EMIR Margin RTS, Article 18(2). Counterparties must document all changes to the initial margin model. That documentation shall also detail the results of the validations carried out after those changes. EMIR Margin RTS, Article 18(3). The risk management procedures referred to in Article 2(1) of the EMIR Margin RTS (i) ensure that the performance of an initial margin model is monitored on a continuous basis including by back-testing the model at least every three months; (ii) outline the methodologies used for undertaking back-testing, including statistical tests of performance; (iii) describe what results of the back-testing would lead to a model change, recalibration or other remediation action; and (iv) ensure that counterparties retain records of the results of the back-testing. EMIR Margin RTS, Article 14. **<u>EMIR risk mitigation (other than margin)</u>**	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
	See below discussion (in section 1(e) and (1)(f)) of risk mitigation techniques set out in RTS 149/2013. **<u>CRR & FCA, PRA Rules</u>** The management body of a CRR Firm must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. FCA SYSC 7.1.4R and PRA Risk Control Rule 2.3. CRR Firms are required to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures. FCA SYSC 4.1.1R, PRA General Organisational Requirements Rule 2.1. CRR Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
8. To what extent are firms required to implement internal risk management controls?		
	set and monitor position limits for trading book positions. Article 103 and 103(b)(ii) CRR. CRR Firms that are significant in terms of size, internal organisation and nature, scope and complexity of their activities must establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. FCA SYSC 7.1.18R(1), PRA Risk Control Rule 3.1(1). CRR Firms must have internal methodologies that enable them to assess the credit risk of exposures. FCA IFPRU 2.2.18R(1), PRA Internal Capital Adequacy Assessment Rule 4.2. CRR Firms must revalue their trading book positions at least daily. Article 105(3) CRR. CRR Firms must conduct stress testing on their exposures when using models for the purpose of credit risk, CCR, market risk, as well as for their exposures to CCPs and credit-risk concentrations, including in relation to the realisable value of any collateral taken. Articles 177, 286(8), 290, 302, 369, 376 and 401 CRR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
9. What types of risks are those internal controls required to address?		
The capital rules related to internal risk management control systems are meant to address risks associated with their business activities, including market, credit, leverage, liquidity, legal, and operational risks. Exchange Act rule 18a-1(f) [17 CFR 240.18a-1(f)].[63] **The margin rules are meant to address risks associated with the review or monitoring of financial information, counterparty credit limits and credit risk exposure, the use of stress tests, determinations regarding the need to collect collateral, and the maintenance of sufficient equity in each counterparty account. Exchange Act rule 18a-3(e) [17 CFR 240.18a-3(e)].[64]**	**MiFID** Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 23(1) MiFID Org Reg. **EMIR** **Margin**: The EMIR Margin RTS are intended to protect counterparties from the risk of a potential default of the other counterparty. EU EMIR Margin RTS, Recital (3).[65] **FCA & PRA Rules** An Investment Firm's risk management strategy will, amongst other things, be required to cover: credit and counterparty risk, residual risk, concentration risk, securitisation risk, market risk, interest rate risk, operational risk, liquidity risk, risk of excessive leverage, etc. FCA IFPRU 2.2.17R	**Comparability of outcomes**: The UK's risk management requirements provide for similar outcomes with respect to the types of risks that must be managed as the SEC's risk management requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 18a-1(f) and 18a-3(e) and MiFID Org Reg, EMIR, the relevant FCA and PRA Rules are consistent in that each requires Investment Firms to ensure that their internal risk management structures address all varieties of risk. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:

[63] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=sg17.4.240_117ad_622.sg51&rgn=div7
[64] https://www.ecfr.gov/cgi-bin/text-idx?SID=f21356649423aa2f17ac838f9928d337&mc=true&node=se17.4.240_118a_63&rgn=div8
[65] See the Introduction regarding the on-going relevance of recitals in EU legislation post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Internal Risk Management Requirements		
9. What types of risks are those internal controls required to address?		
	– 2.2.35R, PRA Internal Capital Adequacy Assessment Rules 4-11.	• **Risks addressed**. Article 23(1) MiFID Org Reg. requires Investment Firms to establish risk management policies and procedures addressing risks relating to an Investment Firm's activities, processes and systems. FCA IFPRU 2.2.17R-2.2.35R and PRA Internal Capital Adequacy Assessment Rules 4-11 require Investment Firms to implement risk management strategies to address, *inter alia*, credit and counterparty risk, residual risk, concentration risk, securitization risk, market risk, interest rate risk, operational risk, liquidity risk and risk of excessive leverage. These requirements are consistent with the risks addressed in Exchange Act rules 18a-1(f) and 18a-3(e).

e. Subcategory: Trade Acknowledgement and Verification Requirements

Trade acknowledgment and verification rules are intended to help avoid legal and operations risks by providing for definitive written records of transactions and procedures to avoid disputes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
10. To what extent are transactions subject to trade acknowledgment, confirmation, or similar requirements that provide for the creation of definitive written records of the transaction?		
The trade acknowledgment rules apply to any transaction in which a firm "purchases from or sells to any counterparty a security-based swap." Exchange Act rule 15Fi-2(a) [17 CFR 240.15Fi-2(a)].[66]	**MiFID requirements & FCA Rules** An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. FCA COBS 16A.2.1R, COBS 16A.3.1UK and Article 59 MiFID Org Reg. **EMIR: timely confirmation** FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a).	**Comparability of outcomes**: The timely confirmation requirement under EMIR, MiFID Org Reg and the FCA Rules requirements provide a comparable regulatory outcome to the SEC trade acknowledgement and confirmation requirements. In particular, the regulatory outcomes pursued under the Exchange Act rule 15Fi-2(a) and Article 11(1)(a) of EMIR and the FCA Rules are consistent, in that each requires the timely confirmation of relevant details of a trade in order to promote effective risk management and minimize legal and operational risks. In the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EU EMIR timely confirmation requirements were "[g]enerally identical in intent", as well "comparable to and as comprehensive as the swap transaction confirmation requirements of Commission regulation 23.501". Whilst the UK has now left the EU, the position in the UK remains the same.

[66] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
11. To what extent are transactions further subject to verification or similar requirements intended to identify disagreements regarding transaction terms?		
A firm must verify[67] the accuracy of, or dispute with the counterparty, the terms of the trade acknowledgment. Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[68] The trade verification requirement applies to security-based swap transactions for which a firm has received a trade acknowledgment (subject to certain exceptions). Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[69]	**EMIR** Both counterparties to an uncleared OTC derivative transaction are equally subject to the timely confirmation obligation described in question 1 of section 1(e). EMIR, Article 11(1)(a).	**Comparability of outcomes**: Although the timely confirmation requirements under EMIR apply in a different manner to the SEC's transaction verification requirements, the risk management objectives pursued under Exchange Act rule 15Fi-2(d)(2) and Article 11(1)(a) of EMIR are consistent and comparable, in that each regulation is designed to ensure that both parties to a transaction are informed of, and agree upon, all terms of that transaction in writing and in a timely manner following execution. The SEC requirement with respect to timely confirmation is substantially the same as the CFTC requirement and the CFTC noted in the CFTC Substituted Compliance Decision on Transaction-Level Requirements that "the trade confirmation requirements of the [EU] EMIR standards are comparable to and as comprehensive as the swap transaction confirmation requirements of CFTC Regulation 23.501." Whilst the UK has now left the EU, the position in the UK remains the same.

[67] "Trade verification" means "the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty." Exchange Act rule 15Fi-1(i) [17 CFR 240.15Fi-1(i)].
[68] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[69] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
12. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?		
Responsible Parties (Exchange Act rule 15Fi-2(a) [17 CFR 240.15Fi-2(a)]):[70] – For transactions between a dealer and a participant, the dealer will provide the trade acknowledgment. – For transactions in which only one counterparty is a dealer or participant, the dealer or participant will provide the trade acknowledgment. – For all other transactions in which a dealer or participant purchases or sells a security-based swap,	**EMIR: timely confirmation (responsible parties)** Both counterparties to an uncleared OTC derivative transaction are equally subject to the timely confirmation obligation described in question 1 of section 1(e). Article 11(1)(a). **EMIR: timely confirmation (contents)** A confirmation is defined in RTS 149/2013 as the documentation of the agreement of the counterparties to all the terms of an OTC derivative contract. RTS 149/2013, Article 1(c). To comply with the timely confirmation obligation, counterparties must therefore reach a legally binding agreement as to all the terms of an OTC derivative contract. ESMA Q&A on EMIR, OTC Answer 4(a).[76] **EMIR: timely confirmation (delivery)** A timely confirmation may take the form of an electronically executed contract or a document	**Comparability of outcomes**: The timely confirmation requirement under EMIR provides for a comparable regulatory outcome to the SEC's responsible parties and trade acknowledgment requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-1 and 15Fi-2 and Article 11(1)(a) of EMIR, along with RTS 149/2013, are consistent and comparable in that each requires parties to promptly provide a confirmation containing all details of a transaction to their counterparty following execution. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**:

[70] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[76] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
12. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?		
the counterparties will agree as to who provides the trade acknowledgment. **Contents**: Trade acknowledgments are comprised of written or electronic records of a security-based swap transaction sent by one counterparty to the other (Exchange Act rule 15Fi-1(h) [17 CFR 240.15Fi-1(h)]),[71] that disclose all the terms of the transaction (Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)]).[72] **Delivery**: Trade acknowledgments must be provided through electronic means that provide reasonable assurance of delivery and a	signed by both counterparties. EU RTS 149/2013, Recital 26.[77] **EMIR: timely confirmation (timing)** Confirmation is required within two working days if one or both of the parties to the transaction is an NFC- and otherwise within one working day. RTS 149/2013, Article 12. Where a transaction is concluded after 4:00 PM. local time or with a counterparty located in a different time zone which does not allow for confirmation by the set deadline, confirmation shall take place as soon as possible and, at the latest, one business day after the expiration of the confirmation time limit which would otherwise have applied. RTS 149/2013, Article 12(3); ESMA Q&A on EMIR, OTC Answer 4(d).[78] **MiFID** **Responsible parties:** All Investment Firms must provide confirmations to their clients following	The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways: • **Responsible parties**. The timely confirmation requirement under Article 11(1)(a) of EMIR applies equally in respect of both counterparties. The FCA Rules COBS 16A.2.1R and COBS 16A.3.1UK and Article 59 of MiFID Org Reg. require Investment Firms to provide confirmations to their clients following the execution of transactions with those clients. While the requirements under EMIR do not align exactly with the SEC requirements, the EMIR, MiFID, FCA COBS Rules and SEC obligations all promote the same underlying policy goal of providing an agreed confirmation following the execution of a transaction. • **Contents**. ESMA has clarified in the ESMA Q&A on EMIR[79] that compliance with the timely confirmation requirement as defined in RTS 149/2013, requires counterparties to reach a

[71] https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-15Fb6-1.pdf
[72] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[77] See the Introduction regarding the on-going relevance of recitals in EU legislation post-Brexit for interpretative purposes.
[78] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.
[79] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
12. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?		
record of transmittal. Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)].[73] **Timing**: Trade acknowledgments "must be provided promptly, but in any event by the end of the first business day[74] following the day of execution." Exchange Act rule 15Fi-2(b) [17 CFR 240.15Fi-2(b)].[75]	the execution of orders on behalf of such clients (including by executing an order as principal with its client). FCA COBS 16A.2.1R and COBS 16A.3.1UK and Article 59 MiFID Org Reg. **Contents:** An Investment Firm must provide the client with the essential information concerning the execution of orders and to send a notice to the client in a durable medium confirming execution of orders. The confirmation must include: the reporting firm identification; the name or other designation of the client; the trading day; the trading time; the type of order; venue identification; instrument identification; a buy/sell indicator; the nature of the order if other than buy/sell; the quantity; the unit price; the total consideration; information on commissions and expenses charged; the rate of exchange (where relevant); the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not	legally binding agreement as to all the terms of an OTC derivative contract. FCA COBS 16A.2.1R and COBS 16A.3.1UK and Article 59 MiFID Org Reg. require an Investment Firm to confirm a plethora of essential information concerning the execution of that order (including all material terms of the transaction). These requirements are comparable to the requirements of Exchange Act rule 15Fi-2(c) [17 CFR 240.15Fi-2(c)], which requires the trade acknowledgement to disclose all the terms of the transaction. • **Delivery**. Article 11(1)(a) of EMIR requires a confirmation to be provided by electronic means where available. Article 3 MiFID Org Reg. allows for the use of electronic communications where the client provides an email address in order to ensure that the client is reasonably likely to receive the electronic communication. These requirements are comparable to Exchange Act rule 15Fi-2(c) which requires delivery of a trade acknowledgment through electronic means.

[73] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[74] For those purposes: the term "business day" means any day other than a Saturday, Sunday or legal holiday; the term "execution" means the point at which the counterparties become irrevocably bound to a transaction under applicable law; and the term "day of execution" means the calendar day of the counterparty to the security-based swap transaction that ends the latest, with special accommodations for late-afternoon and non-business day transactions. *See* Exchange Act rules 15Fi-1(a), (d) and (e) [17 C.F.R. 240.15Fi-1(a), (d) and (e)].
[75] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
12. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?		
	previously been notified to the client; and, where the client's counterparty was the Investment Firm itself or any person in the Investment Firm's group or another client of the Investment Firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading. In addition, Investment Firms must supply the client, on request, with information about the status of its order. FCA COBS 16A.2.1R, COBS 16A.3.1UK and Article 59 MiFID Org Reg. **Delivery:** This information must be provided to the client in a 'durable medium'. This means any instrument which: (a) enables a client to store information addressed personally to that client in a way accessible for future reference, and (b) allows the unchanged reproduction of the information stored. FCA Glossary defined term 'durable medium'. Investment Firms can use a medium other than on paper only if: (a) the provision of that information in that medium is appropriate to the context in which the business between the Investment Firm and the client is, or is to be, conducted; and (b) the person to whom the information is to be provided, when offered the	• **Timing**. Article 12 of RTS 149/2013 requires counterparties to confirm the terms of each uncleared OTC derivative contract within one or two working days, depending on the nature of the counterparties. Article 59 MiFID Org Reg. requires an Investment Firm to promptly provide the client with a confirmation as soon as possible and no later than the first business day following execution or, where the confirmation is received by the Investment Firm from a third-party, no later than the first business day following receipt of the confirmation from the third-party. These requirements are comparable to the timing requirements set forth in Exchange Act rule 15Fi-2(b), which requires confirmation by the end of the first business day following the day of execution. The CFTC also noted in their Substituted Compliance Decision on Transaction-Level Requirements that the specific timing requirements under EU EMIR and the relevant US rules were comparable. Whilst the UK has now left the EU, the position in the UK remains the same.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
12. What requirements govern the persons responsible for providing trade acknowledgments, confirmations or equivalent records? What requirements govern their contents, delivery and timing?		
	choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium. For this purpose, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Investment Firm and the client is, or is to be, conducted where there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of conducting business shall be treated as such evidence. Article 3 MiFID Org Reg. **Timing:** This information must be provided to the client promptly, meaning as soon as possible and no later than the first business day following execution or, where the confirmation is received by the Investment Firm from a third-party, no later than the first business day following receipt of the confirmation from the third-party. FCA COBS 16A.3.1UK and Article 59 MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
13. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?		
Policies and Procedures: Firms are required to "establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment", regardless of whether the counterparty is also subject to the trade acknowledgment requirement. Exchange Act rule 15Fi-2(d)(1) [17 CFR 240.15Fi-2(d)(1)].[80] **Negative affirmation**: The SEC has clarified that the policies and procedures may rely on a counterparty's "negative affirmation" to the terms of a trade acknowledgment. *See* Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR at 39820 (Jun. 17, 2019) (**Trade**	**EMIR: timely confirmation (policies and procedures) & negative affirmation** Both counterparties must comply with the timely confirmation requirement and the obligations contained in RTS 149/2013 and must agree in advance on the specific process for this compliance. Processes under which documentation is deemed to be finalised and accepted by both parties after a fixed deadline has expired (i.e. negative affirmation) are compliant with RTS 149/2013, provided that both counterparties have agreed in advance to provide for negative affirmation. ESMA Q&A on EMIR, OTC Answer 4(a).[83] FCs and NFCs are also obliged, in relation to uncleared OTC derivative contracts, to have agreed detailed procedures and processes in relation to: (a) the identification, recording and monitoring of disputes relating to the recognition of the contract;[84] and	**Comparability of outcomes**: The timely confirmation requirement under EMIR provides for a comparable regulatory outcome to the SEC trade verification requirements. In particular, both Exchange Act rules 15Fi-1 and 15Fi-2 and RTS 149/2013 require parties to have processes in place to provide trade confirmations and promptly resolve any disputes which may arise in respect of such trade confirmations. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are comparable to analogous SEC requirements in the following ways: • **Negative affirmation.** Both the SEC and ESMA have clarified that negative affirmation is possible, although the ability for counterparties to rely on a negative affirmation under the EMIR Margin RTS

[80] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[83] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.
[84] This requirement has been widely interpreted to include questions as to whether the contract exists and if so, what its terms are.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
13. What requirements govern the substance, policies and procedures, and timing associated with trade verifications?		
Acknowledgment and Verification Adopting Release).[81] **Timing**: Firms must "promptly" verify or dispute the terms of trade acknowledgments they receive. Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)].[82] Exchange Act rule 15Fi-1(i) defines trade verification as "the process by which a trade acknowledgement has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty."	(b) the resolution of disputes in a timely manner, with a specific process for those disputes which are not resolved within five business days. RTS 149/2013, Article 15(1). **EMIR: timely confirmation (timing)** As the timely confirmation obligation under Article 11(1)(a) of EMIR applies equally to both counterparties, the information on timing in question 3 of section 1(e) applies equally in response to question 4 of section 1(e).	is required to be agreed by the counterparties in advance. As noted in the Introduction section above, UK regulators will, and expect counterparties, market participants and stakeholders to, have regard to the ESMA Q&A on EMIR notwithstanding that the UK has now left the EU (see the Approach to EU Non-Legislative Materials produced by each of the PRA and FCA) and thus we would expect the position in the UK relating to negative affirmation to remain the same. • **Timing**. Article 12 of RTS 149/2013 requires parties to confirm the terms of each uncleared OTC derivative contract within one or two working days, depending on the nature of the counterparties. This is comparable to the timing requirements in Exchange Act rule 15Fi-2(d)(2) [17 CFR 240.15Fi-2(d)(2)], which require firms to "promptly" verify or dispute the terms of trade acknowledgments they receive.

[81] The SEC generally would consider negative affirmation policies and procedures reasonable if they require the counterparty to agree to be bound by negative affirmation before or at the time of execution, and provide adequate time after the counterparty receives the trade acknowledgment to dispute its terms or otherwise respond, and adding that the policies and procedures generally should require the entity to document its counterparty's agreement to rely on negative affirmation. Trade Acknowledgment and Verification Adopting Release, 81 FR at 39820. https://www.govinfo.gov/content/pkg/FR-2016-06-17/pdf/2016-13915.pdf

[82] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
14. To what extent are those requirements subject to exceptions with regard to particular types of transactions?		
The trade acknowledgment and verification requirements are subject to exceptions regarding: • Transactions with a clearing agency as counterparty: An exception applies to any "clearing transaction," which is defined as a security-based swap "that has a clearing agency as a direct counterparty." Exchange Act rules 15Fi-1(b), 15Fi-1(c), 15Fi-2(e) [17 CFR 240.15Fi-1(b), (c),[85] 240.15Fi-2(e)];[86] • Transactions on execution facilities: An exception applies to transactions executed on a security-based	The timely confirmation requirement under Article 11(1)(a) of EMIR only applies to uncleared OTC derivative contracts and does not apply to derivative contracts entered into on a regulated market (whether in the UK or in a non-UK market considered as equivalent). Exempt entities under EMIR, as specified in Articles 1(4) and (5) of EMIR, [90] are not subject to these requirements and accordingly, counterparties to such exempt entities are not subject to the Article 11(1)(a) timely confirmation obligation in respect of transactions with these exempt entities.[91] In the context where the Investment Firm deals as principal with its client, it is only not required to provide a confirmation if the confirmation would contain the same information as a confirmation	**<u>Comparability of outcomes</u>**: The exceptions to the timely confirmation obligation under Article 11(1)(a) of EMIR provide a comparable regulatory outcome to the SEC transaction exceptions to the trade acknowledgement and verification rules. In particular, there are comparable exceptions under EMIR and the Exchange Act rules for cleared derivative contracts and derivative contracts entered into on a regulated market. In addition: (1) exemptions from MiFID confirmation requirements implemented under FCA COBS and the MiFID Org Reg exist where the confirmation would be duplicative of a confirmation provided by another party involved in the transaction; and (2) the timing and content of MiFID confirmation may be adjusted as agreed with the client where the client is an ECP.

[85] https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-15Fb6-1.pdf
[86] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8
[90] This includes: (i) the Bank of England and other public bodies in the UK charged with or intervening in the management of the public debt; (ii) the Bank for International Settlements; (iii) the central banks and public bodies charged with or intervening in the management of the public debt in Japan; United States of America; Australia; Canada; Hong Kong; Mexico; Singapore and Switzerland; (iv) certain multilateral development banks, (v) certain public sector entities within the meaning of Article 4(1)(8) of the CRR where they are owned by central governments and have explicit guarantee arrangements provided by central governments; (vi) the European Financial Stability Facility and the European Stability Mechanism; (vii) the European Central Bank, the central bank of a member state, a body in a member state which performs similar functions to members of the FSCB or a body in a member state charged with, or intervening in, the management of public debt; and (viii) the central bank of Iceland or of Norway, a body in Iceland, Norway or Liechtenstein which performs similar functions to members of the ESCB or a body in Iceland, Norway or Liechtenstein charged with, or intervening in, the management of public debt.
[91] OTC Answer 12(g) in the ESMA Q&A on EMIR provides additional guidance on this point. See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
14. To what extent are those requirements subject to exceptions with regard to particular types of transactions?		
swap execution facility or national securities exchange, provided that the facility's rules, procedures or processes provide for the acknowledgment and verification of all terms of the transaction "no later than" the time otherwise required by the rule. Exchange Act rule 15Fi-2(f)(1) [17 CFR 240.15Fi-2(f)(1)];[87] • Transactions accepted for clearing: An exception applies to transactions that are submitted for clearing to a clearing agency, provided: (i) the transaction is submitted "as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment" under the rule; and (ii) the clearing agency's rules, procedures or	that is to be promptly dispatched to the client by another person (e.g. a clearing broker). Investment Firms are permitted to enter into agreements with ECPs to determine the content and timing of the reports required by Article 59 MiFID Org Reg (see above) and reports required relating to holdings of client assets and client money. FCA COBS 16A.3.5UK and Article 61 MiFID Org Reg.	

[87] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
14. To what extent are those requirements subject to exceptions with regard to particular types of transactions?		
processes provide for acknowledgment and verification of all terms of the transaction "prior to or at the same time" the transaction is accepted for clearing. Exchange Act rule 15Fi-2(f)(2) [17 CFR 240.15Fi-2(f)(2)];[88] and • Additional provisions for transactions that have not been acknowledged, verified or accepted for clearing: If a firm receives notice that a transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of an execution facility or exchange, or accepted for clearing by a clearing agency (per the above exceptions), the firm must comply with the applicable trade acknowledgment and verification requirements "as		

[88] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Trade Acknowledgement and Verification Requirements		
14. To what extent are those requirements subject to exceptions with regard to particular types of transactions?		
if" the transaction were executed at the time it receives the notice. Exchange Act rule 15Fi-2(f)(3) [17 CFR 240.15Fi-2(f)(3)].[89]		

[89] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fi_62&rgn=div8

f. Subcategory: Risk Mitigation Requirements

Registered entities are required to take steps to identify and resolve discrepancies in transaction terms and valuations, reduce offsetting or redundant security-based swaps, and document their trading relationships in order to mitigate market, credit, operational and legal risks by, *inter alia*, increasing the likelihood that parties (i) remain in agreement with existing material terms, and (ii) identify problems with parties' internal valuation systems, models or internal controls. SEC Guidance at Category I.F;[92] *see* Exchange Act Release No. 87782 (Dec. 18, 2019) at 10-11 (**Risk Mitigation Adopting Release**).[93]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**UK Requirement and/or Policy Goal Summary**	**Comparability Assessment**
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
Portfolio reconciliation requirements do not apply to cleared security-based swaps. Exchange Act rule 15Fi-3(d) [17 CFR 240.15Fi-3(d)].[94] Firms are required to take the following actions to engage in portfolio reconciliation with their counterparties: 1. Portfolios and security-based swap transactions with counterparties that are dealers or participants:	**EMIR: portfolio reconciliation** FCs and NFCs to an OTC derivative contract not cleared by a CCP are required to establish formalised processes which are robust, resilient and auditable in order to reconcile portfolios. EMIR, Article 11(1)(b). FCs and NFCs to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios should be reconciled before entering into that OTC derivative contract. RTS 149/2013, Article 13(1). This reconciliation shall be performed by the counterparties to the OTC derivative contract or by a qualified third-party duly mandated to this effect by a counterparty (for example, a third-	**Comparability of outcomes**: The UK reconciliation and dispute resolution requirements provide a similar regulatory outcome to the corresponding SEC requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-3 and Articles 13 and 15 of RTS 149/2013 are consistent, in that each require parties to agree to develop procedures to comply with extensive reconciliation requirements tailored to the type of firm at issue, in order to identify and resolve any discrepancies or disputes between counterparties regarding the valuation of the transaction in a timely manner. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, both the UK and SEC rules are aimed at achieving a process in which overall risk can be identified and reduced.

[92] https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf
[93] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf
[94] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
– The two counterparties must engage in portfolio reconciliation in the manner specified in paragraph (a) to Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3];[95] – Firms must establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation for transactions with all other counterparties in the manner set forth in paragraph (b) to Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3];[96]	party service provider). It shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract in accordance with Article 11(2) of EMIR. RTS 149/2013, Article 13(2). In addition to the valuation attributed to each contract, key trade terms may also include other relevant details such as the effective date, the notional value of the contract and currency of the transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates. EU RTS 149/2013, Recital 28.[109] Reconciliation shall be performed: (a) for an FC or NFC+: (i) On each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; (ii) Once per week when the counterparties have between fifty-one and 499 OTC derivative contracts outstanding with	While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below UK requirements are comparable to analogous SEC requirements in the following ways: • **General reconciliation requirement framework**. Article 13(1) of RTS 149/2013 provides that FCs and NFCs to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of their counterparties on the arrangements under which portfolios should be reconciled before entering into that OTC derivative contract. Under Article 13(2) of RTS 149/2013, the reconciliation shall cover key trade terms that identify each particular OTC derivative contract and shall include at least the valuation attributed to each contract. These requirements

[95] https://www.sec.gov/rules/final/2019/34-87782.pdf
[96] https://www.sec.gov/rules/final/2019/34-87782.pdf
[109] See the Introduction regarding the on-going relevance of recitals in EU legislation post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
– Rule 15Fi-3(a) and (b) address the potential use of third-party service providers to perform the reconciliations, and require firms to agree in writing on the terms of portfolio reconciliation with their counterparties. Exchange Act rule 15Fi-3(a), (b) [17 CFR 240.15Fi-3(a), (b)];[97] – Portfolio reconciliation must be performed no less frequently than once per business day for portfolios that include 500 or more security-based swaps, once each week for portfolios that include more	each other at any time during the week; and (iii) Once per quarter when the counterparties have fifty or less OTC derivative contracts outstanding with each other at any time during the quarter. (b) for a NFC-: (i) Once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter; or (ii) Once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other. RTS 149/2013, Article 13(3). **<u>EMIR: dispute resolution</u>** FCs and NFCs to an OTC derivative contract not cleared by a CCP are also required to establish formalised processes which are robust, resilient	are comparable to the portfolio reconciliation requirements in Exchange Act rule 15Fi-3. • **Policies and procedures**. Article 11(1)(b) of EMIR requires that FCs and NFCs to an OTC derivative contract not cleared by a CCP establish formalized processes which are robust, resilient and auditable, in order to reconcile portfolios. This requirement is comparable to Exchange Act rule 15Fi-3. • **Third-party service providers**. Article 13(2) of RTS 149/2013 prescribes that reconciliation shall be performed by the counterparties to the OTC derivative contract with each other or by a qualified third-party duly mandated to this effect by a counterparty. This requirement is comparable to Exchange Act rules 15Fi-3(a) and 15Fi-3(b). • **Frequency**. Article 13(3) of RTS 149/2013 sets out the frequency with which reconciliation be performed for FCs and NFCs. These frequency requirements are comparable to those set out in Exchange Act rules 15Fi-3(a)(3) and 15Fi-3(b)(3).

[97] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
than fifty security-based swaps, and once each calendar quarter for portfolios that include no more than fifty security-based swaps at any time during the quarter. Exchange Act rule 15Fi-3(a)(3) [17 CFR 240.15Fi-3(a)(3)];[98] – Firms must resolve discrepancies in material terms[99] immediately. Exchange Act rule 15Fi-3(a)(4) [17 CFR 240.15Fi-3(a)(4)];[100] – Firms must establish, maintain and follow written policies and	and auditable in order to identify disputes early and resolve them. EMIR, Article 11(1)(b). In relation to uncleared OTC derivative contracts, RTS 149/2013 requires FCs and NFCs to have agreed detailed procedures and processes in relation to: (a) the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract (recording at least the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed); and (b) the resolution of disputes in a timely manner, with a specific process for those disputes that are not resolved within five business days. RTS 149/2013, Article 15(1). FCs shall report to the FCA any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or value higher than EUR 15 million and outstanding for at least fifteen business days.	• **Resolving discrepancies**. Article 15(1) of RTS 149/2013 requires parties to agree to detailed procedures and processes to identify, record, monitor and resolve disputes relating to the recognition or valuation of the contract. This requirement is comparable to Exchange Act rules 15Fi-3(a)(5), 15Fi-3(c) and 15Fi-3(b)(4). • **Regulator notification**. Article 15 of RTS 149/2013 requires FCs to report to the FCA any disputes between counterparties relating to an OTC derivative contract, its valuation or the exchange of collateral for an amount or value higher than EUR 15 million and outstanding for at least fifteen business days. While the equivalent requirement under Exchange Act rules 15Fi-3(a)(5) and 15Fi-3(c) is slightly different, in that firms must notify the SEC and any applicable prudential regulator of valuation disputes in excess of $20 million if not resolved within a specified period of time, we note that in the CFTC Substituted Compliance Decision on Transaction-Level Requirements the CFTC acknowledged this discrepancy and nonetheless considered that the

[98] https://www.sec.gov/rules/final/2019/34-87782.pdf
[99] In this context, and in the same context where the counterparties are not dealers or participants, a "material term" includes the terms required to be reported to security-based swap data repositories or the SEC pursuant to Regulation SBSR rule 901, and excludes terms that are not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap. 17 CFR 242.901; *see* Exchange Act rule 15Fi-1(i) [17 CFR 240.15Fi-1(i)].
[100] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
procedures reasonably designed to resolve valuation discrepancies of 10% or more as soon as possible but in any event within five business days.[101] Exchange Act rule 15Fi-3(a)(5), (c) [17 CFR 240.15Fi-3(a)(5), (c)];[102] and – Firms must promptly notify the SEC and any applicable prudential regulation regarding valuation disputes, at the transaction or portfolio level, in excess of $20 million, if not resolved within a specified period of time. Exchange Act rule 15Fi-3(a)(5), (c)	RTS 149/2013, Article 15(2). As a minimum, FCs are expected to make a monthly notification of any disputes outstanding in the preceding month. ESMA Q&A on EMIR, OTC Answer 13(d).[110]	EU and relevant US requirements were comparable. Whilst the UK has now left the EU, the position in the UK remains the same. Overall, in the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EU EMIR portfolio reconciliation requirements were "[g]enerally identical in intent" and further "comparable to and as comprehensive as the portfolio reconciliation requirements of Commission regulation 23.502". Whilst the UK has now left the EU, the position in the UK remains the same.

[101] Provided that the firm has procedures to identify how it will comply with applicable variation margin requirements pending resolution of the discrepancy.
[102] https://www.sec.gov/rules/final/2019/34-87782.pdf
[110] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
[17 CFR 240.15Fi-3(a)(5), (c)].[103] Firms must report such valuation disputes within three business days, and must provide amended notices if the amount of any valuation dispute that was the subject of a previous notice increases or decreases by more than $20 million at the transaction or portfolio level. Exchange Act rules 15Fi-3(c)(1), (2) [17 CFR 240.15Fi-3(c)(1), (2)].[104] 2. Portfolios and security-based swap transactions with counterparties that		

[103] https://www.sec.gov/rules/final/2019/34-87782.pdf
[104] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
are not dealers or participants: – Timing: Portfolio reconciliation must be performed no less frequently than once each calendar quarter for portfolios that include no more than 100 security-based swaps at any time during the quarter, and once annually for portfolios that include no more than 100 security-based swaps at any time during the calendar year. Exchange Act rule 15Fi-3(b)(3) [17 CFR 240.15Fi-3(b)(3)];[105] – Firms must resolve discrepancies in the		

[105] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
material terms or valuation of security-based swaps, and must establish, maintain and follow written procedures reasonably designed to resolve discrepancies in valuation (of 10% or less) or in the material terms of security-based swaps in a timely fashion. Exchange Act rule 15Fi-3(b)(4) [17 CFR 240.15Fi-3(b)(4)];[106] and – Firms must promptly notify the SEC and any applicable prudential regulation regarding security-based swap valuation disputes, at the transaction or		

[106] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
15. To what extent are parties to transactions required to reconcile transaction terms and valuation discrepancies?		
portfolio level, in excess of $20 million, if not resolved within a specified period of time. Exchange Act rule 15Fi-3 [17 CFR 240.15Fi-3].[107] Firms must report such valuation disputes within five business days, and must provide amended notices if the amount of any valuation dispute that was the subject of a previous notice increases or decreases by more than $20 million. Exchange Act rule 15Fi-3(c)(1), (2) [17 CFR 240.15Fi-3(c)(1), (2)].[108]		

[107] https://www.sec.gov/rules/final/2019/34-87782.pdf
[108] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
16. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?		
Portfolio compression Firms must establish, maintain and follow written policies and procedures addressing bilateral offset, bilateral compression and multilateral compression. For counterparties that are dealers or participants, Exchange Act rule 15Fi-4(a) addresses bilateral offset, bilateral compression and multilateral compression requirements. Exchange Act rule 15Fi-4(a) [17 CFR 240.15Fi-4(a)].[111] Compression rules do not apply to cleared security-based swaps. Exchange Act rule 15Fi-4(c) [17 CFR 240.15Fi-4(c)].[112] Compression rules may reduce a market participant's "gross exposure to its direct counterparties," and may provide "important operational	**EMIR: portfolio compression** FCs and NFCs to an OTC derivative contract not cleared by a CCP are required to establish formalised processes which are robust, resilient and auditable to manage the risk associated with portfolios. EMIR, Article 11(1)(b). FCs and NFCs with 500 or more uncleared OTC derivative contracts outstanding with a counterparty shall have in place procedures to regularly and, at least twice a year, analyse the possibility of a portfolio compression exercise in order to decrease counterparty risk and either: (i) engage in such an exercise; or (ii) be able to provide a reasonable and valid explanation to the relevant competent authority if they conclude such exercise is not appropriate. RTS 149/2013, Article 14.	**Comparability of outcomes**: The UK portfolio compression requirements provide a similar regulatory outcome to the SEC portfolio compression requirements. In particular, the regulatory outcomes pursued under Exchange Act rules 15Fi-4 and Article 14 of RTS 149/2013 are consistent, in that each require regular determinations of whether portfolio compression is appropriate and policies and procedures to be put in place to engage in such exercise. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are comparable to analogous SEC requirements in the following ways: • **Policies and Procedures**. Pursuant to the Article 11(1)(b) of EMIR requirement that parties to an

[111] https://www.sec.gov/rules/final/2019/34-87782.pdf
[112] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
16. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?		
benefits and efficiencies for market participants . . . .” Risk Mitigation Adopting Release at 12-13.[113]		OTC derivative contract not cleared by a CCP establish formalized risk management processes, Article 14 of RTS 149/2013 provides that FCs and NFCs with 500 or more uncleared OTC derivative contracts outstanding with a counterparty shall have procedures in place to regularly and, at least twice a year, analyze the possibility of a portfolio compression exercise in order to decrease counterparty risk and either: (i) engage in such an exercise; or (ii) be able to provide a reasonable and valid explanation to the relevant competent authority if they conclude such exercise is not appropriate. This requirement is comparable to the policies and procedures required by Exchange Act rule 15Fi-4(a) to be put into place to analyze and effect compression. • **Applicability**. The portfolio compression rules created pursuant to Article 11(1)(b) of EMIR only apply to parties to an OTC derivative contract not cleared by a CCP. This is comparable to Exchange Act rule 15Fi-4(c). • In the CFTC Substituted Compliance Decision on Transaction-Level Requirements, the CFTC found that the EU EMIR portfolio compression

[113] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
16. To what extent are parties to transactions required to engage in bilateral offset, bilateral or multilateral compression, or similar exercises to reduce offsetting or redundant instruments?		
		requirements were "[g]enerally identical in intent" and further "comparable to and as comprehensive as the portfolio compression requirements of Commission regulation 23.503". Whilst the UK has now left the EU, the position in the UK remains the same.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
17. To what extent are parties to transactions required to document the terms of their trading relationships?		
Except for pre-existing security-based swaps, cleared security-based swaps, or certain security-based swaps executed anonymously on a national securities exchange or security-based swap execution facility, firms must establish, maintain and follow policies and procedures reasonably designed to ensure that they execute written security-based swap trading relationship documentation with each of their	**MiFID requirements** Counterparties must be classified as retail clients, professional clients, and eligible counterparties, and corresponding different conduct of business rules apply. Investment Firms have to correctly categorize clients and notify those clients of their classification; furthermore, Investment Firms should be able to demonstrate the correctness of the classification. FCA COBS 3.3-3.7 and Article 45 MiFID Org Reg. An Investment Firm must establish a record that includes the document or documents agreed	**Comparability of outcomes**: The UK documentation requirements applicable to OTC derivatives trading relationships provide a similar regulatory outcome to the SEC trading relationship documentation requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fi-5, EMIR, the MiFID Org Reg, and FCA COBS 3.3-3.7 Rules are consistent in that each provide for documentation requirements in order to mitigate the risks associated with entering into transactions. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
17. To what extent are parties to transactions required to document the terms of their trading relationships?		
counterparties prior to, or contemporaneously with, executing a security-based swap. Exchange Act rule 15Fi-5(a)(1), (2), (b)(1)-(3) [17 CFR 240.15Fi-5(a)(1), (2), (b)(1)-(3)].[114] These requirements should: – promote sound collateral and risk management practices; – reduce counterparty credit risk; and – promote certainty regarding the agreed-upon valuation and other material terms of a security-based swap. Risk Mitigation Adopting Release at 14.[115]	between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. FCA COBS 8A.1.9R. This must be in writing and on paper or another durable medium. FCA COBS 8A.1.4UK and Article 58 MiFID Org Reg. In practice, Investment Firms meet this obligation through their standard client-facing terms of business (addressing client protection requirements amongst other things), in combination with derivatives master agreements and related collateral documentation where appropriate. An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. FCA COBS 16A.2.1R, COBS 16A.3.1UK and Article 59 MiFID Org Reg.	in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below UK requirements are comparable to analogous SEC requirements in the following ways: • **Creation of trading records**. FCA COBS 8A.1.9R requires an Investment Firm to establish a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. FCA COBS 16A.2.1R, COBS 16A.3.1UK and Article 59 MiFID Org Reg. require an Investment Firm that has carried out an order on behalf of a client, other than for portfolio management (which means the provision of discretionary investment management), to promptly provide the client a confirmation, in a durable medium, with the essential information concerning the execution of that order. Articles 74 and 75 MiFID Org Reg. require Investment Firms to keep detailed records

[114] https://www.sec.gov/rules/final/2019/34-87782.pdf
[115] https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
17. To what extent are parties to transactions required to document the terms of their trading relationships?		
Where both counterparties are dealers or financial counterparties,[116] or upon counterparty request – documentation must include: – Written documentation regarding the process for determining the value of security-based swaps for purposes of complying with margin and risk management requirements. Exchange Act rule 15Fi-5(b)(4) [17 CFR 240.15Fi-5(b)(4)];[117] – Information regarding the status of the dealer or its counterparty, as an	Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. The responsibilities of this function must include to: establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Investment Firm's systems, internal control mechanisms and arrangements; issue recommendations based on the result of this work and verify compliance with those recommendations; and report to senior management in relation to internal audit matters. PRA Compliance and Internal Audit Rule 3.1A, Article 24 MiFID Org Reg. **<u>EMIR: netting and collateral agreements</u>** FCs and NFCs subject to the margin requirement will generally be required to enter into netting agreements and exchange collateral agreements, at the latest, at the moment in which a non-	in relation to every client order and decision to deal, and every client order executed or transmitted. These requirements are comparable to Exchange Act rules 15Fi-5(a) and 15Fi-5(b). • Article 24 MiFID Org Reg. and PRA Compliance and Internal Audit Rule 3.1A require Investment Firms, where appropriate and proportionate, to establish an internal audit function, the remit of which includes reviewing the effectiveness of internal controls – these internal controls would normally include, among other matters, the Investment Firm's documentation policies and procedures. These requirements are comparable to Exchange Act rules 15Fi-5. • **Required terms**: Article 2(2)(g) of the EMIR Margin RTS requires, at a minimum, that the terms of all necessary agreement (including as relevant the terms of any netting or collateral agreements) document, *inter alia*, payment obligations, the conditions for netting, termination events and the transfer of rights and obligations upon termination. These requirements are comparable to the trading relationship

[116] For those purposes, the term "financial counterparty" includes swap dealers, major swap participants, certain commodity pools, private funds and employee benefit plans, and persons predominately engaged in activities that are in the business of banking or that are financial in nature. Exchange Act rule 15Fi-1(g) [17 CFR 240.15Fi-1(g)].
[117] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
17. To what extent are parties to transactions required to document the terms of their trading relationships?		
insured financial institution or financial company. Exchange Act rule 15Fi-5(b)(5) [17 CFR 240.15Fi-5(b)(5)];[118] and – Information regarding security-based swaps that have been accepted for clearing. Exchange Act rule 15Fi-5(b)(6) [17 CFR 240.15Fi-5(b)(6)].[119] Firms must have an independent audit of their documentation policies and procedures. Exchange Act rule 15Fi-5 [17 CFR 240.15Fi-5].[120] Trading relationship documentation must address, in part: payment obligations,	centrally cleared OTC derivative contract is concluded, as further detailed in question 2 of section 1(c) above. The terms of all necessary agreements (including, as relevant, the terms of any netting agreement and any exchange of collateral agreement) must document (at least): (a) any payment obligations arising between counterparties; (b) the conditions for netting payment obligations; (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts; (d) all calculation methods used in relation to payment obligations; (e) the conditions for netting payment obligations upon termination; (f) the transfer of rights and obligations upon termination; and (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts. EMIR Margin RTS, Article 2(2)(g). **EMIR: dispute resolution** FCs and NFCs are required to agree on detailed written procedures and processes to identify, record, monitor and resolve disputes, in	documentation requirements under Exchange Act rules 15Fi-5(a)(1) and (b)(1)-(2).

[118] https://www.sec.gov/rules/final/2019/34-87782.pdf
[119] https://www.sec.gov/rules/final/2019/34-87782.pdf
[120] https://www.sec.gov/rules/final/2019/34-87782.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Risk Mitigation Requirements		
17. To what extent are parties to transactions required to document the terms of their trading relationships?		
netting, termination events, termination obligations, transfer of rights and obligations, governing law, valuation, dispute resolution, trade acknowledgments and verifications, and credit support arrangements. Exchange Act rules 15Fi-5(a)(1), (b)(1)-(3) [17 CFR 240.15Fi-5(a)(1), (b)(1)-(3)].[121]	particular in relation to the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract and to the exchange of collateral, as further detailed in question 1 of section 1(f). EMIR, Article 11(1)(b) and RTS 149/2013, Article 15(1). **EMIR: portfolio reconciliation** FCs and NFCs are obliged to agree on procedures for, and carry out, portfolio reconciliation to identify any discrepancies at an early stage. The reconciliation process is required to be agreed in writing or other equivalent electronic means and cover the key trade terms (including, at least, valuation). Further details are provided in question 1 of section 1(f). EMIR, Article 11(1)(b) and RTS 149/2013, Article 13.	

2. Category: Recordkeeping and Reporting Requirements[122]

a. Executive Summary

The recordkeeping and reporting requirements provide for records, reports and notices to facilitate the SEC's oversight of registrants, by enabling SEC access to key information in connection with the SEC's obligation to protect the integrity of the security-based swap market and to

[121] https://www.sec.gov/rules/final/2019/34-87782.pdf

[122] To date, the SEC has not yet issued guidance regarding substituted compliance determinations concerning trade reporting and public dissemination. We further note that the SEC has issued limited four-year no-action relief when complying with certain CFTC reporting and dissemination requirements. The working group will monitor the situation in light of these factors, and may support a substituted compliance determination on these topics at a later time.

protect market participants. The recordkeeping and reporting requirements also include quarterly securities count practices intended to help guard against deficiencies in firms' internal controls.

When considering substituted compliance in connection with recordkeeping and reporting requirements, the SEC intends to consider whether "the foreign financial regulatory system's required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports" are comparable to applicable Exchange Act provisions and underlying rules, as well as whether the foreign regulatory system "would permit the [SEC] to examine and inspect regulated firms' compliance with the applicable securities laws." Exchange Act rule 3a71-6(d)(6) [17 CFR 240.3a71-6(d)(6)].[123]

b. Subcategory: Record Creation

Registered firms must keep applicable books and records in the form and manner, and for the period, prescribed by the SEC, and keep those books and records open to inspection and examination by SEC representatives. Exchange Act section 15F(f)(1)(B), (C) [15 U.S.C. 78o-10(f)(1)(B), (C)];[124] and Exchange Act Release No. 87005 (Sep. 19, 2019) (**Books and Records Adopting Release**).[125]

The record creation requirements vary depending on whether the firm at issue has a prudential regulator.[126] For firms that have a prudential regulator, the recordkeeping requirements specifically apply to the firm's business as a dealer. Exchange Act section 15F(f)(1)(B) [15 U.S.C. 78o-10(f)(1)(B)].[127]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
Recordkeeping Firms must maintain daily trading records (including records of each counterparty) of security-based swaps, and related records and recorded communications.	**Recordkeeping** **<u>Threshold Conditions</u>** The Threshold Conditions require UK Firms to be capable of being effectively supervised by the FCA and, for Dual-Regulated Firms, the PRA, and to	**<u>Comparability of outcomes:</u>** The UK transaction recordkeeping requirements provide for a comparable regulatory outcome to the SEC transaction recordkeeping requirements. In particular, the regulatory outcomes pursued under

[123] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[124] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[125] http://www.cecouncil.org/media/266640/sec-release-no-34-87005.pdf
[126] Commodity Exchange Act section 1a(39) [7 U.S.C. 1a(39)] defines "prudential regulator", and is incorporated by reference by Exchange Act section 3(a)(74) [15 U.S.C. 78c(a)(74)].
[127] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
Firms must maintain a complete audit trail for trade reconstructions. Exchange Act section 15F(g) [15 U.S.C. 78o-10(g)].[128] Records to be created include:	have appropriate non-financial resources, which includes in relation to systems and controls for maintaining records to enable this supervision to be conducted (as appropriate to the particular UK Firm, and accounting for its group context).[129] Threshold Conditions at paragraphs 2C, 2D, 3B, 3C, 5D and 5F. **PRA Fundamental Rules and FCA Principles** A UK Firm must conduct its business with due skill, care and diligence take reasonable care to organise and control its affairs responsibly and effectively. In practice, this will require UK Firms to maintain adequate records and record-keeping systems. PRA Fundamental Rules 2 and 6 and FCA PRIN 2.1.1.R(2) and (3). **PRA Rules & FCA Rules** Investment Firms are required to arrange for records to be kept of all services and transactions undertaken which must be sufficient to enable the relevant regulator to fulfil its supervisory tasks and to perform enforcement actions under the UK regulatory system (including MiFID, MiFIR and MAR), and in particular to ascertain that an	Exchange Act section 15F(g) and the corresponding UK regulatory requirements are consistent in that each requires firms to record and maintain a variety of transaction and counterparty records to facilitate regulatory oversight and enforcement. *See* Threshold Conditions at paragraphs 2C, 2D, 3B, 3C, 5D and 5F, PRA Fundamental Rules 2 and 6 and FCA PRIN 2.1.1.R(2) and (3), PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR (requiring recordkeeping to enable regulatory supervision and enforcement). While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below UK requirements are comparable to analogous SEC requirements in the following ways:

[128] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[129] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
	Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR.	
Trade blotters: Blotters or other records of original entry containing an itemized daily record of purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash and other debits and credits, as well as additional information such as account-related information and information regarding security-based swaps (e.g., type, reference security, unique transaction identifier, and counterparty identifier). **Exchange Act rule 18a-5(a)(1) [17 CFR 240.18a-5(a)(1)]**[130] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(1) [17 CFR 240.18a-*	**Trade blotters**: Investment Firms are required to keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. Investment Firms are required to retain, and make accessible to the PRA and the FCA, precise information in relation to client orders, decisions to deal, transactions and order processing. Records cover matters such as the name and designation of the client or any person acting on the client's behalf, instrument identification, and a broad range of transaction detail (date and time, quantity, price, currency, order type etc.). These are granular information requirements which allow the regulator to reconstitute each key stage of processing a transaction. Annex IV MiFID Org Reg. Investment Firms are required to keep the relevant data relating to all transactions in	**Trade blotters**: The trade information that must be recorded in accordance with Articles 74 and 75 MiFID Org Reg. and Annex IV MiFID Org Reg. and the FCA SYSC requirements is comparable to the trade information that must be recorded pursuant to Exchange Act rules 18a-5(a)(1) and 18a-5(b)(1).

[130] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
5(b)(1)][131] *(with a prudential regulator)*;	financial instruments which they have carried out, whether on their own account or on behalf of a client. Article 25(1) MiFIR. Investment Firms are required to record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). FCA SYSC 10A.1.6R, 10A.1.8R and Article 76 MiFID Org Reg.	
Trade confirmations: Copies of purchase and sale confirmations for securities other than security-based swaps, and copies of trade acknowledgments and verifications for security-based swaps. **Exchange Act rule 18a-5(a)(6) [17 CFR 240.18a-5(a)(6)]**[132] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(6) [17 CFR 240.18a-*	**Trade confirmations**: An Investment Firm that has carried out an order on behalf of a client (including by executing an order as principal with its client) must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order and send a notice to the client in a durable medium confirming execution of the order. In addition, Investment Firms must supply the client, on request, with information about the status of its order. FCA COBS 16A.2.1 R, COBS 16A.3.1UK and Article 59 MiFID Org Reg. The information provided forms part of the records that must be kept in order to satisfy an	**Trade confirmations**: The record retention schedules under Article 9(2) of EMIR specify how long counterparties must keep a record of any derivative contract they have concluded and any modification thereto. Article 25(1) MiFIR requires Investment Firms to keep the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client. FCA COBS 8A.1.9R requires an Investment Firm to establish a record that includes the document or documents agreed between the firm and the client that set out the rights and obligations of the parties. FCA COBS

[131] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[132] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
5(b)(6)][133] *(with a prudential regulator)*; and	Investment Firm's general recordkeeping obligations. FCA SYSC 9.1.1AR. FCs and NFCs are required to confirm the terms of each uncleared OTC derivative contract in a timely manner and by electronic means where available. EMIR, Article 11(1)(a). Counterparties (including FCs and NFCs) must keep a record of any derivative contract they have concluded and any modification. Article 9(2) EMIR. Investment Firms are required to establish a record that includes the document or documents agreed between an Investment Firm and a client that set out the rights and obligations of the parties, and the other terms on which an Investment Firm will provide services to a client. FCA COBS 8A.1.9R.	16A.2.1 R, COBS 16A.3.1UK and Article 59 MiFID Org Reg require an Investment Firm to provide the client with a trade confirmation and, on request, with information about the status of the client's order. These requirements are comparable to the requirements applicable to trade confirmations, acknowledgements and verifications in Exchange Act rules 18a-5(a)(6) and 18a-5(b)(6).
Counterparty information: For each security-based swap account, a record of the counterparty's unique identification code, name and address, and of the authorization for each person with authority to transact on behalf of the	**Counterparty information**: For transactions carried out on behalf of clients, the records must contain all the information and details of the identity of the client, and the information required under the laws on the prevention of the use of the financial system for	**Counterparty information**: Article 25(1) MiFIR requires that the records must contain all the information and details of the identity of the client. This requirement is comparable to the counterparty information requirements of Exchange Act rules 18a-5(a)(7) and 18a-5(b)(7).

[133] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
counterparty. **Exchange Act rule 18a-5(a)(7) [17 CFR 240.18a-5(a)(7)][134] (without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(7) [17 CFR 240.18a-5(b)(7)][135] (with a prudential regulator)*.	the purpose of money laundering. Article 25(1) MiFIR. Various types of counterparty information must be collected as part of a CRR Firm's customer due diligence including, for example, with regards to the customer's identity, its beneficial owner and the purpose and intended nature of the business relationship. Regulations 28-30 MLR 2017. It must be verified that any person purporting to act on behalf of the customer is duly authorised and identify and verify the identity of that person. Regulation 28(10) and (18) MLR 2017. In the UK, leading financial services trade associations form part of the Joint Money-Laundering Steering Group (**JMLSG**), which produces guidance regarding anti-money laundering (**AML**) and counter-terrorist financing (**CTF**) matters, with a view to, among other things, assisting firms interpret the applicable AML and CTF legal and regulatory requirements, and explain how they may be implemented in practice; and indicate good industry practice in AML and CTF procedures through a proportionate, risk-based approach. The guidance	

[134] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[135] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
1. What records are firms required to make with regard to their transactions and other activities?		
	provides an indication of what the courts and the UK AML and CTF supervisors (including the FCA) expect of firms and has been endorsed by the FCA (FCA FCG 3.1.7). Part 1 Chapter 5 of the JMLSG guidance provides further guidance regarding customer due diligence measures. Investment Firms must collect a variety of information regarding their clients. Examples include information regarding customers in order to conduct suitability (for investment advice) and appropriateness (for product types) assessments, where relevant. This includes information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service and that person's financial situation including his ability to bear losses. FCA COBS 9A.2.1R. (Investment Firms are entitled to assume that these criteria are met for professional clients in relation to appropriateness and for certain types of professional clients in relation to suitability).	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
Records to be created:	An Investment Firm must arrange for records to be kept of all services and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to perform enforcement actions under the UK regulatory system (including MiFID, MiFIR and MAR), and in particular to ascertain that the Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR. The provisions referenced below in response to this question and in response to the question set forth in section 2.b.1 above apply to transactions in securities, security-based swaps and options positions, whether verified or not.	**Comparability of outcomes**: The UK position and liability recordkeeping requirements provide for a comparable regulatory outcome to the SEC position and liability recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of records about positions and financial liabilities to facilitate regulatory oversight and enforcement and to promote the integrity of the market. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The UK requirements are comparable to analogous SEC requirements in that both require firms to record and maintain information on securities identifiers, positions and counterparties, etc. We note that the two regimes are different in respect of trial balances (see below).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
Ledgers: • **Ledgers or other records reflecting assets and liabilities, income and expense and capital accounts. Exchange Act rule 18a-5(a)(2) [17 CFR 240.18a-5(a)(2)]**;[136]	**Ledgers**: • Investment Firms must assess their internal capital adequacy to ensure that they have in place sound, effective and comprehensive strategies and processes to assess and maintain, on an on-going basis, the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed. FCA IFPRU 2.2.7R(1) and PRA Internal Capital Adequacy Assessment Rule 3.1. In practice, this will require the maintenance of full records of the Investment Firm's assets, liabilities, income and expense and capital accounts to be maintained on an on-going basis. • Investment Firms must introduce organisational arrangements to minimise the risk of the loss or diminution of client money and clients' safe custody assets, or of rights in connection with client money and assets, as a result of misuse of client money and assets, fraud, poor administration, inadequate record-keeping or negligence. Investment	

[136] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
	Firms must: (a) ensure the segregation of client money and assets from those of the Investment Firm; (b) maintain detailed, up-to-date and accurate accounts and records distinguishing client money and assets from those of the Investment Firm (these accounts and records must be sufficient to establish an audit trail); and (c) conduct regular reconciliations between their accounts and records and those accounts and records of any third-parties with whom client money or assets may be held. FCA CASS 6.2.2R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R and 7.15.21G.[137] • Please also refer to the provisions referenced in response to the question set forth in section 2.b.4 below, which set out the UK record-keeping requirements regarding the control of customer funds and securities. • An Investment Firm must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held	

[137] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
	for the account of its clients at the CCP. Article 39(4) EMIR.	
Securities records or ledgers: • For securities other than security-based swaps, this includes information regarding long or short positions, location-related information and account-related information. For security-based swaps, this includes information such as the reference security, transaction and counterparty identifiers, whether the position is bought or sold, and clearing-related information. For dealers with a prudential regulator, the requirement extends only to security-based swaps and securities positions related to the firm's business as a dealer**. Exchange Act rule 18a-5(a)(4) [17 CFR 240.18a-**	**Securities records or ledgers**: • CRR Firms must monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. In practice, this will require that CRR Firms have a record of their long and short positions to enable these to be monitored. • Please also refer to the provisions referenced in response to the question set forth in section 2.b.1 above, which also require firms to establish records of their positions.	-

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
5(a)(4)][138] (without a prudential regulator); and *Exchange Act rule 18a-5(b)(3) [17 CFR 240.18a-5(b)(3)][139] (with a prudential regulator)*;		
Trial balances: **A record of the proof of money balances of all ledger accounts in the form of trial balances and certain records relating to the computation of aggregate indebtedness and net capital under the net capital rule. This requirement applies only to dealers without a prudential regulator. Exchange Act rule 18a-5(a)(9) [17 CFR 240.18a-5(a)(9)];[140]**	**Trial balances**: Please refer to the response above in this section 2.b.2 in respect of Ledgers.	• **Trial balances**. The US regime requires maintaining records of trial balances under Exchange Act rule 18a-5(a)(9). The UK regime does not have this specific requirement. It does, however, in practice require firms to maintain records of the inputs for their capital calculations, and therefore these requirements are comparable in outcome.
Current exposure calculation:	**Current exposure calculation**:	-

[138] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[139] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[140] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
• **A record of daily calculations of current exposure and the initial margin amount for each account, consistent with the relevant capital rule. This provision applies only to dealers without a prudential regulator. Exchange Act rule 18a-5(a)(12) [17 CFR 240.18a-5(a)(12)];**[141]	• Investment Firms must have in place clearly defined policies and procedures for the active management of trading book positions and must set and monitor position limits for trading book positions. Articles 103 and 103(b)(ii) CRR. • Investment Firms must revalue their trading book positions at least daily. Article 105(3) CRR. • Investment Firms revaluation of trading book positions must account for valuation adjustments, including close-out costs and early termination. Article 105(10) CRR. • Segregated regulatory initial margin will be treated as client money (cash collateral) or client assets (non-cash collateral) and so will be recorded in the client money and client asset records referenced above in respect of "Trial balances".	
Non-verified security-based swaps: • Records of each security-based swap that has not	The provisions referenced above in response to this question and in response to the question set forth in section 2.b.1 above apply to transactions	-

[141] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
been verified, including transaction and counterparty identifiers. **Exchange Act rule 18a-5(a)(15) [17 CFR 240.18a-5(a)(15)][142] (without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(11) [17 CFR 240.18a-5(b)(11)][143] (with a prudential regulator)*; and **Records of options positions**: • **A record of all options in which the firm has a direct or indirect interest or that the firm has granted or guaranteed, containing at least the security identification and the number of units involved. This requirement applies only to dealers without a prudential regulator. Exchange Act rule 18a-**	in securities, security-based swaps and options positions, whether verified or not.	

[142] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[143] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
2. What records are firms required to make with regard to their positions and other potential financial liabilities?		
5(a)(8) [17 CFR 240.18a-5(a)(8)].[144]		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?		
Records to be created: A questionnaire[145] or employment application for each associated natural person who effects or is involved in effecting security-based swaps on the firm's behalf, containing identifying and background information (e.g., information regarding disciplinary actions, and arrests and indictments). The firm must also make a record that lists the offices associated with each associated person of	The following requirements entail the creation of information and records in relation to a CRR Firm's staff: In the UK, CRR Firms must have certain members of their management body approved by the regulators in order to be able to perform Senior Management Functions (**SMF**) in relation to the carrying on of regulated activities in accordance with the Senior Managers and Certification Regime (**SMCR**) (please refer to Annex IV for further background on the SMCR). As part of this approval process and ongoing compliance with SMCR requirements, UK Firms	**Comparability of outcomes**: The UK personnel recordkeeping requirements provide for a comparable regulatory outcome to the SEC personnel recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of personnel information to ensure that personnel are qualified to perform their duties. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[144] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

[145] There may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to certain information that needs to be recorded pursuant to the questionnaire requirement. See Exchange Act Rules 18a-5(a)(10)(iii) and 18a-5(b)(8)(iii)., *available at* https://www.ecfr.gov/cgi-bin/text-idx?SID=ab02383d4fb2163c947d97b87af1d639&mc=true&node=se17.4.240_118a_65&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?		
the firm. **Exchange Act rule 18a-5(a)(10) [17 CFR 240.18a-5(a)(10)]**[146] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(8) [17 CFR 240.18a-5(b)(8)]*[147] *(with a prudential regulator)*.	are required to obtain detailed information concerning their Senior Managers, including but not limited to criminal records and investigations (in the UK and other jurisdictions), and relating to fitness and propriety matters, covering the individual's qualifications and training, competence, personal characteristics. UK Firms must satisfy themselves annually that their assessment of fitness and propriety is suitable and in practice firms meet this requirement by refreshing their records. Section 63(2A) and 60A(2) FSMA, PRA Fitness and Propriety Rules 2.6 and 2.9, FCA SUP 10C.10.14G, 10C.10.16R, 10C.10.21G, FIT 2.1, 2.2 and 2.3. The SMF application form for Senior Managers (Form A) that an individual needs to submit to the regulators that, in addition to covering the matters noted immediately above, also contains information requirements concerning their employment history for the last five years, any directorships held by the relevant individual in the past ten years, other than in relation to the CRR Firm in question. PRA Senior Managers Regime – Applications and Notifications Rules	**Comparability of specific requirements:** The below UK requirements are comparable to analogous SEC requirements in the following ways: • **Associated offices**. The US regime requires records of offices associated with each associated person of the firm. The UK regime requires the identification and recording of conflicts of interest, which will include the disclosure and recording of associated offices, as well as information concerning any other directorships held by the relevant individual in firms other than the CRR Firm in question.

[146] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[147] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?		
	2.1, 2.2 and 2.6 and FCA SUP 10C.10.8D, 10C.10.8AD 10C.15 and 10C Annex 3D. Staff other than Senior Managers are generally subject to the Certification Regime (please see Annex IV for details). This requires a UK Firm to annually assess the fitness and propriety of its Certified Persons, considering the individual's qualifications and training, competence, personal characteristics. This should also include a criminal records check. Section 63F(2) and (5) FSMA, PRA Certification Rule 2.1, FCA SYSC 27.2.5G and FCA FIT 2.1, 2.2 and 2.3. Furthermore, CRR Firms must record information relating to their Senior Managers including, among other items, disclosure of criminal records, investigations, enforcement proceedings and dismissals, which may need to be provided to the regulators in order to enable them to assess the suitability of the management body. Guidelines 74-75, 172 and Annex III EBA/ESMA Guidelines on Management Suitability.[148] Records must also be maintained by CRR Firms in order to be able to comply with governance	

[148] See the Introduction regarding the on-going relevance of EBA and ESSA guidance post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?		
	requirements imposed on their management body, such as: • Each member of the management body of a CRR Firm must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. PRA General Organisational Requirements Rule 5.2, FCA SYSC 4.3A.3R. • The UK has expanded the scope of these requirements to include other relevant staff of a CRR Firm. FCA SYSC 27, PRA Certification Rules. • Members of the management body must act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. PRA General Organisational Requirements Rule 5.2, SYSC 4.3A.3R. • Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21(1)(a) MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
3. What records are firms required to make with regard to their personnel, including records regarding the background of individuals?		
	A CRR Firm's management body must define, oversee and be accountable for the implementation of the governance arrangements including, among other matters, ensuring the prevention of conflicts of interest. PRA General Organisational Requirements Rule 5.1, FCA SYSC 4.3A.1R. This will include managing conflicts with associated offices. Investment Firms must maintain a record of all conflicts of interest. FCA SYSC 10.1.7R and Article 35 MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
Records to be created: **Transaction information**: • Ledger accounts or other records to itemize separately, as to each account, information such as purchases and sales, receipts and deliveries of securities and commodities, and other debits and credits, along with additional information regarding security-based swaps. **Exchange Act rule 18a-5(a)(3) [17 CFR 240.18a-5(a)(3)]**[149] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(2) [17 CFR 240.18a-5(b)(2)]* [150] *(with a prudential regulator)*; and	**Transaction information and compliance records**: When holding financial instruments belonging to clients, Investment Firms must make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the Investment Firm's insolvency, and to prevent the use of a client's financial instruments on own account except with the client's express consent. FCA CASS 6.2.1R.[153] [154] An Investment Firm, when holding funds belonging to clients, must make adequate arrangements to safeguard the rights of clients and, except in the case of Credit Institutions, prevent the use of client funds for its own account. FCA CASS 7.12.1R.[155] To this end, Investment Firms must: (i) keep records and accounts enabling them at any time and without delay to distinguish money and	**Comparability of outcomes**: The UK control of customer funds and securities recordkeeping requirements provide for a comparable regulatory outcome to the SEC control of customer funds and securities recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of information about client funds to ensure the segregation between firm funds and client funds and protect the safety of client funds. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below UK requirements are comparable to analogous SEC requirements in the following ways:

[149] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[150] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[153] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.
[154] The FCA's client money rules set out in CASS 7 apply to "client money". This term excludes certain monies received from or held by a UK Firm for a client, most notably money held as a deposit by a UK Firm which is a Credit Institution, and money provided to a UK Firm on a title transfer collateral basis which therefore becomes the money of the UK Firm.
[155] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
Compliance records: • Records of compliance with the possession or control requirement under the applicable segregation rule, and of the reserve computation required under the segregation rule. **Exchange Act rule 18a-5(a)(13), (14) [17 CFR 240.18a-5(a)(13), (14)]**[151] **(without a prudential regulator)**; and *Exchange Act rule 18a-5(b)(9), (10) [17 CFR 240.18a-5(b)(9), (10)]*[152] *(with a prudential regulator)*.	assets held for one client from money assets held for any other client and from their own assets; (ii) maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the money, financial instruments and funds held for clients and that they may be used as an audit trail; (iii) conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third-parties by whom that money and those assets are held; (iv) take the necessary steps to ensure that any client financial instruments deposited with a third-party are identifiable separately from the financial instruments belonging to the Investment Firm and from financial instruments belonging to that third-party, by means of differently titled accounts on the books of the third-party or other equivalent measures that achieve the same level of protection; (v) take the necessary steps to ensure that client money deposited in a central bank, a Credit Institution or a bank authorised in a non-EEA jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold money belonging to the Investment Firm; and (vi)	• **Transaction information**. The transaction information required under FCA CASS 6 and 7 and Articles 72, 74 and 75 MiFID Org Reg. is comparable to that required by Exchange Act rules 18a-5(a)(3) and 18a-5(b)(2). • **Compliance records**. FCA CASS 6.2.1R and 7.12.1R require that Investment Firms make adequate arrangements to protect client funds, including, as set out by FCA CASS 6.2.2R, 6.3.2AR, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.8R, 6.6.33G, 6.6.34R, 7.12.2R, 7.13.12R, 7.13.25R, 7.13.32R, 7.13.33R, 7.15.2R, 7.15.3R, 7.15.4G, 7.15.8R, 7.15.5R and 7.15.9R, 7.15.20R, 7.15.21G, 10.1.2G and 10.1.3R, 10.1.7 and 10.1.9E, maintaining records of client money and client assets possessed or controlled (such money and assets also being subject to a segregation requirement) which is analogous to the requirements in relation to compliance records under Exchange Act rules 18a-5(a)(13), (14) and 18a-5(b)(9), (10).

[151] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[152] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
	introduce adequate organizational arrangements to minimise the risk of the loss or diminution of client money and assets, or of rights in connection with that money and those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence. FCA CASS 6.2.2R, 6.3.4A-1R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.13.12R, 7.15.2R, 7.15.3R, 7.15.20R, 7.15.21G.[156] An Investment Firm must make a record of the grounds upon which it satisfies itself as to the appropriateness of its selection and appointment of a third party to hold its client assets, or a bank or qualifying money market fund to hold its client money, and must make a record of each periodic review of its selection and appointment of such third party, bank or money market fund, its considerations and conclusions. FCA CASS 6.3.2AR and 7.13.25R.[157] Where security interests, liens or rights of set-off are granted by an Investment Firm over safe custody assets, or where the Investment Firm has been informed that they are granted, these must	

[156] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.
[157] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
	be recorded in client contracts and the Investment Firm's own books and records to make the ownership status of safe custody assets clear, such as in the event of an insolvency. FCA CASS 6.3.6AR. An Investment Firm must maintain a client-specific safe custody asset record. FCA CASS 6.6.4R Any internal records and accounts of clients' safe custody assets which an Investment Firm is required to keep to should be maintained by the Investment Firm, and should be separate to any records the Investment Firm may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, client money and safe custody assets. FCA CASS 6.6.5G and 7.15.4G.[158] For each internal custody record check and internal client money reconciliation, each physical asset reconciliation and each external custody reconciliation and external client money reconciliation carried out by an Investment Firm, it must make a record including: (1) the date it	

[158] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
	carried out the relevant process; (2) the actions the Investment Firm took in carrying out the relevant process; and (3) for client assets, a list of any discrepancies the Investment Firm identified and the actions the it took to resolve those discrepancies, and for client money, the outcome of its calculation of its client money requirement and client money resource. FCA CASS 6.6.8R and 7.15.8R.[159] All receipts by an Investment Firm of client money in the form of cash, cheque (including a future-dated cheque) or other payable order must be recorded in its books and records, including when these are not yet deposited in a client bank account. FCA CASS 7.13.32R(3), 7.13.33R(3) and 7.15.9R. An Investment Firm must maintain records so that it is able to promptly determine the total amount of client money it should be holding for each of its clients and must ensure that its records are sufficient to show and explain its transactions and commitments for its client money. FCA CASS 7.15.5R.	

[159] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
	Investment Firms must maintain and be able to retrieve a client assets resolution pack, which contains information to assist, in an insolvency scenario, in achieving a timely return of client money and safe custody assets held by the firm to that firm's clients and, in a resolution scenario, assist with an orderly resolution. FCA CASS 10.1.2G and 10.1.3R.[160] Internal and external client money and asset reconciliations, and documents identifying custodians, banks holding client money and agents that act for the Investment Firm in respect of client money or custody assets must be immediately available, with a broader range of documents being available on 48 hours' notice. FCA CASS 10.1.7 and 10.1.9E.[161] Investment Firms must keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. Records must be retained in a medium allowing, among other things, the storage of information in	

[160] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.
[161] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
4. What records are firms required to make regarding the control of customer funds and securities?		
	a way accessible for future reference by the regulator, and in a form/manner allowing the regulator to access them readily and reconstitute each key stage of processing each transaction. Article 72(1) MiFID Org Reg. An Investment Firm must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. Article 39(4) EMIR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
5. What records are firms required to make regarding business conduct practices?		
Records to be created: **Compliance with business conduct standards***:* • Records regarding compliance with business conduct standards that address, among other	**<u>Threshold Conditions</u>** The Threshold Conditions require UK Firms to be capable of being effectively supervised by the FCA and, for Dual-Regulated Firms, the PRA, and to have appropriate non-financial resources, which includes in relation to systems and controls for maintaining records to enable this supervision to be conducted (as appropriate to the particular	**<u>Comparability of outcomes</u>**: The UK business conduct recordkeeping requirements provide for a comparable regulatory outcome to the SEC business conduct recordkeeping requirements. In particular, both regulatory regimes require firms to record and maintain a variety of information about transactions and compliance with business conduct standards to facilitate regulatory supervision and

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
5. What records are firms required to make regarding business conduct practices?		
respects: verification related to counterparty status; certain disclosures related to the daily mark and its calculation; disclosures regarding material incentives, conflicts of interest, material risks and characteristics of the security-based swap, and certain clearing rights; certain "know your counterparty" and suitability obligations; supervisory requirements, including written policies and procedures; certain requirements regarding interactions with special entities; provisions intended to prevent dealers from engaging in certain "pay to play" activities; and certain minimum requirements relating to CCOs. ***Exchange Act rules 18a-5(a)(16), (17) [17 CFR 240.18a-5(a)(16),***	UK Firm, and accounting for its group context).[164] Threshold Conditions at paragraph 2C, 2D, 3B, 3C, 5D and 5F. **PRA Fundamental Rules and FCA Principles** A UK Firm must conduct its business with due skill, care and diligence take reasonable care to organise and control its affairs responsibly and effectively. In practice, this will require UK Firms to maintain adequate records and record-keeping systems. PRA Fundamental Rules 2 and 6 and FCA PRIN 2.1.1.R(2) and (3). **MiFID, EMIR, PRA & FCA Rules** An Investment Firm must arrange for records to be kept of all services, activities and transactions undertaken by it which must be sufficient to enable the regulator fulfil its supervisory tasks and to perform enforcement actions under the UK regulatory system (including MiFID, MiFIR and MAR), and in particular to ascertain that the Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR.	enforcement, protect clients and promote the integrity of the market While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below UK requirements are comparable to analogous SEC requirements in the following way: • **Compliance with business conduct standards**: The information required under FCA SYSC 10A.1.6R and Article 76(8)(b) MiFID Org Reg. is comparable to the information required under Exchange Act rules 18a-5(a)(16), (17), 18a-5(b)(12), (13). We note that, while there are certain limited respects where the UK compliance obligations differ from the US ones (for example, no 'pay to play' restrictions or related recordkeeping obligations apply in the UK), the information required under Article 72 and Annex I MIFID Org Reg. (including suitability and appropriateness assessments, compliance, conflicts,

[164] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
5. What records are firms required to make regarding business conduct practices?		
(17)][162] ***(without a prudential regulator)***; and *Exchange Act rules 18a-5(b)(12), (13) [17 CFR 240.18a-5(b)(12), (13)]*[163] *(with a prudential regulator*.	**Compliance with business conduct standards**: • Investment Firms must retain all records in relation to communications with clients in respect of the reception, transmission and execution of orders. FCA SYSC 10A.1.6R and Article 76(8)(b) MiFID Org Reg. Records setting out the rights and obligations of the Investment Firm/client under the service agreement, or the terms of service, must also be retained. Article 73 MiFID Org Reg. • The minimum records Investment Firms must keep include: the information and communications provided to clients on the services provided, the Investment Firm itself, costs and charges and marketing; client agreements; suitability and appropriateness assessments; client order and order-handling (i.e. order aggregation) records; assets and instruments held by the Investment Firm or third-parties for the client and their use by the Investment Firm; investment advice to retail clients; investment research; reports and records on business and internal organization, compliance; conflicts,	inducements, risk management, internal audit, and complaints-handling) is comparable to the information regarding compliance with business conduct standards required under Exchange Act rules 18a-5(a)(16), (17), 18a-5(b)(12), (13).

[162] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65
[163] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_65

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
5. What records are firms required to make regarding business conduct practices?		
	inducements, risk management, internal audit, complaints-handling and personal transaction. Article 72 and Annex I MIFID Org Reg. • Investment Firms must retain records in relation to communications with clients in respect of clearing rights and, in particular, regarding the choice between omnibus client segregation and individual client segregation. Clients must be informed of the costs and level of protection associated with each option and the client must confirm its choice in writing. Article 39(5) EMIR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
Dealers without a prudential regulator are required to perform a securities count each quarter. The count may be performed on a certain date or	When holding financial instruments belonging to clients, Investment Firms must make adequate arrangements to safeguard the ownership rights of clients, especially in the event of the Investment Firm's insolvency, and to prevent the	**Comparability of outcomes**: The UK periodic securities count requirements provide for a comparable regulatory outcome to the SEC periodic securities count requirements. In

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
on a cyclical basis, must cover the entire list of securities, and be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation[165] of the subject records. To meet this requirement, a firm generally will need to account for or verify its open security-based swap transactions, and that the method to do this could involve steps to confirm open transactions reflected in the firm's books and records with securities clearing agencies or counterparties. Exchange Act rule 18a-9 [17 CFR 240.18a-9].[166]	use of a client's financial instruments on own account except with the client's express consent. FCA CASS 6.2.1R. An Investment Firm, when holding funds belonging to clients, must make adequate arrangements to safeguard the rights of clients and, except in the case of Credit Institutions, prevent the use of client funds for its own account. FCA CASS 7.12.1R. To this end, Investment Firms must: (i) keep records and accounts enabling them at any time and without delay to distinguish money and assets held for one client from money assets held for any other client and from their own assets; (ii) maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the money, financial instruments and funds held for clients and that they may be used as an audit trail; (iii) conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third-parties by whom that money and those assets are held; (iv) take the necessary steps to ensure that any client financial instruments	particular, both regulatory regimes require firms to make periodic securities counts, in order to ensure the proper care and protection of assets. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The specific requirements under the UK regimes are at least as stringent as those under the US regime. While the US regime only requires that securities counts be performed quarterly under Exchange Act rule 18a-9, the UK regime requires that firms make similar information available and accessible at any time under, among others, FCA CASS 6.2.1R, 6.2.2R, 6.3.4A-1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.4R, 6.6.5G, 6.6.33G, 6.6.34R, 7.12.1R, 7.12.2R, 7.13.12R, 7.15.2R, 7.15.3R, 7.15.20R, 7.15.21G. This stringent UK regime is supported by the expectation that internal checks and reconciliations of

[165] In adopting this requirement the SEC acknowledged that security-based swaps are not held in depositories or at other types of custodians.
[166] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_69

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
	deposited with a third-party are identifiable separately from the financial instruments belonging to the Investment Firm and from financial instruments belonging to that third-party, by means of differently titled accounts on the books of the third-party or other equivalent measures that achieve the same level of protection; (v) take the necessary steps to ensure that client money deposited in a central bank, a Credit Institution or a bank authorised in a non-EEA jurisdiction or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold money belonging to the Investment Firm; and (vi) introduce adequate organizational arrangements to minimise the risk of the loss or diminution of client money and assets, or of rights in connection with that money and those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence. FCA CASS 6.2.2R, 6.3.4A-1R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.13.12R, 7.15.2R, 7.15.3R, 7.15.20R, 7.15.21G.[167]	client assets are conducted by a person that is not responsible for the production or maintenance of the records to be checked and/or reconciled and the obligation for annual audits of compliance with the UK's client money and client assets regime to be conducted by an independent auditor. FCA 6.6.47G and FCA SUP 3.10.4R – 3.10.7R.

[167] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
	An Investment Firm should ensure that checks and reconciliations of client assets are carried out by a person (who can be an employee of the firm) who is independent of the production or maintenance of the records to be checked and/or reconciled. The FCA requires this "whenever possible" which, in the context of a firm of any material size and resources, would be expected to mean in all cases. FCA CASS 6.6.47G. Where security interests, liens or rights of set-off are granted by an Investment Firm over safe custody assets, or where the Investment Firm has been informed that they are granted, these must be recorded in client contracts and the Investment Firm's own books and records to make the ownership status of safe custody assets clear, such as in the event of an insolvency. FCA CASS 6.3.6AR. An Investment Firm must maintain a client-specific safe custody asset record. FCA CASS 6.6.4R. Any internal records and accounts of clients' safe custody assets which an Investment Firm is required to keep should be maintained by the Investment Firm, and should be separate to any	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
	records the Investment Firm may have obtained from any third parties, such as those with whom it may have deposited, or through whom it may have registered legal title to, clients' safe custody assets. FCA CASS 6.6.5G. For each internal custody record check and internal client money reconciliation, each physical asset reconciliation and each external custody reconciliation and external client money reconciliation carried out by an Investment Firm, it must make a record including: (1) the date it carried out the relevant process; (2) the actions the Investment Firm took in carrying out the relevant process; and (3) for client assets, a list of any discrepancies the Investment Firm identified and the actions the it took to resolve those discrepancies, and for client money, the outcome of its calculation of its client money requirement and client money resource. FCA CASS 6.6.8R and 7.15.8R.[168] All receipts by an Investment Firm of client money in the form of cash, cheque (including a future-dated cheque) or other payable order must be recorded in its books and records,	

[168] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
	including when these are not yet deposited in a client bank account. FCA CASS 7.13.32R(3), 7.13.33R(3) and 7.15.9R. An Investment Firm must maintain records so that it is able to promptly determine the total amount of client money it should be holding for each of its clients and must ensure that its records are sufficient to show and explain its transactions and commitments for its client money. FCA CASS 7.15.5R. Investment Firms must maintain and be able to retrieve a client assets resolution pack, which contains information to assist, in an insolvency scenario, in achieving a timely return of client money and safe custody assets held by the firm to that firm's clients and, in a resolution scenario, assist with an orderly resolution. FCA CASS 10.1.2G and 10.1.3R.[169] Internal and external client money and asset reconciliations, and documents identifying custodians, banks holding client money and agents that act for the Investment Firm in respect of client money or custody assets must be	

[169] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
	immediately available, with a broader range of documents being available on 48 hours' notice. FCA CASS 10.1.7 and 10.1.9E.[170] An independent auditor must submit a client money and assets report to the FCA covering at most an annual period, providing reasonable assurance that, among other things, the Investment Firm has maintained adequate systems to enable it to comply with the FCA CASS Rules. The report must be submitted in the prescribed form, within four months from the end of each period covered. FCA SUP 3.10.4R – 3.10.7R.[171] Investment Firms must keep detailed records in relation to every client order and decision to deal, and every client order executed or transmitted. Articles 74 and 75 MiFID Org Reg. With regards to the verification of open transactions, timely confirmations and portfolio reconciliation requirements apply: (i) FCs and NFCs to an OTC derivative contract not cleared by	

[170] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.
[171] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
6. To what extent are firms required to make periodic securities counts or similar records to help ensure the proper care and protection of assets?		
	a CCP are required to establish formalized processes which are robust, resilient and auditable in order to reconcile portfolios. EMIR, Article 11(1)(b); and (ii) to comply with the timely confirmation obligation, counterparties must reach a legally binding agreement as to all the terms of an OTC derivative contract. Articles 12 and 13 RTS 149/2013 and ESMA Q&A on EMIR, OTC Answer 5(a).[172]	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?		
There may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records with respect to information regarding associated natural persons that needs to be recorded pursuant	Recordkeeping and creation requirements must be followed in a manner that is consistent with privacy laws (including the GDPR and the UK Data Protection Act 2018) that Investment Firms are subject to in respect of personal data (i.e. relating to identified or identifiable natural persons).	**Comparability of outcomes**: UK restrictions on firm record creation provide for a comparable regulatory outcome to the SEC restrictions on firm record creation. In particular, while the GDPR and the UK Data Protection Act 2018 could result in situations where personal data cannot be collected or processed, these situations are

[172] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?		
to the questionnaire requirement. The SEC has proposed additional provisions in Rule 18a-5 to address those situations. *See* Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206, 24242-44, 24294 (May 24, 2019) (**Cross-Border Swap Requirements**).[173]	Among the records listed by the SEC Guidance, some could contain personal data. Although record creation and compliance with applicable privacy laws should be considered on a case-by-case basis, having regard to the relevant personal data and the purpose for which that data will be processed, it is generally possible for Credit Institutions and Investment Firms to collect and process the type of personal data that the records listed may entail in a manner that is compliant with applicable privacy laws. For instance, data collected in establishing a client relationship could be processed further within the Credit Institution or the Investment Firm if the "controller" has a legitimate interest that is not overridden by the rights or freedoms of the affected data subjects. Accordingly, it is reasonable to assume that creation and maintenance of records for the purpose of complying with its obligations as a swap dealer would be capable of being accommodated under applicable privacy laws. Moreover, much of the information that is required to be recorded by Credit Institutions and Investment Firms pursuant to the provisions of UK law referenced in the responses to the questions set forth in sections 2.b.1-2.b.6 above may not fall	narrow, and should not broadly alter the ability of Investment Firms to retain the records at issue here.

[173] https://www.ecfr.gov/cgi-bin/text-idx?SID=ab02383d4fb2163c947d97b87af1d639&mc=true&node=se17.4.240_118a_65&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
7. (Part A) Are there potential restrictions or prohibitions on the ability of firms to receive, create or maintain certain types of information, such as information regarding counterparties and associated persons?		
	within the definition of personal data (to the extent that it is information that does not relate to an identified or identifiable natural person). This answer does not address the sharing of such information outside of the Credit Institution or the Investment Firm, for which please see the response in Part B to the question set forth in section 2.b.7 below. For the purposes of the SMCR, criminal records checks for Certified Persons will include all 'unspent' criminal convictions (the time period after which convictions are 'spent' varies with the nature of the crime – e.g. convictions entailing over four years in prison are never 'spent' whilst fines are 'spent' after one year). Criminal records checks for Senior Managers entail a greater degree of disclosure as compared to the disclosures for Certified Persons because these individuals are approved by the PRA and/or FCA. Rehabilitation of Offenders Act 1974, Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Record Creation		
7. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?		
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators). Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR and the UK Data Protection Act 2018, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between UK authorities and the SEC each of which, in itself, should give the SEC the assurance that, even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.		

c. Subcategory: Record Preservation

The preservation of records requirements – regarding firms' financial status, positions, activities and compliance with applicable requirements – promote effective SEC oversight.

Registered firms must keep applicable books and records in the form and manner, and for the period, prescribed by the SEC, and keep those books and records open to inspection and examination by SEC representatives. Exchange Act sections 15F(f)(1)(B), (C) [15 U.S.C. 78o-10(f)(1)(B), (C)].[174] For firms that have a prudential regulator, the recordkeeping requirements specifically apply to the firm's business as a dealer. 15F(f)(1)(B) [15 U.S.C. 78o-10(f)(1)(B)].[175]

Firms must maintain daily trading records (including records of each counterparty) of security-based swaps, and related records and recorded communications, for the period prescribed by the SEC. Firms must maintain a complete audit trail for trade reconstructions. Exchange Act section 15F(g) [15 U.S.C. 78o-10(g)].[176]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**UK Requirement and/or Policy Goal Summary**	**Comparability Assessment**
c. Subcategory: Record Preservation		
1. What are the general provisions regarding the preservation period and accessibility?		
SEC rules incorporate a number of elements regarding how long particular records must be preserved, accessibility of records, and related matters. *See* below for details.	The FCA rules and the PRA rules contain extensive recordkeeping requirements, including with respect to how long particular records must be preserved, accessibility of records, and related matters. *See* below for details.	**Comparability of outcomes**: The UK record preservation and accessibility requirements provide for a comparable regulatory outcome to the SEC record preservation and accessibility requirements. In particular, both regulatory regimes contain detailed, comprehensive requirements on record preservation to promote information accessibility for market participants and facilitate regulatory supervision.

[174] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[175] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[176] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
Firms are required to maintain a variety of records:	**General recordkeeping requirement:** An Investment Firm must arrange for records to be kept of all services and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to perform enforcement actions under the UK regulatory system (including MiFID, MiFIR and MAR). PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR. Records must be retained in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing (i) the regulator to access them readily and reconstitute each key stage of processing each transaction; (ii) corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; (iii) it must not be possible for the records otherwise to be manipulated or altered; and (iv) IT or any other sufficient exploitation when the analysis of the data cannot easily be carried out due to the volume and nature of the data. Article 72(1) MiFID Org Reg.	**Comparability of outcomes**: The UK record preservation requirements provide for a comparable regulatory outcome to the SEC record preservation requirements. In particular, both regulatory regimes contain detailed requirements for different types of information about firms and transactions, in order to promote information accessibility for market participants and facilitate regulatory supervision and enforcement. See PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR and Article 72(1) MiFID Org Reg. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below UK requirements are comparable to analogous SEC requirements in the following ways:

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
	Unless an individual UK requirement specifies otherwise, Investment Firms must retain all records required under the PRA Recordkeeping Rule, SYSC and MiFID Org Reg for a period of at least five years. PRA Recordkeeping Rule 2.2. FCA SYSC 9.1.2R.	
Ledgers and transaction information: Records related to trade blotters, ledgers, ledger accounts and security records/ledgers for at least six years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(a)(1) [17 CFR 240.18a-6(a)(1)][177] (without a prudential regulator)**; and *Exchange Act rule 18a-6(a)(2) [17 CFR 240.18a-6(a)(2)][178] (with a prudential regulator*); Information required to be made pursuant to rule 18a-5, including records related to the above information regarding brokerage	**Ledgers and transaction information**: Please refer to the responses to question set forth in sections 2.b.1 at "Trade blotters", 2.b.2 at "Ledgers" and "Securities records or ledgers", and 2.b.4 at "Ledger accounts and compliance records" regarding the records that must be preserved, as well as the "General recordkeeping requirement" noted above in this response. Additionally, Investment Firms must keep at the disposal of the regulator, for five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client. For transactions carried out on behalf of clients, the records must contain all the information and details of the identity of	**Ledgers and transaction information**: Requirements on transaction records under PRA Record Keeping Rules 2.1 and 2.2, FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R and 10A.1.8R, section 165 FSMA, Articles 74-76 and Annex IV MiFID Org Reg. and Article 25(1) MiFIR are comparable to those under Exchange Act rules 18a-6(a)(1), (2) and 18a-6(b)(1), (2).

[177] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[178] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
orders/instructions, security-based swap transactions for the firm account, confirmations and trade acknowledgments/verifications, security-based swap counterparty information, options positions, trial balances, current exposure calculations, segregation, non-verified security-based swaps, and business conduct compliance for at least three years, the first two years in an easily accessible place. This portion of the record preservation requirement does not address the record-making requirement related to associated persons. **Exchange Act rule 18a-6(b)(1)(i) [17 CFR 240.18a-6(b)(1)(i)]**[179] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(i) [17 CFR 240.18a-6(b)(2)(i)]*[180] *(with a prudential regulator)*;	the client, and the information required under the laws on the prevention of the use of the financial system for the purpose of money laundering. Article 25(1) MiFIR. Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract. Article 9(2) EMIR.	

[179] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[180] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
Trade instructions, confirmations and positions: Originals of communications received and copies of communications sent (and approvals of communications sent), including inter-office memoranda and communications, as well as sales scripts and recordings of telephone calls required to be maintained pursuant to Exchange Act section 15F(g)(1) (related to daily trading records) for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(iv) [17 CFR 240.18a-6(b)(1)(iv)]**[181] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(ii) [17 CFR 240.18a-6(b)(2)(ii)]*[182] *(with a prudential regulator)*;	**Trade instructions, confirmations and positions**: Please refer to the responses to the questions set forth in sections 2.b.1 at "Trade confirmations" and "Counterparty information", 2.b.2 at "Ledgers" and "Securities records or ledgers", and 2.b.5 at "Compliance with business conduct standards" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	**Trade instructions, confirmations and positions**: Requirements on client communication records under PRA Recordkeeping Rule 2.2 and FCA SYSC 9.1.2R, FCA COBS 8A.1.9R, 16A.2.1R and 16A.3.1UK, Article 59 MiFID Org Reg., and Articles 9(2) and 11(1)(a) EMIR are comparable to those set forth in Exchange Act rules 18a-6(b)(1)(iv) and 18a-6(b)(2)(ii).

[181] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[182] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
Cash-related records: **Certain cash-related records and bills, including (i) check books, bank statements, cancelled checks and cash reconciliations; and (ii) information regarding bills receivable and payable, related to the business of the firm as such for at least three years, the first two years in an easily accessible place. These requirements apply only to firms without a prudential regulator. *See* Exchange Act rules 18a-6(b)(1)(ii), (iii) [17 CFR 240.18a-6(b)(1)(ii), (iii)]**;[183]	**Cash-related records**: Please refer to the responses to the question set forth in section 2.b.2 at "Ledgers" as well as the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.	**Cash-related records**: Requirements under IFPRU 2.2.7R and PRA Internal Capital Adequacy Assessment Rule 3.1, FCA CASS 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R, 7.15.21R, and PRA Record Keeping Rule 2.1, FCA SYSC 9.1.1AR are comparable to those under Exchange Act rules 18a-6(b)(1)(ii), (iii).
Communication records: Originals of communications received and copies of communications sent (and approvals of communications sent), including inter-office memoranda and	**Communication records**: Investment Firms must retain records in relation to communications with clients in respect of the reception, transmission and execution of orders for five years or, where requested by its regulator, up to seven years.	**Communication records**: Requirements under FCA SYSC 10A.1.6R, 10A.1.8R and Article 76(8)(b) MiFID Org Reg. are comparable to those under Exchange Act rules 18a-6(b)(1)(iv) and 18a-6(b)(2)(ii).

[183] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
communications, as well as sales scripts and recordings of telephone calls required to be maintained pursuant to Exchange Act section 15F(g)(1) (related to daily trading records) for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(iv) [17 CFR 240.18a-6(b)(1)(iv)]**[184] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(ii) [17 CFR 240.18a-6(b)(2)(ii)]*[185] *(with a prudential regulator)*;	FCA SYSC 10A.1.6R, 10A.1.8R and Article 76(8)(b) MiFID Org Reg. Investment Firms must record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). FCA SYSC 10A.1.6R, 10A.1.8R and Article 76 MiFID Org Reg. Please refer to the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	
Capital information: **Net capital-related information, including trial balances, computations of net capital and tangible net worth (and related working papers), financial statements, branch office reconciliations, and internal**	**Capital information**: CRR requires the financial/capital reports to be submitted by CRR Firms on the following matters (among others): capital/own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS), accounting information (Article 99 CRR and Annexes III, IV and V CRR Reporting ITS), counterparty credit risk (Article 99 CRR),	**Capital information**: Requirements under the Articles 99, 394 and 430 and Part Six: Title II & Title III CRR and the CRR Reporting ITS are comparable to those under Exchange Act rule 18a-6(b)(1)(v).

[184] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[185] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
audit working papers relating to the business of the firm as such for at least three years, the first two years in an easily accessible place. This requirement applies only to firms without a prudential regulator. Exchange Act rule 18a-6(b)(1)(v) [17 CFR 240.18a-6(b)(1)(v)];[186]	large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS), liquidity coverage and stable funding (Part Six: Title II & Title III CRR and Annexes XII and XIII CRR Reporting ITS), and leverage ratios (Article 430 CRR and Annexes X and XI CRR Reporting ITS). Information on capital and large exposures must be reported semi-annually, liquidity coverage must be reported monthly, and stable funding and leverage must be reported quarterly. Articles 99, 294 and 415 CRR and Article 14 CRR Reporting ITS. Regulators also have the power to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions. Article 104(1)(j) CRR.	
Account documents: Account documents, including guarantees of accounts and powers of attorney and other evidence of the granting of any discretionary authority given in	**Account documents**: An Investment Firm must establish a record that includes the documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will	**Account documents**: Requirements under the PRA Record Keeping Rules 2.1 and 2.2 and FCA SYSC 9.1.1AR and 9.1.2R, FCA COBS 8A.1.9R and Article 73 MiFID Org Reg. are comparable to those under Exchange Act rules 18a-6(b)(1)(vi) and 18a-6(b)(2)(iii).

[186] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
respect of any account, as well as copies of resolutions empowering an agent to act on behalf of a corporation for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(vi) [17 CFR 240.18a-6(b)(1)(vi)]**[187] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(iii) [17 CFR 240.18a-6(b)(2)(iii)]*[188] *(with a prudential regulator)*;	provide services to the client. FCA COBS 8A.1.9R. Records setting out the rights and obligations of the Investment Firm/client under the service agreement, or the terms of service, must be retained for at least the duration of the client relationship. Article 73 MiFID Org Reg. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.	
Written agreements: Written agreements (or copies) relating to the firm's business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or noncustomer – including governing documents or any document establishing the terms	**Written agreements**: Please refer to the section on "Account documents" noted above in this response regarding the records that must be preserved and the preservation of such records. Please also refer to the response to the question set forth in section 2.b.1 at "Trade confirmations" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in	**Written agreements**: Requirements on maintaining records of written agreements with clients under PRA Record Keeping Rules 2.1 and 2.2 and FCA SYSC 9.1.1AR and 9.1.2R, FCA COBS 8A.1.9R , 16A.2.1 R, and 16A.3.1UK, Articles 59 and 73 MiFID Org Reg. and Articles 9(2) and 11(1)(a) EMIR are comparable to those under Exchange Act rules 18a-6(b)(1)(vii) and 18a-6(b)(2)(iv).

[187] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[188] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
and conditions of the security-based swaps – must be maintained with the account records of the customer or non-customer for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(vii) [17 CFR 240.18a-6(b)(1)(vii)]**[189] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(iv) [17 CFR 240.18a-6(b)(2)(iv)]*[190] *(with a prudential regulator)*;	this response regarding the preservation of such records.	
Financial statements: Information supporting financial statements including information supporting amounts included in FOCUS reports and in required financial statements, including money balances, positions in securities, futures, commodities and options, and records relating to margin and segregation for at	**Financial statements:** Please refer to the section on "Capital information" noted above in this response regarding the records that must be preserved and the preservation of such records.	**Financial statements**: Requirements under Articles 99, 394 and 430 and Part Six: Title II & Title III CRR and the CRR Reporting ITS are comparable to those under Exchange Act rules 18a-6(b)(1)(viii) and 18a-6(b)(2)(v).

[189] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[190] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
least three years, the first two years in an easily accessible place. This requirement applies only to firms without a prudential regulator, except for the segregation-related possession or control information. **Exchange Act rule 18a-6(b)(1)(viii) [17 CFR 240.18a-6(b)(1)(viii)]**[191] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(v) [17 CFR 240.18a-6(b)(2)(v)]*[192] *(with a prudential regulator)*;		
Risk management: **Risk management records, including records and results of periodic reviews associated with risk management requirements for at least three years, the first two years in an easily accessible place. This requirement applies only to firms without a prudential regulator. Exchange**	**Risk management:** Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. FCA SYSC 4.1.1(1)R.	**Risk management**: Requirements under the FCA and the PRA Rules, CRR, the MiFID Org Reg. and EMIR are comparable to those under Exchange Act rule 18a-6(b)(1)(ix).

[191] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[192] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
Act rule 18a-6(b)(1)(ix) [17 CFR 240.18a-6(b)(1)(ix)];[193]	Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 23 MiFID Org Reg. The requirement encompasses the monitoring of the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of measures taken to address deficiencies in them. The FCA Rules and MiFID Org Reg require the maintenance of a range of risk management records, including: compliance reports (FCA SYSC 6.1.1R and Article 22(3)(c) MiFID Org Reg.), conflict of interest records (FCA SYSC 10.1.7R and Article 35 MiFID Org Reg.), inducements (FCA COBS 2.3A.32R), risk management reports (FCA SYSC 4.1.1R(1) and Articles 23(1)(b) and 25(2) MiFID Org Reg.), internal audit (FCA SYSC	

[193] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
	4.1.1R(1) and Articles 24 and 25(2) MiFID Org Reg.), complaints-handling records (FCA SYSC 6.1.1R and Article 26 MiFID Org Reg.), and personal transaction records (FCA SYSC 6.1.1R and Articles 29(2)(c) MiFID Org Reg.). CRR Firms are subject to enhanced risk management requirements, especially, for CRR Firms using internal models, in relation to CCR exposures arising from derivatives trading activities. In particular, a CRR Firm is required to establish and maintain a CCR management framework. Article 286 CRR. Daily reports on a CRR Firm's exposures to CCR must be prepared and then reviewed by a level of management with sufficient seniority and authority to enforce both reductions of positions taken by individual credit managers or traders and reductions in the entity's overall CCR exposure. Article 293(1)(d) CRR. The management body of a CRR Firm must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
	business cycle. PRA Risk Control Rule 2.3, FCA SYSC 7.1.4R. The risk management arrangements, policies and procedures required to be implemented under the PRA and the FCA Rules cover: internal capital; remuneration of staff; treatment of risks; use of, and supervisory approaches to, capital models; credit and counterparty risk; residual risk; concentration risk; securitisation risk; market risk; interest rate risk; operational risk; liquidity risk; and risk of excessive leverage. PRA Internal Capital Adequacy Assessment Rules 3-11, FCA IFPRU 2.2.7R, 2.2.17R – 2.2.35R and 2.2.44R. A CRR Firm is required to establish and maintain a CCR management framework, consisting of: policies, processes and systems to ensure the identification, measurement, management, approval and internal reporting of CCR; and procedures for ensuring that those policies, processes and systems are complied with. Article 286 CRR. FCs and NFCs are generally required to comply with risk mitigation obligations, which include having formalised processes which are robust,	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
	resilient and auditable to measure, monitor and mitigate operational risk and counterparty credit risk, including but not limited to: 1. timely confirmation of OTC derivative contracts; 2. portfolio reconciliation (agreement to be reached before the counterparties enter into the derivative contract); 3. portfolio compression; and 4. identifying and resolving disputes. Article 11 EMIR and RTS 149/2013. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the duration for which records must be preserved.	
Credit assessments: **Records regarding the basis for the firm's internal credit assessments of counterparties for purposes of the credit risk charges it must take as part of its net capital computation for at least three years, the first two**	**Credit assessments**: Investment Firms must assess their internal capital adequacy to ensure that they have in place sound, effective and comprehensive strategies and processes to assess and maintain, on an on-going basis, the amounts, types and distribution of internal capital that they consider adequate to cover the nature and	**Credit assessments**: Requirements under IFPRU 2.2.7R and PRA Internal Capital Adequacy Assessment Rule 3.1 and PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR are comparable to those under Exchange Act rule 18a-6(b)(1)(x).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
years in an easily accessible place. This provision applies only to firms without a prudential regulator. Exchange Act rule 18a-6(b)(1)(x) [17 CFR 240.18a-6(b)(1)(x)];[194]	level of the risks to which they are or might be exposed. IFPRU 2.2.7R and PRA Internal Capital Adequacy Assessment Rule 3.1. In practice, this will require the maintenance of full records of the Investment Firm's assets, liabilities, income and expense and capital accounts to be maintained on an on-going basis. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.	
Submission of information to a repository: Information the firm is required to submit to a repository pursuant to Regulation SBSR. For firms without a prudential regulator, this information includes documentation of internal risk management systems, periodic reviews of such systems conducted by internal audit staff and annual reviews of	**Submission of information to a repository**: Counterparties must ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. Article 9(1) EMIR. Counterparties must keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of that contract. Article 9(2) EMIR.	**Submission of information to a repository**: Article 9(1) requires counterparties to ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository. Article 9(2) of EMIR requires counterparties to keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of that contract. Exchange Act rules 18a-6(b)(1)(xi) and 6(b)(2)(vi).

[194] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
such systems conducted by independent certified public accountants for at least three years, the first two years in an easily accessible place. For firms with prudential regulators, this information includes counterparty and transaction information, secondary trade information, life cycle events, and the identity of parent and affiliated entities. **Exchange Act rule 18a-6(b)(1)(xi) [17 CFR 240.18a-6(b)(1)(xi)]**[195] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(vi) [17 CFR 240.18a-6(b)(2)(vi)]*[196] *(with a prudential regulator)*; and		
Due diligence information: Documents related to applicable business conduct standards, and documents used to make certain determinations with respect to	**Due diligence information:** Various types of counterparty information must be collected as part of customer due diligence including, for example, with regards to the customer's identity, its beneficial owner and the	**Due diligence information**: Requirements under Articles 11 and 13 MLD4 are comparable to those under Exchange Act rules 18a-6(b)(1)(xii), (xiii) and 18a-6(b)(2)(vii), (viii).

[195] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[196] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
special entities, including information relating to financial status, tax status and the investment or financing objectives of the special entity for at least three years, the first two years in an easily accessible place. **Exchange Act rule 18a-6(b)(1)(xii), (xiii) [17 CFR 240.18a-6(b)(1)(xii), (xiii)]**[197] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(b)(2)(vii), (viii) [17 CFR 240.18a-6(b)(2)(vii), (viii)]*[198] *(with a prudential regulator)*;	purpose and intended nature of the business relationship. Regulations 27-30 MLR 2017. Please also refer to the "General recordkeeping requirement" noted above in this response regarding the records that must be preserved and the preservation of such records.	
Registration documents: Records such as partnership articles, articles of incorporation, minute books and stock certificate books (depending on the form of the legal entity); and copies of the applicable firm registration forms (forms SBSE,	**Registration documents:** The forms and supporting documents required for an Investment Firm to become authorized in the UK in order to be able to provide investment services are set out in the FCA rules. In practice, any such application for authorization to the UK regulator broadly requires the submission by the Investment Firm	**Registration documents**: Investment Firms must preserve relevant types of records on an ongoing basis that are relevant to their regulatory status and their general recordkeeping obligations. This is comparable to the requirements of Exchange Act rule 18a-6(c).

[197] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[198] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
SBSE-A, SBSE-C or SBSE-W), as well as amendments to those forms and other documentation showing the firm's registration with securities regulatory authorities or the CFTC for the life of the enterprise and any successor enterprise. Exchange Act rule 18a-6(c) [17 CFR 240.18a-6(c)];[199]	of documentation including: articles of association and related constitutional documentation, supporting documentation regarding its senior management (including their skills and expertise, criminal background, etc.), accounting documents and related financial and operational information and certain policies and procedures. Once authorized, Investment Firms will have general record-keeping obligations (as discussed above) which, in practice, means that they would need to have a record of many of the items mentioned above.	
Associated persons: Information regarding associated persons in an easily accessible place. Exchange Act rule 18a-6(d)(1) [17 CFR 240.18a-6(d)(1)];[200]	**Associated persons:** Please refer to the response to the question set forth in 2.b.3 regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	**Associated persons**: Requirements under Guidelines 74-75, 172 and Annex III EBA/ESMA Guidelines on Management Suitability are comparable to those under Exchange Act rule 18a-6(d)(1).[201]
Settlement:	**Settlement:**	**Settlement**:

[199] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[200] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[201] See the Introduction regarding the on-going relevance of EBA and ESMA guidance post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
Records related to orders or settlement, including reports that a securities regulatory authority or the CFTC (or a prudential regulator, if applicable) has required the firm to make and furnish pursuant to an order or settlement, and related examinations reports until three years after the date of the report in an easily accessible place. **Exchange Act rule 18a-6(d)(2)(i) [17 CFR 240.18a-6(d)(2)(i)]**[202] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(d)(2)(ii) [17 CFR 240.18a-6(d)(2)(ii)]*[203] *(with a prudential regulator)*;	Regulators are able to require Investment Firms to hold any additional records beyond those required to be retained under normal circumstances. Article 72(3) MiFID Org Reg.	Requirements under Article 72(3) MiFID Org Reg. are analogous to those under Exchange Act rules 18a-6(d)(2)(i), (ii).
Compliance manuals: Compliance, supervisory and procedures manuals related to compliance with applicable	**Compliance manuals:** The FCA Rules require the maintenance of a range of compliance policies and procedures in respect of the compliance of the Investment	**Compliance manuals**: Requirements under FCA SYSC 6.1.1R, PRA Record Keeping Rules 2.1 and 2.2 and FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R, 10A.1.8R, Articles 72, 73 and 76(8)(b) and

[202] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[203] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
requirements and the supervision of associated natural persons, until three years after termination of the use of the manual in an easily accessible place. For firms with a prudential regulator, this requirement relates to compliance with laws and rules relating to security-based swap activities. **Exchange Act rule 18a-6(d)(3)(i) [17 CFR 240.18a-6(d)(3)(i)]**[204] **(without a prudential regulator)**; and *Exchange Act rule 18a-6(d)(3)(ii) [17 CFR 240.18a-6(d)(3)(ii)]*[205] *(with a prudential regulator)*; and	Firm, and its managers, employees and tied agents, with their MiFID obligations. FCA SYSC 6.1.1R. Please also refer to the response to the question set forth in section 2.b.5 at "Compliance with business conduct standards" regarding the records that must be preserved as well as the "General recordkeeping requirement" noted above in this response regarding the preservation of such records.	Annex I MiFID Org Reg. are comparable to those under Exchange Act rules 18a-6(d)(3)(i), (ii).
Post-relationship documentation: Written policies and procedures required under the risk mitigation requirements until three years after their termination, written portfolio reconciliation	**Post-relationship documentation:** Please refer to the section on " Account documents" noted above in this response regarding the records that must be preserved and the preservation of such records. MiFID requires the maintenance of a range of risk management records, including internal audit	**Post-relationship documentation**: Requirements under the FCA SYSC 6.1.1, FCA SYSC 4.1.1R(1), PRA Record Keeping Rules 2.1 and 2.2 and FCA SYSC 9.1.1AR and 9.1.2R, FCA COBS 8A.1.9R and Articles 24, 25(2) and 73 MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(d).

[204] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[205] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
2. To what extent are firms required to preserve the types of records that are the subject of the Exchange Act record preservation requirement (e.g., bank records, bills, communications, account documents, written agreements and risk management records)?		
agreements until three years after the termination of the agreement and related transactions, trading relationship documentation until three years after the termination of the documentation and related transactions, and audit results related to trading relationship documentation until three years after the conclusion of the audit in an easily accessible place. Exchange Act rule 18a-6(d) [17 CFR 240.18a-6(d)].[206]	reports which must be submitted to the Investment Firm's management body at least annually. FCA SYSC 4.1.1R(1) MiFID and Articles 24 and 25(2) MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
3. To what extent are firms required to preserve specific information regarding associated persons?		
This provision requires preservation of the above information related to associated persons, in an easily accessible	A CRR Firm must prepare and retain the records related to the requirements applicable to a CRR Firm's staff, as set out in response to the question set forth in section 2.b.3 above. These	**Comparability of outcomes**: The relevant UK employees/personnel record preservation requirements (discussed above) provide

[206] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
3. To what extent are firms required to preserve specific information regarding associated persons?		
place until at least three years after the termination of the associated person's employment or other connection with the firm. Exchange Act rule 18a-6(d)(1) [17 CFR 240.18a-6(d)(1)].[207]	requirements applicable to a CRR Firm's staff apply at all times. PRA General Organisational Requirements Rule 5.2, FCA SYSC 4.3A.3R. In addition, CRR Firms should keep records of all external professional and political positions held by the members of the management body. Such records must be updated whenever a member notifies the CRR Firm of a change and when such changes come otherwise to the attention of the CRR Firm. Guideline 48 EBA/ESMA Guidelines on Management Suitability.[208] An Investment Firm must retain records in relation to all its services, activities and transactions in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing the regulator to access them readily. Article 72(1) MiFID Org Reg.	for a comparable regulatory outcome to the SEC associated person record preservation requirements. In particular, both regulatory regimes contain detailed requirements on preservation of information about associated persons, in order to ensure the associated persons' qualification, promote information accessibility for market participants and facilitate regulatory supervision and enforcement.

[207] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66
[208] See the Introduction regarding the on-going relevance of EBA and ESMA guidance post-Brexit for interpretative purposes.

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>UK Requirement and/or Policy Goal Summary</th><th>Comparability Assessment</th></tr>
<tr><td colspan="3">c. Subcategory: Record Preservation</td></tr>
<tr><td colspan="3">4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?</td></tr>
<tr><td colspan="3"><u>Comparability of outcomes</u>:

The UK electronic storage and third-party record preservation requirements provide for a comparable regulatory outcome to the SEC electronic storage and third-party record preservation requirements. In particular, both regulatory regimes stipulate requirements on electronic storage and third-party contractors as record keepers, in order to promote easier access to information and ensure information safety.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements:</u>

The below UK requirements are comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Electronic storage:

The records required to be maintained and preserved may be produced by means of an electronic storage system, subject to a number of conditions including the capacity to readily download into the readable format the indexes and records preserved in the system, the use of duplicate records stored separately, an audit system, and undertakings by senior officers.</td><td>Electronic storage:

An Investment Firm can make use of electronic storage systems as long as it complies with the following requirements:

• an Investment Firm must retain records in relation to all its services, activities and transactions in a medium allowing the storage of information in a way accessible for future reference by the regulator, and in a form/manner allowing (i) the regulator to access them readily and reconstitute each key stage of processing each transaction; (ii) corrections or other amendments, and the contents of the records prior to such</td><td>Electronic storage:

Requirements on the accessibility of storage systems under Article 72(1) MiFID Org Reg. are comparable to those under Exchange Act rule 18a-6(e).</td></tr>
</table>

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?		
See Exchange Act rule 18a-6(e) [17 CFR 240.18a-6(e)].[209]	corrections or amendments, to be easily ascertained; (iii) it must not be possible for the records otherwise to be manipulated or altered; and (iv) IT or any other sufficient exploitation when the analysis of the data cannot easily be carried out due to the volume and nature of the data. Article 72(1) MiFID Org Reg. Investment Firms are required to arrange for records to be kept of all services and transactions undertaken which must be sufficient to enable the relevant regulator to fulfil its supervisory tasks and to perform enforcement actions under the UK regulatory system (including MiFID, MiFIR and MAR), and in particular to ascertain that an Investment Firm has complied with all obligations with respect to clients or potential clients and the integrity of the market. PRA Record Keeping Rule 2.1 and FCA SYSC 9.1.1AR. • an Investment Firm must retain records of any policies and procedures required to be maintained under MiFID, MiFIR and MAR must be maintained in writing. Article 72(3) MiFID Org Reg.	

[209] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?		
	• an Investment Firm must establish in writing and on paper or another durable medium a record that includes the document or documents agreed between the Investment Firm and the client that set out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to the client. FCA COBS 8A.1.9R and Article 58 MiFID Org Reg. • Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems, and to have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimize the risk of data corruption and unauthorized access and to prevent information leakage maintaining the confidentiality of the data at all times. FCA SYSC 4.1.1R. • Investment Firms must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?		
	information, taking into account the nature of the information in question. Article 21(2) MiFID Org Reg.	
Third-party contractors: If a firm uses a third-party to prepare or maintain records, the rule requires the third-party to file an undertaking with the SEC stating, among other things, that the records are the property of the firm and will be promptly furnished to the SEC or its designee. *See* Exchange Act rule 18a-6(f) [17 CFR 240.18a-6(f)].[210]	**Third-party contractors**: The FCA and PRA Rules treat third-party contractors brought into the firm to work alongside other staff in the same way as an Investment Firm's employees (both are captured within policies and procedures relating to "staff"). Accordingly, the provisions noted above will apply. Where an Investment Firm uses an external third-party contractor, outsourcing requirements may be applicable. Where an Investment Firm outsources critical or important operational functions, it will remain fully responsible for discharging all of its MiFID obligations. Article 31(1) MiFID Org Reg. An Investment Firm must ensure, when relying on an outsourced service provider for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a	**Third-party contractors**: Requirements under FCA SYSC 8.1.1R and PRA Outsourcing Rule 2.1 on qualifications of third-party contractors as record keepers are comparable to those under Exchange Act rule 18a-6(f).

[210] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
4. What requirements address firms' use of electronic storage systems and third-party contractors in connection with record preservation?		
	continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the regulator to monitor the Investment Firm's compliance with all obligations. FCA SYSC 8.1.1R and PRA Outsourcing Rule 2.1. CRR Firms are required to ensure that its regulators have access to the information held by, and premises of, and rights to audit critical or important outsourced functions. Section 13.3 EBA Guidelines on Outsourcing.[211]	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?		
The SEC Guidance recognizes that there may be situations in which firms are prohibited by applicable non-U.S. law from receiving, creating, or maintaining records	All recordkeeping and creation requirements are subject to data privacy and confidentiality laws, where applicable, as further described in	**Comparability of outcomes**: The UK restrictions on preservation of certain records provide for a comparable regulatory outcome to the SEC restrictions on preservation of certain records. In

[211] See the Introduction regarding the on-going relevance of EBA guidance post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?		
with respect to information regarding associated natural persons that needs to be recorded pursuant to the questionnaire requirement. The SEC has adopted Rule 18a-5(b)(8)(iii) to address those situations. Specifically, as exceptions to the general rule to make and keep current the AP questionnaires: (1) an SBS Entity would not need to make or keep current such questionnaires or employment applications if the entity is excluded from the statutory disqualification prohibition in Exchange Act 15F(b)(6) with respect to the associated person; and, (2) A questionnaire or application for employment executed by an associated person who is not a U.S. resident need not include the information described in paragraphs (b)(8)(i)(A) through	response to the question set forth in section 2.b.7 above.	particular, both regulatory regimes contemplate situations where firms are not allowed to maintain certain information. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The specific requirements under the UK regime are more detailed than the US regime. The UK regime stipulates specific situations where firms are subject to additional confidentiality requirements and are prevented from collecting (and therefore in practice from maintaining) certain information (e.g., under the GDPR and the UK Data Protection Act 2018). In contrast, the US regime only broadly contemplates that firms may be subject to non-US law and therefore restricted in maintaining certain information lawfully collected.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
5. (Part A) Are there potentially any restrictions or prohibitions on the ability of firms to maintain certain of those types of information?		
(H) of Rule 18a-5, unless the SBS Entity (a) is required to obtain such information under local law in the jurisdiction in which the associated person is employed or located, or (b) obtains such information in conducting a background check that is customary for such firms in that jurisdiction, and the creation or maintenance of records reflecting that information would not result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
5. (Part B) Are there potentially any restrictions on the ability of the SEC to access particular types of records?		
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis with different regulators).		

Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR and the UK Data Protection Act 2018, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between UK authorities and the SEC each of which, in itself, should give the SEC the assurance that even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**UK Requirement and/or Policy Goal Summary**	**Comparability Assessment**
c. Subcategory: Record Preservation		
6. Are firms required to furnish records promptly to regulators upon request?		
Upon request, firms must furnish promptly to a representative of the SEC legible, true, complete, and current copies of records that the firm is required to make or preserve. *See* Exchange Act rule 18a-6(g) [17 CFR 240.18a-6(g)].[212]	UK regulators are given very broad information-access powers, including with regards to access to information upon request. Section 165 FSMA. FCA Enforcement Guide 19.34. Regulators have powers to: have access to any document or other data in any form which the regulator considers could be relevant for the performance of its duties and receive or take a copy of it; to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information; to carry out on-site inspections or investigations; and to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an Investment Firm, a	**Comparability of outcomes**: The UK requirements to furnish records to UK regulators provide for a comparable regulatory outcome to the SEC requirements to furnish records to the SEC. In particular, both regulatory regimes allow the SEC/UK regulators (as applicable) to have prompt access to information upon request.

[212] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_66

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Record Preservation		
6. Are firms required to furnish records promptly to regulators upon request?		
	Credit Institution, or any other entity regulated by MiFID or MiFIR. Sections 165 – 177 FSMA.	

d. Subcategory: Reports and Notifications

The reports and notices that firms must provide regarding their financial condition and regarding operational issues and deficiencies are necessary to provide for effective SEC oversight of registered entities.

Registered firms must make reports that the SEC requires regarding transactions, positions and financial condition. Exchange Act section 15F(f)(1)(A) [15 U.S.C. 78o-10(f)(1)(A)].[213]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?		
Comparability of outcomes: The UK requirements to make reports provide for a comparable regulatory outcome to the SEC requirements to make reports. In particular, both regulatory regimes require that firms provide periodic, detailed information on their financials, operations, trading, and communication with clients, in order to improve information availability to market participants and facilitate regulatory oversight and enforcement. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The below UK requirements are comparable to analogous SEC requirements in the following ways:		
Firms are required to make a number of reports: **Financial/capital reports**:	Firms are required to make a number of reports, and in addition to the following, regulators have the power to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions.	Firms are required to make a number of reports: **Financial/capital reports**:

[213] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?		
Firms must file FOCUS reports to provide the SEC with, *inter alia*, unaudited reports about their financial and operational condition. **Exchange Act rule 18a-7(a)(1) [17 CFR 240.18a-7(a)(1)][214] (without a prudential regulator)**; and *Exchange Act rule 18a-7(a)(2) [17 CFR 240.18a-7(a)(2)][215] (with a prudential regulator)*;	Article 104(1)(j) EU CRD and sections 137A, 137G and 137T FSMA. For Credit Institutions, the PRA has made use of this power by imposing additional requirements regarding the reporting of connected funding of a capital nature for UK Credit Institutions. PRA Definition of Capital Rule 4.5. **Financial/capital reports**: Reports must be submitted by CRR Firms on the following matters (among others): capital/own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS), accounting information (Article 99 CRR and Annexes III, IV and V CRR Reporting ITS), counterparty credit risk (Article 99 CRR), large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS), liquidity coverage and stable funding (Part Six: Title II & Title III CRR and Annexes XII and XIII CRR Reporting ITS), and leverage ratios (Article 430 CRR and Annexes X and XI CRR Reporting ITS).	Financial and capital information required under the PRA Regulatory Reporting Rules, CRR and CRR Reporting ITS is comparable to that required under Exchange Act rules 18a-7(a)(1) and 18a-7(a)(2).
Internal models:	**Internal models**:	**Internal models**:

[214] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[215] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?		
Dealers that have been authorized to use internal models to calculate net capital are required to file additional reports on a monthly or quarterly basis. Exchange Act rule 18a-7(a)(3) [17 CFR 240.18a-7(a)(3)];[216]	CRR Firms are required to report on their use of internal models, as further described in response to the question set forth in section 2.d.3 below.	The UK requirements are comparable to the requirements under Exchange Act rule 18a-7(a)(3) in that firms that use internal models must submit additional reports to regulators. Although the UK regime does not specify the monthly or quarterly frequency, it imposes more detailed requirements on what information to report. Please see section 2.d.2 below for more details.
Financial statements: **Firms without a prudential regulator are required to disclose on their websites an audited statement of financial condition, and more recent unaudited statements. Exchange Act rules 18a-7(b)(1)(i), (2) [17 CFR 240.18a-7(b)(1)(i), (2)].[217] Dealers for which there is no prudential regulator also must disclose information regarding net capital, and if applicable, regarding material weaknesses**	**Financial statements**: Please see the response to question set forth in section 2.d.3 below for details.	**Financial statements**: Financial and operational information required under CRR and the Companies Act is comparable to that required under Exchange Act rules 18a-7(b)(1)(i), (ii), (iii), 18a-7(b)(2), 18a-7(c)(1)(i)(A) and 18a-7(c)(2).

[216] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[217] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?		
identified by an accountant. Exchange Act rules 18a-7(b)(1)(ii), (iii) [17 CFR 240.18a-7(b)(1)(ii), (iii)];[218]		
Annual reports: **Firms without a prudential regulator annually must file a financial report with the SEC. Exchange Act rule 18a-7(c)(1)(i)(A) [17 CFR 240.18a-7(c)(1)(i)(A)];[219] *see* also Exchange Act rule 18a-7(c)(2) [17 CFR 240.18a-7(c)(2)][220] (addressing required contents of the financial report)**;	**Annual reports**: CRR Firms must publish their financial statements and management report annually. Sections 394, 415 and 442 Companies Act .	**Annual reports**: Financial and operational information required under the Companies Act is comparable to that required under Exchange Act rules 18a-7(b)(1)(i), (ii), (iii), 18a-7(b)(2), 18a-7(c)(1)(i)(A) and 18a-7(c)(2).
Segregation reports: **Dealers are required to file, as applicable, a report addressing the firm's compliance with or exemption from segregation**	**Segregation reports**: Investment Firms must: (a) ensure the segregation of client money and assets from those of the Investment Firm, (b) maintain detailed, up to date and accurate accounts and	**Segregation reports**: Although the UK regime does not require standalone reports on funds segregation, information about client money required under FCA CASS 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R, 7.15.21R is comparable to

[218] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[219] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[220] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?		
requirements. Exchange Act rule 18a-7(c)(1)(i)(B) [17 CFR 240.18a-7(c)(1)(i)(B)];[221] *see* also Exchange Act rules 18a-7(c)(3), (4) [17 CFR 240.18a-7(c)(3), (4)][222] (addressing required contents of compliance and exemption reports); and	records distinguishing client money and assets from those of the Investment Firm (these accounts and records must be sufficient to establish an audit trail), and (c) conduct regular reconciliations between their accounts and records and those accounts and records of any third-parties with whom client money or assets may be held. FCA CASS 6.2.2R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R and 7.15.21R.[223] An independent auditor must submit a client money and assets report to the FCA, providing reasonable assurance that, among other things, the Investment Firm has maintained adequate systems to enable it to comply with the FCA CASS Rules. The report must be submitted in the prescribed form, within four months from the end of each period covered. FCA SUP 3.10.4R - SUP 3.10.7R.[224]	information required under Exchange Act rules 18a-7(c)(1)(i)(B) and 18a-7(c)(3), (4) in order to ensure funds segregation.

[221] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[222] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[223] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.
[224] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
1. What reports are firms required to make regarding financial, operational and compliance matters? To what extent is the information associated with the required reports similar to, or different from, the information presented in FOCUS reports, and in annual reports required under the Exchange Act?		
Accountant reports: **Firms are required to file reports of an independent public accountant addressing the financial report and the segregation-related report. Exchange Act rule 18a-7(c)(1)(i)(C) [17 CFR 240.18a-7(c)(1)(i)(C)].[225] The rule contains additional provisions regarding, *inter alia*, the nature and form of reports, accountant qualifications and engagement, and notifications of non-compliance or material weakness. Exchange Act rules 18a-7(d)-(g) [17 CFR 240.18a-7(d)-(g)].[226]**	**Accountant Reports**: Please see the response to the question set forth in section 2.d.5 below for details.	**Accountant Reports**: Both regulatory regimes require firms to submit reports by independent auditors addressing the firms' financial and operational information. Please see section 2.d.5 below for details However, the US regime requires unaudited reports of financial and operational information (to be submitted in FOCUS reports under Exchange Act rules 18a-7(a)(1), (2)), which the UK regime does not.

[225] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[226] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
2. To what extent does your jurisdiction require reports that address the use of internal models for purposes of calculating net capital?		
Dealers that have been authorized to use internal models to calculate net capital are required to file additional reports on a monthly or quarterly basis. Exchange Act rule 18a-7(a)(3) [17 CFR 240.18a-7(a)(3)].[227]	CRR Firms must submit financial/capital reports that expressly include a range of data in relation to their use of models. More broadly, CRR Firms must submit reports on the following matters (among others) which can be directly or indirectly affected by the use of capital models: own funds (Article 99 CRR and Annexes I and II CRR Reporting ITS), counterparty credit risk (Article 99 CRR), and large exposures (Article 394 CRR and Annexes VIII and IX CRR Reporting ITS). Regulators also have the power to impose additional or more frequent reporting requirements, including reporting on capital positions. Article 104(1)(j) EU CRD and sections 137A, 137G and 137T FSMA. For example, the PRA has made use of this power by imposing additional requirements on UK Credit Institutions regarding the reporting of connected funding of a capital nature for UK Credit Institutions. PRA Definition of Capital Rule 4.5. CRR Firms are also required to make 'Pillar III' public disclosures at least annually in conjunction with the publication of their financial statements. Articles 431 and 433 CRR. These disclosures include information on the	**Comparability of outcomes**: The UK requirements that the use of internal models to calculate net capital be addressed in reports provide for a comparable regulatory outcome to the SEC requirements that the use of internal models to calculate net capital be addressed in reports. In particular, both regulatory regimes impose additional reporting obligations if firms use internal models of net capital calculation. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The UK requirements are comparable to the US requirements under Exchange Act rule 18a-7(a)(3) in that firms that use internal models must submit additional reports to regulators. Although the UK regime does not specify the monthly or quarterly frequency, it imposes more detailed requirements on what information to report.

[227] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
2. To what extent does your jurisdiction require reports that address the use of internal models for purposes of calculating net capital?		
	use of capital models. Articles 452, 454 and 455 CRR. This information includes matters such as, for credit risk, the exposure values by class of exposures subject to evaluation using models and internal controls on the development and use of models. CRR Firms have discretion to determine where and how this information is made public. Article 434 CRR. CRR Firms are not required to disclose information which is immaterial, proprietary or confidential. Articles 432 CRR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
3. Does your jurisdiction require firms to make financial and capital information publicly available online? If so, what are the contents of the required disclosures?		
Firms without a prudential regulator are required to disclose on their websites an audited statement of financial condition, and more recent unaudited statements. Exchange Act rules 18a-7(b)(1)(i), (2) [17	CRR Firms are required to make 'Pillar III' public disclosures at least annually in conjunction with the publication of their audited corporate financial statements. Articles 431 to 455 CRR. These disclosures cover (among other matters): capital resources and capital requirements, exposure to CCR, capital buffers (amounts required to be held above minimum capital, such	**<u>Comparability of outcomes</u>**: The UK public disclosure requirements provide for a comparable regulatory outcome to the SEC public disclosure requirements. In particular, both regulatory regimes require firms to disclose financial and capital information in order to promote easier access to information and to protect market participants.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
3. Does your jurisdiction require firms to make financial and capital information publicly available online? If so, what are the contents of the required disclosures?		
CFR 240.18a-7(b)(1)(i), (2)].[228] Dealers for which there is no prudential regulator also must disclose information regarding net capital, and if applicable, regarding material weaknesses identified by an accountant. Exchange Act rules 18a-7(b)(1)(ii), (iii) [17 CFR 240.18a-7(b)(1)(ii), (iii)].[229]	as the countercyclical capital buffer); credit risk adjustments; unencumbered assets; use of rating agencies; exposure to market risk; operational risk; non-trading book equity and interest rate exposures; exposures to securitization positions; remuneration policy; the leverage ratio; use of capital models; and use of credit risk mitigation. Articles 437 to 440, 442, 443, 445 to 449 and 451 to 455 CRR. CRR Firms have discretion to determine where and how this information is made public. Article 434 CRR. In practice, websites are used. Credit Institutions and certain Investment Firms (depending on their size)[230] must have their financial statements audited. Section 475 Companies Act. CRR Firms must publish their financial statements and management report annually. Sections 394, 415 and 442 Companies Act .	While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The UK requirements are comparable to analogous SEC requirements. The requirements on disclosure of financial and capital information under Articles 431 to 455 CRR are comparable to those under Exchange Act rules 18a-7(b)(1)(i), (ii) and (iii) and 18a-7(b) (2). Although the UK regime does not specifically require that firms disclose the information on their websites, firms must make the information public and, in practice, websites are widely used.

[228] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[229] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[230] This requirement does not apply to small companies. A company qualifies as being small if it meets two out of the following three criteria: balance sheet not more than £5.1 m; net turnover of not more than £10.2m; or not more than fifty employees during the financial year. Section 382 Companies Act.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?		
Firms must provide notices regarding: 1. **Capital deficiencies: Dealers without a prudential regulator must notify the SEC if the dealer's net capital falls below the minimum amount required. Exchange Act rule 18a-8(a)(1) [17 CFR 240.18a-8(a)(1)].[231] Notice must be provided promptly, but within twenty-four hours, based on a number of triggering events. Exchange Act rule 18a-8(b) [17 CFR 240.18a-8(b)]**;[232] 2. *Bank dealers' capital category adjustments: Dealers with a prudential regulator are required to give notice to the SEC when they file an adjustment of reported capital category with a prudential regulator.*	Breach reporting requirements apply to CRR Firms. CRR Firms have a duty to deal with their regulators in an open and cooperative way, and must disclose to the FCA and the PRA, as appropriate, anything relating to the CRR Firm of which that regulators would reasonably expect notice. Principle 11 FCA PRIN 2.1.1R. PRA Fundamental Rule 7. A CRR Firm must notify the FCA immediately if it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future: the firm failing to satisfy one or more of the conditions allowing it to be an authorized firm, any matter which could have a significant adverse impact on the firm's reputation, any matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm, or any matter in respect of the firm which could result in serious financial	**Comparability of outcomes**: The UK notice requirements provide for a comparable regulatory outcome to the SEC notice requirements. In particular, both regulatory regimes aim to establish reporting mechanisms so that the regulators will be promptly notified of these events, in order to facilitate regulatory oversight and enforcement and protect market participants. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements:** The specific UK requirements are different from the specific US requirements. The US regime specifies how firms must notify the regulators of these events (including timing, content, etc.). By contrast, the UK regime sets out a more flexible reporting mechanism for firms, allowing them to

[231] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68
[232] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?		
Exchange Act rule 18a-8(c) [17 CFR 240.18a-8(c)];[233] 3. Failures regarding books and records: Firms that fail to make and keep current the required books and records must notify the SEC on the day that the failure arises, and, within forty-eight hours of the original notice, provide a report stating what the firm has done or is doing to correct the situation. Exchange Act rule 18a-8(d) [17 CFR 240.18a-8(d)];[234] 4. **Material weaknesses: Firms without prudential regulators that discover a material weakness, or are notified by an independent public accountant of a material weakness, must notify the SEC within twenty-four hours, and**	consequences to the UK financial system or to other firms. FCA SUP 15.3.1R and PRA Notifications Rule 2.1. A CRR Firm must notify the FCA of a breach of a rule or of any requirements under, among other things, MiFIR or CRR. FCA SUP 15.3.11R and PRA Notifications Rule 2.4. In determining whether the breach was significant, CRR Firms should have regard to potential financial losses to customers or to the firm, frequency of the breach, implications for the CRR Firm's systems and controls and if there were delays in identifying or rectifying the breach. FCA SUP 15.3.12G. A notification to the regulator should include: (i) information about any circumstances relevant to the breach or the offence, (ii) identification of the rule or requirement or offence, and (iii) information about any steps which the CRR Firm has taken or intends to take to rectify or remedy the breach or prevent any future potential	decide what constitutes a reportable breach. The FCA SUP Rules and PRA Notification Rules provide guidance to firms with regards to the matters that the regulator would expect firms to report to them. The timeline for the disclosure is not prescribed, requiring firms to notify the FCA immediately as they become aware, or have information which reasonably suggests that a significant breach has occurred. The UK regime also requires that firms establish, implement and maintain appropriate and effective requirements that would enable firms and their employees to notify regulators of potential or actual breaches of obligations.

[233] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68
[234] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?		
transmit a report within forty-eight hours of the notice stating what they have done or are doing to correct the situation. Exchange Act rule 18a-8(e) [17 CFR 240.18a-8(e)];[235] and 5. Failures to make required reserve account deposits: Dealers must give notice to the SEC if they fail to make a deposit into their customer reserve account, as required by the segregation rule. Exchange Act rule 18a-8(g) [17 CFR 240.18a-8(g)].[236]	occurrence. FCA SUP 15.3.14G and PRA Notifications Rule 2.5. Specific notification obligations apply for breaches of requirements relating to client money and client assets. In particular, CRR Firms are obliged to notify the FCA in the event of non-compliance or a material inability to comply with recordkeeping obligations in respect of client money and client assets. FCA CASS 6.6.57R, 7.15.33R and Schedule 2. Separate notification requirements to the regulator apply in the case of civil, criminal or disciplinary proceedings against a CRR Firm, fraud, errors and other irregularities and insolvency, bankruptcy and winding up. FCA SUP 15.3.15R, 15.3.17R and 15.3.21R and PRA Notifications Rules 2.6, 2.8 and 2.9. CRR Firms must have appropriate procedures in place for its employees to report a potential actual breach of, among other things, any rule implementing MiFID or a requirement imposed by MiFIR. The procedures must enable	

[235] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68
[236] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_68

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?		
	employees to report internally through a specific, independent and autonomous process. FCA SYSC 18.6.1R. Similar whistleblowing obligations apply to firms subject to FCA regulation under CRD (FCA IFPRU 2.4.1R). FCA SYSC 18.6.4G. In addition, a CRR Firm regulated by the PRA must establish, implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by a person, including a firm's employee, internally through a specific, independent and autonomous channel. PRA General Organisational Requirements 2A.2. Additional requirements concerning the provision of information to employees regarding whistleblowing apply where a CRR Firm has average total gross assets exceeding £250 million, determined on the basis of the annual average amount of gross assets calculated across a rolling period of five years or, if it has been in existence for less than five years, across the period during which it has existed (in each case, calculated with reference to the CRR Firm's annual accounting reference date). PRA General Organisational	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
4. What notices are firms required to make regarding matters such as capital adequacy and deficiencies, failures to comply with books and records requirements, failures to comply with segregation requirements, and material weaknesses?		
	Requirements 2A.1(2). PRA General Organisational Requirements 2A.3-2A.6.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?		
As described above, firms without a prudential regulator annually must file a financial report with the SEC, and dealers are further required to file, as applicable, a report addressing the firm's compliance with or exemption from segregation requirements. Firms are required to file reports of an independent public accountant addressing the financial report and the segregation-related report, as applicable. Exchange	**Accountant reports**: Certain Investment Firms (depending on their size)[239] must have their financial statements audited. Section 475 Companies Act. An independent auditor must submit a client money and assets report to the FCA, providing reasonable assurance that, among other things, the Investment Firm has maintained adequate systems to enable it to comply with the FCA CASS Rules. The report must be submitted in the prescribed form, within four months from	**Comparability of outcomes**: The UK report review requirements provide for a comparable regulatory outcome to the SEC report review requirements. In particular, both regulatory regimes require firms to submit reports by independent auditors on the firms' financial and operational information, in order to ensure accuracy of information and protect market participants. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the

[239] This requirement does not apply to small companies. A company qualifies as being small if it meets two out of the following three criteria: balance sheet not more than £5.1 m; net turnover of not more than £10.2m; or not more than fifty employees during the financial year. Section 382 Companies Act.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?		
Act rule 18a-7(c)(1)(i)(C) [17 CFR 240.18a-7(c)(1)(i)(C)].[237] **The rule contains additional provisions regarding, *inter alia*, the nature and form of reports, accountant qualifications and engagement, and notifications of non-compliance or material weakness. Exchange Act rule 18a-7(d)-(g) [17 CFR 240.18a-7(d)-(g)].**[238]	the end of each period covered. FCA SUP 3.8.5R and 3.10.4R - SUP 3.10.7R.[240] An Investment Firm may include interim or year-end profits in Common Equity Tier 1 capital before the Investment Firm has taken a formal decision confirming the final profit or loss of the Investment Firm for the year only with the prior permission of the regulator, which must require that those profits have been verified by persons independent of the Investment Firm that are responsible for the auditing of the accounts of that Investment Firm. Article 26(2) CRR. Investment Firms must engage an external auditor to confirm the accuracy of their calculation regarding an average risk weight for its exposures in the form of a unit or share in a collective investment undertaking (i.e. a fund), where the Investment Firm is not aware of the underlying exposures of the fund. Article 132(5) and 154 CRR. Where an Investment Firm uses internal models to calculate its credit risk requirement, the	comparability of specific requirements below for completeness. **<u>Comparability of specific requirements:</u>** The below UK requirements are comparable to analogous SEC requirements in the following ways: • **Information to be audited**. Information to be audited under Articles 132(5) and 154 CRR and Regulation 2(4) Capital Requirements (Country-by-Country Reporting) Regulations 2013 is comparable to that under Exchange Act rules 18a-7(c)(1)(i)(C) and 18a-7(d)-(g). • **Independence of auditors**. The UK regime requires independent auditing teams from both inside and outside the firm, which is comparable to the requirements under Exchange Act rule 18a-7(c)(1)(i)(C).

[237] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[238] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=544aa6f87075e70ff4681c3c80a5e91c&mc=true&r=SECTION&n=se17.4.240_118a_67
[240] In the FCA's CASS regime, rules in respect of non-cash client assets are set out in CASS 6 and rules in respect of client money (i.e. cash) are set out in CASS 7. The description therefore distinguishes between client money and client assets.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?		
	Investment Firm's internal audit department, or another comparable independent auditing unit must review, at least annually, the Investment Firm's rating systems and its operations, including the operations of the credit function and the estimation of probability of default, loss given default, expected losses and conversion factors. Article 191 CRR. An Investment Firm which uses internal models must calculate its operational risk capital requirement to subject its operational risk management processes and measurement systems to regular reviews performed by internal or external auditors. Article 321 CRR. An Investment Firm that uses an internal risk-measurement model for market risk purposes must conduct an independent review of this (these) model(s), either as part of its regular internal auditing process, or by mandating a third-party undertaking that provides auditing or consulting services and that has staff who have sufficient skills in the area of market risk in trading activities to conduct that review, which must be conducted to the satisfaction of the Investment Firm's regulators. Article 325bi CRR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?		
	An Investment Firm which relies on a depository or management company of a collective investment undertaking must calculate and report own funds requirements for position risk for positions in, or foreign exchange positions in, collective investment undertakings and must confirm the accuracy of these calculations with an external auditor. Articles 350 and 353 CRR. An Investment Firm which uses the internal models approach to calculate its market risk capital requirement must conduct, as part of its regular internal auditing process, an independent review of its internal models. Article 368 CRR. An Investment Firm which relies on a depository or management company of a collective investment undertaking must calculate and report own funds requirements for the market value and haircuts for shares or units in collective investment undertakings and must confirm the accuracy of these calculations with an external auditor. Article 418 CRR. Investment Firms must have certain information audited in accordance with UK law on statutory audits of accounts. Such information includes: (a) name(s), nature of activities and	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
5. To what extent does your jurisdiction require financial reports or other information to be reviewed by an independent accountant?		
	geographical location; (b) turnover; (c) number of employees on a full time equivalent basis; (d) profit or loss before tax; (e) corporation tax paid; and (f) public subsidies received. Regulation 2(4) The Capital Requirements (Country-by-Country Reporting) Regulations 2013	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Reports and Notifications		
6. Are there potentially any restrictions or prohibitions on the ability of the SEC to access reports or notices made pursuant to the requirements of your jurisdiction?		
In general, Credit Institutions and Investment Firms are able to share their own data directly with the SEC (subject to considerations regarding privacy and client confidentiality) without restrictions. Exceptions to this are reports from, and correspondence with, a Credit Institution's or Investment Firm's regulator, which the regulator often requires the firm to keep confidential (though this would vary on a case-by-case basis). Beyond this, the working group recognizes that substituted compliance on recordkeeping not only requires a comparability finding, but also a framework that would permit the SEC to examine and inspect regulated firms' compliance with the applicable securities laws. However, the working group further understands that there are multiple variations of the question of access to data protected by, e.g., GDPR and the UK Data Protection Act 2018, including as a request to obtain assurances on records access, a registration opinion required from non-US entity registrants, and in the context of negotiations of memoranda of understanding between UK authorities and the SEC each of which, in itself, should give the SEC the assurance that even accounting for privacy laws and client confidentiality, records access can be obtained either directly or through supervisory channels. The working group does not propose to add another variation of the discussion, in addition to the three aforementioned venues.		

3. Category: Supervision and Chief Compliance Officer Requirements

a. Executive Summary

The supervision and CCO requirements promote registered entities' use of structures, processes and responsible personnel reasonably designed to promote compliance with applicable law and to identify and cure instances of non-compliance, in part through the designation of an individual with responsibility and authority over compliance matters.

b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors

Firms are required to have internal supervision systems with qualified supervisory personnel. When making a substituted compliance determination with regard to supervision requirements, the SEC will consider whether "the mandates for supervisory systems under the requirements of the foreign financial regulatory system, and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[241]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**UK Requirement and/or Policy Goal Summary**	**Comparability Assessment**
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
6. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?		
<u>Comparability of outcomes</u>: The UK requirements to establish internal supervisory systems provide a comparable regulatory outcome to the SEC internal supervisory system requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(1) and the UK regime are consistent in that each requires firms to establish internal supervisory systems designed to ensure compliance with applicable laws, and each provide for mechanisms to assess the effectiveness of those systems. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**:		

[241] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
6. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?		
The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Supervisory systems to prevent violations Firms are required to conform with rules that the SEC prescribes with regard to diligent supervision of the firm's business. Exchange Act section 15F(h)(1)(B) [15 U.S.C. 78o-10(h)(1)(B)].[242] Under SEC rules, each firm is required to "establish and maintain a system to supervise, and shall diligently supervise," its business and the activities of its associated persons relating to security-based swaps. The system must "be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the	**Supervisory systems to prevent violations** **<u>Threshold Conditions</u>** The Threshold Conditions require UK Firms to have appropriate non-financial resources, which includes in relation to systems and controls for the supervision of their business and personnel and to ensure compliance with applicable laws (as appropriate to the particular UK Firm, and accounting for its group context).[244] Threshold Conditions at paragraph 2D, 3C and 5D. **<u>PRA Fundamental Rules and FCA Principles</u>** A UK Firm must conduct its business with due skill, care and diligence take reasonable care to organise and control its affairs responsibly and effectively. In practice, this will require UK Firms to maintain adequate systems and controls for the supervision of their business and personnel and to ensure compliance with applicable laws.	**Supervisory systems to prevent violations** The Threshold Conditions, PRA Fundamental Rules and FCA Principles establish a framework within which UK Firms are required to maintain appropriate compliance and supervisory systems. Article 21 MiFID Org Reg. requires Investment Firms to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities and maintain internal compliance and reporting mechanisms. Article 25 MiFID Org Reg. requires Investment Firms to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under the UK law on markets in financial instruments. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1 requires an Investment Firm to establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and

[242] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[244] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
6. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?		
rules and regulations thereunder" relating to the firm's business. Exchange Act rule 15Fh-3(h)(1) [17 CFR 240.15Fh-3(h)(1)].[243]	PRA Fundamental Rules 2 and 6 and FCA PRIN 2.1.1.R(2) and (3). **<u>MiFID Org Reg., PRA & FCA Rules</u>** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and appointed representatives with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1. Extensive requirements apply with regards to the supervisory measures that must be taken by Investment Firms in order to supervise their business and their staff, and to prevent violations of applicable rules and regulations. Examples include: • Investment Firms must ensure that their relevant persons are aware of the procedures which must be followed for the proper	appointed representatives with its obligations under the regulatory system. Articles 27, 28 and 29 MiFID Org Reg. provide various requirements to ensure that an Investment Firm's staff complies with their regulatory obligations regarding remuneration and personal transactions matters. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1 require the management body to ensure the integrity of the accounting and financial reporting systems, including financial and operational controls, and compliance with the law and relevant standards. These requirements are comparable to the supervisory system requirements prescribed by Exchange Act rule 15Fh-3(h).

[243] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
6. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?		
	discharge of their responsibilities; establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm; and establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg. • Investment Firms must ensure that their senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under UK law on markets in financial instruments. Article 25 MiFID Org Reg. Additional requirements apply, including in relation to remuneration and personal transactions, to ensure that an Investment Firm's staff comply with their obligations. Articles 27, 28 and 29 MiFID Org Reg.	
System assessments	**System assessments**	**System assessments**

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
6. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?		
Firms are required to conform to rules that the SEC prescribes with regard to diligent supervision of the firm's business. Exchange Act section 15F(h)(1)(B) [15 U.S.C. 78o-10(h)(1)(B)].[245] Under SEC rules, each firm is required to "establish and maintain a system to supervise, and shall diligently supervise," its business and the activities of its associated persons relating to security-based swaps. The system must "be reasonably designed to prevent violations of the provisions of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's business. Exchange Act rule 15Fh-3(h)(1) [17 CFR 240.15Fh-3(h)(1)].[246]	Investment Firms must establish and maintain a permanent and effective compliance function which operates independently and has responsibilities including: monitoring and assessing the adequacy and effectiveness of measures, policies and procedures to detect a failure in the Investment Firm's obligations under UK law on markets in financial instruments; advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under UK law on markets in financial instruments; reporting to the management body on the implementation and effectiveness of the overall control environment, identified risks and remedial actions; and monitoring the complaints-handling process. Article 22 of MiFID Org Reg. The management body must define, oversee and be accountable for matters including the implementation of the governance arrangements that ensure effective and prudent management. Among other requirements, the management	Article 22 MiFID Org Reg. requires firms to maintain an independent compliance function that assesses the adequacy and effectiveness of procedures and systems in place to ensure compliance with UK law on markets in financial instruments. The management body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards. These requirements are analogous to the system assessment requirement set forth in Exchange Act rule 15Fh-3(h).

[245] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[246] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
6. To what extent are firms required to have systems for the internal supervision of their security-based swap business and personnel? How are those systems required to be reasonably designed to prevent violations of the applicable laws? How is the effectiveness of those systems assessed?		
	body must ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1.	

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
Comparability of outcomes: The UK requirements regarding the designation, responsibility and capacity of supervisory personnel provide a comparable regulatory outcome to the SEC requirements regarding the designation, responsibility and capacity of supervisory personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2) and the UK regime are consistent in that each requires firms to designate qualified supervisory personnel responsible for ensuring compliance with applicable laws. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**:		

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Authority and responsibility Firms must designate at least one qualified person with authority to carry out supervisory responsibilities. The designation requirement applies to each type of business for which registration is required. Exchange Act rule 15Fh-3(h)(2)(i) [17 CFR 240.15Fh-3(h)(2)(i)].[247]	**Authority and responsibility** **<u>Threshold Conditions</u>** The Threshold Conditions require UK Firms to have appropriate non-financial resources, which includes in selection of supervisory staff (as appropriate to the particular UK Firm, and accounting for its group context).[248] Threshold Conditions at paragraph 2D, 3C and 5D. **<u>PRA Fundamental Rules and FCA Principles</u>** A UK Firm must conduct its business with due skill, care and diligence take reasonable care to organise and control its affairs responsibly and effectively. In practice, this will require UK Firms to appoint appropriate supervisory staff. PRA Fundamental Rules 2 and 6 and FCA PRIN 2.1.1.R(2) and (3). **<u>SMCR</u>** In the UK, CRR Firms must have certain members of their management body approved by the	**Authority and responsibility** The Threshold Conditions, PRA Fundamental Rules and FCA Principles establish a framework within which UK Firms are required to appoint appropriate supervisory personnel. The SMR designates a broad range of material supervisory oversight roles as SMFs which must be conducted by Senior Managers. The Certification regime requires that staff, other than Senior Managers, are 'fit and proper' to conduct their roles. Article 22(3) MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by UK law on markets in financial instruments. Additionally, Article 22(3) MiFID Org Reg. requires that persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 25 MiFID Org Reg. requires an Investment Firm to ensure that senior management, and, where appropriate, the

[247] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[248] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
	regulators in order to be able to perform Senior Management Functions (**SMF**) in relation to the carrying on of regulated activities in accordance with the Senior Managers and Certification Regime (**SMCR**) (please refer to Annex IV for further background on the SMCR). The SMFs include the Chief Finance Function, the Chief Risk Function, the Compliance Oversight Function, the Head of Internal Audit Function, Chief Operations Function, the Money Laundering Reporting Officer, and Chairs of the Nominations, Remuneration and Audit Committees (among others and to the extent relevant to any particular CRR Firm). PRA Senior Management Functions Rules 2-4, FCA SUP 10C.4, 10C.5A, 10C.6 and 10C.6A. Each of the PRA and FCA maintain a list of Prescribed Responsibilities, which must be allocated to identified SMFs. These include responsibility for: managing the allocation and maintenance of capital, funding and liquidity; financial information and regulatory reporting; safeguarding the independence of, and overseeing the performance of, each of the compliance function and risk function and internal audit function; as well as responsibility	supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under UK law on markets in financial instruments. Where appropriate, Articles 23 and 24 MiFID Org Reg. require Investment Firms to establish an independent risk management function and an internal audit function, which will assist the Investment Firm in ensuring that it complies with its obligations under UK law on markets in financial instruments. These requirement are analogous to the designation requirement set forth in Exchange Act rule 15Fh-3(h)(2).

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
	for the SMR and the Certification Regime (among others and to the extent relevant to any particular CRR Firm). PRA Allocation of Responsibilities Rule 4 and FCA SYSC 24.2.6R. In addition, the Certification Regime (please see Annex IV for details) also captures key supervisory personnel. In particular, staff performing the CASS oversight function, staff requiring qualifications (e.g. staff overseeing client money and client assets on a day-to-day basis with a retail client) and material risk takers (e.g. staff responsible for finance, taxation and budgeting, as well as staff member responsible for, or members of a committee responsible for, risk management) are required to be Certified Persons and so are subject to the fitness and propriety assessments (including as to competence) noted in response to question 2.b.3. PRA Certification Rule 2.2, FCA SYSC 27.7.3R, 28.10R, FCA TC App 1.1.1R and Articles 2-4 MRT Regulation. **<u>MiFID Org Reg., PRA & FCA Rules</u>** An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its	

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
	managers, employees and appointed representatives with its obligations under the regulatory system. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1. An Investment Firm must ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under UK law on markets in financial instruments. Article 25 MiFID Org Reg. An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting concerning compliance matters required by its obligations under UK law on markets in financial instruments. The persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 22(3) MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities	

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
	undertaken in the course of that business, establish and maintain a risk management function that operates independently. This function must be responsible for the implementation of relevant policies and procedures and the provision of reports and advice to senior management. Article 23(2) MiFID Org Reg. Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. The responsibilities of this function must include to: establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Investment Firm's systems, internal control mechanisms and arrangements; issue recommendations based on the result of this work and verify compliance with those recommendations; and report to senior management in relation to internal audit matters. Article 24 MiFID Org Reg.	

SEC Requirement/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
7. What requirements govern firms' designation of supervisory personnel, and the authority, responsibility and capacity of those personnel?		
Capacity Firms must designate at least one qualified person with authority to carry out supervisory responsibilities. The designation requirement applies to each type of business for which registration is required. Exchange Act rule 15Fh-3(h)(2)(i) [17 CFR 240.15Fh-3(h)(2)(i)].[249]	**Capacity** The FCA expects that a CRR Firm should avoid assigning such a wide range of responsibilities to a particular Senior Manager that the individual is not able to carry out those responsibilities effectively. FCA SYSC 24.3.6G. Investment Firms (among other obligations) must: employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Article 21(1) MiFID Org Reg.	**Capacity** The FCA SYSC 24.3.6G expectation regarding capacity for Senior Managers and Article 21(1) MiFID Org Reg. requirements regarding skills, knowledge and expertise are comparable to the supervisory personnel requirements set forth in Exchange Act rule 15Fh-3(h)(2).

[249] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>UK Requirement and/or Policy Goal Summary</th><th>Comparability Assessment</th></tr>
<tr><td colspan="3">b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors</td></tr>
<tr><td colspan="3">8. What requirements govern the qualification of supervisory personnel?</td></tr>
<tr><td colspan="3"><u>Comparability of outcomes</u>:

The UK requirements regarding the qualification of supervisory personnel provide a comparable regulatory outcome to the SEC requirements regarding the qualification of supervisory personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(ii) and the UK regime are consistent in that each requires firms to ensure that supervisory personnel are qualified to carry out their responsibilities.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Qualification

Firms must make use of supervisors that are qualified to carry out their responsibilities. Qualification may be established via experience or training. Exchange Act rule 15Fh-3(h)(2)(ii) [17 CFR 240.15Fh-3(h)(2)(ii)].[250]</td><td>Qualification

SMCR

In the UK, UK Firms must have certain members of their management body approved by the regulators in order to be able to perform SMFs in relation to the carrying on of regulated activities in accordance with the SMCR (please refer to Annex IV for further background on the SMCR).

As part of this approval process and ongoing compliance with SMCR requirements, UK Firms are required to obtain detailed information concerning</td><td>Qualification

The SMCR requires Senior Managers and Certified Persons to be assessed for their fitness and propriety, including as to their qualifications, training and competence. Article 21 MiFID Org Reg. requires Investment Firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. FCA SYSC 4.2.1R and</td></tr>
</table>

[250] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
8. What requirements govern the qualification of supervisory personnel?		
	their Senior Managers, including but not limited to fitness and propriety matters, covering the individual's qualifications, training and competence. UK Firms must satisfy themselves annually that their assessment of fitness and propriety is suitable. Section 63(2A) and 60A(2) FSMA, PRA Fitness and Propriety Rule 2.6, FCA SUP 10C.10.14G and FIT 2.2. Staff other than Senior Managers are generally subject to the Certification Regime (please see Annex IV for details). This requires a UK Firm to annually assess the fitness and propriety of its Certified Persons, including considering the individual's qualifications, training and competence. Section 63F(2) and (5) FSMA, PRA Certification Rule 2.1, FCA SYSC 27.2.5G and FCA FIT 2.2. **FCA Rules** General qualification requirements are imposed on an Investment Firm's relevant staff and internal functions with regards to their knowledge, skills and expertise. These include: • Investment Firms must employ personnel with the skills, knowledge and expertise necessary	4.3A.3R require UK Firms to ensure both its senior personnel and the members of its management body are, among other things, of sufficiently good repute and sufficiently experienced. FCA SYSC 4.3A.1AR requires a UK Firm's management body to define, approve and oversee the skills, knowledge and expertise required by personnel. Additionally, Article 22 MiFID Org Reg. requires that persons involved in the compliance function must have appropriate expertise. These requirements are analogous to the supervisory personnel qualification requirements set forth in Exchange Act rule 15Fh-3(h)(2)(ii).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Supervisory Systems, Responsible Individuals and Qualified Supervisors		
8. What requirements govern the qualification of supervisory personnel?		
	for the discharge of the responsibilities allocated to them. Article 21 MiFID Org Reg. • The compliance function must have, among other things, the necessary expertise in order to be able to discharge its responsibilities properly and independently. Article 22(3) MiFID Org Reg. • An Investment Firm's management body must define, approve and oversee, among other things, the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the Investment Firm has to comply with. FCA SYSC 4.3A.1AR. • Investment Firms must ensure that their senior personnel are of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm. FCA SYSC 4.2.1R. • Investment Firms must ensure that the members of the management body are of sufficiently good repute, possess sufficient	

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8. What requirements govern the qualification of supervisory personnel?		
	knowledge, skills and experience and commit sufficient time to perform their functions. FCA SYSC 4.3A.3R.	

c. Subcategory: Supervisory System Policies and Procedures

Firms are required to establish, maintain and enforce written supervisory policies and procedures that are reasonably designed to prevent violations of applicable law. When making a substituted compliance determination with regard to supervision requirements, the SEC will consider whether "the mandates for supervisory systems under the requirements of the foreign financial regulatory system, and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[251]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
Comparability of outcomes: The UK requirements to establish and enforce written supervisory policies and procedures provide a comparable regulatory outcome to the SEC requirements to establish and enforce supervisory policies and procedures. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii) and the UK regime are consistent in that each requires firms to establish a variety of policies and procedures meant to ensure that effective and thorough supervisory systems are in place to mitigate risk. UK law on markets in financial instruments requires the establishment of a 'three lines of defence' model in relation to governance, risk and compliance oversight by Investment Firms. The first line of defence comprises the front office, as directed by the policies and procedures (including in respect of conflicts of interest) that the Investment Firm is obliged to establish and front office staff are required to follow. The second line of defence comprises the compliance and risk management teams – these teams conduct supervision of the front office. The third line of defence comprises the internal/external audit team, which ensures the effectiveness of the compliance and risk management teams. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		

[251] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
Supervisory policies and procedures: **Establishing robust risk management systems** SEC rules require that firms establish, maintain and enforce written policies and procedures that address the firm's security-based swap business, including associated persons. Those policies and procedures must be "reasonably designed to prevent violations" of applicable securities laws and regulations. Exchange Act rule 15Fh-3(h)(2)(iii) [17 CFR 240.15Fh-3(h)(2)(iii)].[252] Under SEC rules, those policies and procedures at a minimum must include certain elements (addressed below). In adopting these requirements, the SEC noted that the minimum	**Supervisory policies and procedures**: **Establishing robust risk management systems** **Threshold Conditions** The Threshold Conditions require UK Firms to have appropriate non-financial resources, which includes in relation to risk management systems (as appropriate to the particular UK Firm, and accounting for its group context).[257] Threshold Conditions at paragraphs 2D, 3C, 5D. **PRA Fundamental Rules and FCA Principles** A UK Firm must conduct its business with due skill, care and diligence take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. PRA Fundamental Rules 2, 5 and 6 and FCA PRIN 2.1.1.R(2) and (3). **MiFID Org Reg., PRA Rules and FCA Rules** Investment Firms must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm, including its managers, employees and appointed	**Supervisory policies and procedures**: **Establishing robust risk management systems** The Threshold Conditions, PRA Fundamental Rules and FCA Principles establish a framework within which UK Firms are required to maintain appropriate risk management systems. FCA SYSC 4.1.1R and PRA General Organisational Requirements Rule 2.4 requires Investment Firms to have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Article 23 MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. Article 21(3) MiFID Org Reg. requires that Investment Firms must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of

[252] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[257] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
requirements listed in the rule "are not an exhaustive list," and that entities "should keep in mind their overarching obligation . . . to establish and maintain a supervisory system that is reasonably designed to prevent violations of applicable federal securities laws and the rules and regulations thereunder" relating to the firm's security-based swap business. *See* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR at 30005-06 (May 13, 2016) (**Business Conduct Adopting Release**)[253] (suggesting that entities "generally should consider" providing for the supervisory review of recorded oral communications, and consider how to supervise certain disclosures orally communicated). The supervisory system must encompass procedures for compliance with duties set forth	representatives, with its obligations under the regulatory system and for countering the risk that the Investment Firm might be used to further financial crime. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1. Investment Firms must have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. FCA SYSC 4.1.1R(1) and PRA General Organisational Requirements Rule 2.4. Investment Firms must establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the Investment Firm. The requirement encompasses monitoring the effectiveness and adequacy of the Investment Firm's risk management policies and procedures, together with the level of compliance by the Investment Firm and its personnel with the arrangements, processes and mechanisms adopted and the adequacy and effectiveness of	investment services and activities. In practice, these requirements result in written policies and procedures that are comparable to the supervisory system requirements under Exchange Act rule 15Fh-3(h)(2)(iii) FCA SYSC 4.1.1R(1), PRA General Organisational Requirements Rule 2.1 require CRR Firms to have robust governance arrangements, with adequate internal control mechanisms, including sound administrative and accounting procedures. FCA SYSC 7.1.4R, PRA Risk Control Rule 2.3 require that CRR Firm management must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the entity is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. FCA SYSC 7.1.18R, PRA Risk Control Rule 3.1 require firms of significant size, internal organization, and nature, scope and complexity of their activities to establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. Article 103 CRR requires CRR Firms that carry out trading activities to design and implement trading book

[253] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
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in Exchange Act section 15F(j). Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)].[254] Section 15F(j) contains self-executing requirements that, *inter alia*, impose on firms duties related to: Exchange Act section 15F(j)(2) [15 U.S.C. 78o-10(j)(2)];[255] and Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)];[256]	measures taken to address deficiencies in them. Article 23 MiFID Org Reg. A specific risk management function is required where appropriate and proportionate that must: (i) operate independently, (ii) implement the Investment Firm's risk management policies and procedures, and (iii) provide required reports and advice to senior management. Article 23(2) MiFID Org Reg. An Investment Firm must take reasonable steps to ensure continuity and regularity in the performance of its regulated activities. To this end, the Investment Firm must employ appropriate and proportionate systems, resources and procedures, and ensure, when relying on a third-party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. FCA SYSC 4.1.1R and 8.1.1R(1).	policies and procedures which include position limits that must be set and monitored for appropriateness.

[254] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[255] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[256] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
	Investment Firms must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities. This requires Investment Firms to establish and maintain a business continuity and disaster recovery plan, which must allow for the timely resumption of its investment services and activities and for the preservation of essential data and functions. Article 21(3) MiFID Org Reg. An Investment Firm, where appropriate and proportionate, must have an internal audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms and arrangements; and to issue and oversee the implementation of recommendations based on the plan. Article 24 MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
	PRA Rules and FCA Rules CRR Firms must have robust governance arrangements, with adequate internal control mechanisms, including sound administrative and accounting procedures. FCA SYSC 4.1.1R(1), PRA General Organisational Requirements Rule 2.1. The management body must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the CRR Firm is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle. FCA SYSC 7.1.4R and PRA Risk Control Rule 2.3. CRR Firms that are significant in terms of size, internal organization and nature, scope and complexity of their activities must establish a risk committee composed of members of the management body who do not perform any executive function in the entity concerned. FCA SYSC 7.1.18R and PRA Risk Control Rule 3.1. **CRR** CRR Firms that carry out trading activities must design and implement trading book policies and procedures which include position limits that	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
	must be set and monitored for appropriateness. Article 103 CRR. CRR Firms that have permission to use internal models for calculating their CCR requirements required to establish and maintain a CCR management framework are specifically required to take into account trading and credit limits for the purposes of their CCR risk framework, and are required to include information about appropriate measures taken in terms of position limits in their daily reports on the output of their risk measurement models. Articles 286, 293 and 221 CRR.	
Disclosing certain information to regulators Firms must disclose, to the SEC and prudential regulators (as applicable), information concerning: terms and conditions of its security-based swaps; security-based swap trading operations, mechanisms, and practices; financial integrity protections relating to security-based swaps; and other information relevant to the firm's	**Disclosing certain information to regulators** Investment Firms must make reports to the FCA in respect of transactions in financial instruments which are (a) admitted to trading, or traded, on a trading venue or for which a request for admission to trading has been made; (b) the underlying is a financial instrument traded on a trading venue; or (c) the underlying is an index or a basket composed of financial instruments traded on a trading venue. For these purposes, "trading venues" include EU and UK regulated markets (i.e. exchanges), multilateral trading facilities and organized trading facilities.	**Disclosing certain information to regulators** The FCA and the PRA have broad information-gathering powers and Investment Firms are subject to FCA and PRA notification requirements. In addition, Article 26 MiFIR requires Investment Firms to make reports to the FCA, where relevant, containing granular trade-by-trade information including with respect to parties and precise trade details. These requirements are comparable to the requirements under Exchange Act rule 15F(j)(3) [15 U.S.C. 78o-10(j)(3)].

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
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9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
trading in security-based swaps. Exchange Act section 15F(j)(3) [15 U.S.C. 78o-10(j)(3)];[258]	Transaction reporting contains very granular trade-by-trade information, including (among others), the parties, the precise trade details (e.g. instrument type, position taken, price, quantity, etc.) and the decision makers (e.g. the natural person executing the trade) (the Transaction Reporting RTS sets out the full fields to be addressed in these reports). Article 26 MiFIR. Furthermore, the FCA and the PRA have broad information-gathering powers. This means that, in practice, Investment Firms must have the relevant information available to enable them to comply with any requests for information received from the regulators. Section 165 FSMA and PRA Information Gathering Rule 4.1. Please also see the information provided in response to Question 2.b.1 (Trade confirmations) regarding the records that Investment Firms are required to make and keep in relation to their transactions and other activities. The FCA and the PRA Rules also impose general notification requirements in relation to matters having a serious regulatory impact on an Investment Firm. FCA SUP 15.3.1R, SUP 15.3.8G,	

[258] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
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9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
	PRA Notifications Rules 2.1-2.9. In addition, Investment Firms must deal with their regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice. FCA PRIN 2.1.1R (Principle 11), PRA Fundamental Rule 7.	
Obtaining necessary information Firms must establish and enforce internal systems and procedures to obtain information needed to perform functions required by law or regulation, and to provide the information to the SEC and prudential regulators on request. Substituted compliance similarly is not available in connection with the information provision part of that duty. *See* Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)][259] (further excluding section 15F(j)(4)(B) from the availability of substituted compliance.	**Obtaining necessary information** Please see "**Establishing robust risk management systems**" above in response to the question set forth in this section 3.c.1 in relation to robust operations, mechanisms and practices. An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and appointed representatives with its obligations under the regulatory system. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1. Investment Firms must establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and	**Obtaining necessary information** FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1require an Investment Firm to establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and appointed representatives with its obligations the regulatory system. Article 21(1) MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm. Section 165 FSMA and PRA Information Gathering Rule 4.1 provide the FCA and the PRA with broad information-gathering powers. This means that, in practice, CRR Firms must have the relevant systems

[259] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
Exchange Act section 15F(j)(4) [15 U.S.C. 78o-10(j)(4)]);[260]	procedures at all levels of the Investment Firm. Article 21(1) MiFID Org Reg. The FCA and the PRA have broad information-gathering powers. This means that, in practice, CRR Firms must have the relevant systems and procedures to enable them to comply with such requests. Section 165 FSMA and PRA Information Gathering Rule 4.1.	and procedures to enable them to comply with such requests. These requirements are comparable to the requirements under Exchange Act section 15F(j)(4) [15 U.S.C. 78o-10(j)(4)].
Implementing conflict of interest systems and procedures Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)];[261] and	**Implementing conflict of interest systems and procedures** An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. FCA SYSC 10.1.7R. The management body must define, oversee and is accountable for the implementation of the governance arrangements that ensure effective and prudent management, including the segregation of duties in the organization and the prevention of conflicts of interest. FCA SYSC	**Implementing conflict of interest systems and procedures** FCA SYSC 10.1.7R requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1 require the management body to define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management, including the segregation of duties in the organization and the prevention of conflicts of interest. These requirements are comparable to the requirements addressing conflicts

[260] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[261] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
	4.3A.1R, PRA General Organisational Requirements Rule 5.1.	of interest under Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)].
Addressing antitrust considerations Exchange Act section 15F(j)(6) [15 U.S.C. 78o-10(j)(6)].[262]	**Addressing antitrust considerations** Under the UK antitrust regime, UK regulated firms including CRR Firms are required to comply with UK antitrust laws. In addition, a UK Firm is required to (i) notify the FCA immediately when it becomes aware, or has information which reasonably suggests, that a matter having a serious regulatory impact (i.e., including any potential breaches of antitrust laws) has occurred, may have occurred or may occur in the foreseeable future; (ii) notify the FCA if it has or may have committed a significant infringement of any applicable competition law; and (iii) deal with its regulators in an open and cooperative way and to disclose to the FCA appropriately anything relating to the UK Firm of which the FCA would reasonably expect notice. FCA SUP 15.3.1R, SUP 15.3.32R, SUP 15.3.7G and PRIN 2.1.1R. The FCA has an operational objective to promote competition and enforcement powers (albeit limited) concerning competition law matters.	**Addressing antitrust considerations** Because the UK antitrust regime requires CRR Firms to comply with antitrust laws, the ultimate regulatory outcome of the UK antitrust regime is comparable to that set forth in Exchange Act section 15F(j)(6).

[262] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
9. In what ways are firms required to establish, maintain and enforce written supervisory policies and procedures?		
	Section 1E FSMA. The FCA is a regulator with concurrent powers with regards to competition matters and is required to co-ordinate its activities relating to competition with the UK Competition and Markets Authority and other sectoral regulators, where relevant. Sections 234J, 234K, 234L FSMA. The above requirements mean that UK Firms must have adequate supervisory systems (i.e., including policies and procedures) to avoid, identify, and report relevant breaches of UK competition laws.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
10. In what ways are firms required to have supervisory policies and procedures for the review of transactions?		
Comparability of outcomes: The UK requirements for supervisory review of transactions provide a comparable regulatory outcome to the SEC requirements for supervisory review of transactions. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(A) and the UK regime are consistent in that each requires that firms establish procedures through which qualified supervisors review transactions.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
10. In what ways are firms required to have supervisory policies and procedures for the review of transactions?		
While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Review of transactions Firms are required to have procedures for supervisory review of transactions for which registration as a dealer is required. Exchange Act rule 15Fh-3(h)(2)(iii)(A) [17 CFR 240.15Fh-3(h)(2)(iii)(A)].[263]	**Review of transactions** An Investment Firm must establish adequate policies and procedures sufficient to ensure its compliance with its obligations under the regulatory system. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1. These policies will need to address the monitoring of the transactions entered into by the Investment Firm, including security-based swap transactions. CRR Firms that carry out trading activities must design and implement trading book policies and procedures which include position limits that must be set and monitored for appropriateness. Article 103 CRR. CRR Firms that have a permission to use internal models for calculating their CCR requirements are required to establish and maintain a CCR management framework, are specifically required	**Review of transactions** FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1 require Investment Firms to have policies and procedures that address the monitoring of all the Investment Firm's activities, including its transactions in security-based swaps. Article 103 CRR requires CRR Firms that carry out trading activities to design and implement trading book policies and procedures which include position limits that must be set and monitored for appropriateness. FCA COBS 11.2A.31R also requires review of client orders and transactions to monitor the effectiveness of order execution policies, as applicable. This requirement is comparable to that set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(A).

[263] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
10. In what ways are firms required to have supervisory policies and procedures for the review of transactions?		
	to take into account trading and credit limits for the purposes of their CCR risk framework, and are required to include information about appropriate measures taken in terms of position limits in their daily reports on the output of their risk measurement models. Articles 286, 293 and 221 CRR. Investment Firms must take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature and any other consideration relevant to the execution of the order. FCA COBS 11.2A.2R. To this end, Investment Firms must establish and implement effective arrangements and, in particular, Investment Firms must establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result. FCA COBS 11.2A.20R. Investment Firms who execute client orders must monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. FCA COBS 11.2A.31R.	

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>UK Requirement and/or Policy Goal Summary</th><th>Comparability Assessment</th></tr>
<tr><td colspan="3">c. Subcategory: Supervisory System Policies and Procedures</td></tr>
<tr><td colspan="3">11. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?</td></tr>
<tr><td colspan="3"><u>Comparability of outcomes</u>:

The UK requirements to supervise communications provide for a comparable regulatory outcome to the SEC requirements to supervise communications. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(B) and the UK regime are consistent in that each requires that firms establish procedures to supervise all types of external and internal communications in order to mitigate risk.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Supervised communications

Supervisory policies and procedures at a minimum must include elements regarding:

Correspondence and internal communication review: Firms are required to have procedures for supervisory review of incoming and outgoing written – including electronic – correspondence with counterparties or potential counterparties, and of internal written communications relating to the firm’s security-based swap</td><td>Supervised communications

Investment Firms must establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg.

An Investment Firm must arrange for records to be kept of all services, activities and transactions undertaken by it which must be sufficient to enable the regulator to fulfil its supervisory tasks and to take enforcement actions under the UK regulatory system (including MiFID, MiFIR and MAR), and in particular to ascertain that the Investment Firm has complied with all obligations including those with respect to clients or potential clients and to the</td><td>Supervised communications

Article 21 MiFID Org Reg. requires Investment Firms to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. FCA SYSC 10A.1.6R, 10A.1.8R and Article 76 MiFID Org Reg. require Investment Firms to record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). These requirements are comparable, and even more onerous with regards to supervision of oral communications, to the</td></tr>
</table>

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
11. In what ways are firms required to have supervisory policies and procedures for the review of correspondence and internal communications? Are firms also required to have supervisory policies and procedures for the supervision of oral communications?		
business. Exchange Act rule 15Fh-3(h)(2)(iii)(B) [17 CFR 240.15Fh-3(h)(2)(iii)(B)].[264]	integrity of the market. FCA SYSC 9.1.1AR, PRA Record Keeping Rule 2.1. To this end, Investment Firms must record all forms of telephone conversations and electronic communications regarding client orders (even where these do not result in the conclusion of a transaction or the provision of a service). Investment Firms must notify new and existing clients that telephone communications or conversations between the Investment Firms and clients that result or may result in transactions, will be recorded. Investment Firms must not provide, by phone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders. FCA SYSC 10A.1.6R, 10A.1.8R, 10A.1.11R and Article 76 MiFID Org Reg.	supervisory requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(B).

[264] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
12. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?		
Comparability of outcomes: The UK periodic supervisory review requirements provide a comparable regulatory outcome to the SEC periodic supervisory review requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(C) and the UK regime are consistent in that each requires that firms establish procedures to periodically review their compliance with applicable laws. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Periodic Review Firms are required to have procedures for periodic review, at least annually, of the firm's security-based swap business that are "reasonably designed to assist in detecting and preventing violations" of applicable requirements. Exchange Act rule 15Fh-3(h)(2)(iii)(C) [17 CFR 240.15Fh-3(h)(2)(iii)(C)].[265]	**Periodic Review** Senior management must receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg.	**Periodic review** Article 25 MiFID Org Reg. requires that an Investment Firm's senior management receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 22 MiFID Org Reg. requires the compliance function to monitor and regularly assess the actions taken to address any deficiencies

[265] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
12. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?		
	Investment Firms must establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Investment Firm to comply with its obligations under UK law on markets in financial instruments, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the regulators to exercise their powers effectively under UK law on markets in financial instruments. Article 22 MiFID Org Reg. The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under UK law on markets in financial instruments. Article 22 MiFID Org Reg. Investment Firms are obligated to establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the Investment Firms' activities, processes and systems (please see the response to the question set forth in section 3.c.1 above). Article 23 MiFID Org Reg. Investment Firms are obligated to have, where appropriate and proportionate, an internal audit	in an Investment Firm's compliance with its obligations under UK law on markets in financial instruments. Article 24 MiFID Org Reg. imposes a similar requirement in relation to Investment Firms' internal audit function. Article 23 MiFID Org Reg. requires Investment Firms to establish, implement and maintain adequate risk management policies and procedures that identify the risks related to the Investment Firms' activities processes and systems. These requirements are comparable to those set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(C).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
12. In what ways are firms required to have supervisory policies and procedures for annual or periodic review that are intended to prevent and detect violations of applicable law?		
	function responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms (please see the response to the question set forth in section 3.b.2 above). Article 24 MiFID Org Reg. The compliance risk assessment should be performed regularly to ensure that the focus and the scope of compliance monitoring and advisory activities remain valid. Guideline 1 para. 15 ESMA Guidelines on compliance function.[266]	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
13. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?		
Comparability of outcomes:		

[266] See the Introduction regarding the on-going relevance of ESMA guidance post-Brexit for interpretation purposes.

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>UK Requirement and/or Policy Goal Summary</th><th>Comparability Assessment</th></tr>
<tr><td colspan="3">c. Subcategory: Supervisory System Policies and Procedures</td></tr>
<tr><td colspan="3">13. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?</td></tr>
<tr><td colspan="3">The UK requirements to investigate personnel provide a comparable regulatory outcome to the SEC requirements to investigate personnel. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(D) and the UK regime are consistent in that each requires that firms establish procedures to ensure that personnel associated with the firm are sufficiently qualified and of good character.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Investigation of personnel

Firms are required to have procedures for investigation of “the good character, business repute, qualifications, and experience” of persons prior to their association with the firm. Exchange Act rule 15Fh-3(h)(2)(iii)(D) [17 CFR 240.15Fh-3(h)(2)(iii)(D)].[267]</td><td>Investigation of personnel

<u>SMCR</u>

In the UK, Investment Firms must have certain members of their management body approved by the regulators in order to be able to perform SMFs in relation to the carrying on of regulated activities in accordance with the SMCR.

As part of this approval process and ongoing compliance with SMCR requirements, UK Firms are required to obtain detailed information concerning their Senior Managers, including but</td><td>Investigation of personnel

As part of the approval process and ongoing compliance with SMCR requirements, Investment Firms are required to maintain information concerning their personnel, including but not limited to qualifications, personal details, criminal records and investigations, and relating to fitness and propriety matters.

FCA SYSC 4.3A.3R, PRA General Organisational Requirements Rule 5.2 require each member of the management body of a CRR Firm to be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.</td></tr>
</table>

[267] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
13. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?		
	not limited to criminal records and investigations (in the UK and other jurisdictions), and relating to fitness and propriety matters, covering the individual's qualifications and training, competence, personal characteristics. UK Firms must satisfy themselves annually that their assessment of fitness and propriety is suitable and in practice firms meet this requirement by refreshing their records. Section 63(2A) and 60A(2) FSMA, PRA Fitness and Propriety Rules 2.6 and 2.9, FCA SUP 10C.10.14G, 10C.10.16R, 10C.10.21G, FIT 2.1, 2.2 and 2.3. The SMF application form for Senior Managers (Form A) that an individual needs to submit to the regulators that, in addition to covering the matters noted immediately above, also contains information requirements concerning their employment history for the last five years, any directorships held by the relevant individual in the past ten years, other than in relation to the CRR Firm in question. PRA Senior Managers Regime – Applications and Notifications Rules 2.1, 2.2 and 2.6 and FCA SUP 10C.10.2R, 10C.15 and 10C Annex 3D. Staff other than Senior Managers are generally subject to the Certification Regime (please see	FCA SYSC 4.3A.3R(6) and PRA General Organisational Requirements Rule 5.2(6) require each member of the management body to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. PRA General Organisational Requirements Rule 3.1 requires that the senior personnel of a CRR Firm must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the CRR Firm. Guideline 172 of the EBA/ESMA Guidelines on Management Suitability requires, *inter alia*, disclosure of criminal records, investigations, enforcement proceedings and dismissals of management body members to regulators for assessment. Article 21(1)(a) MiFID Org Reg. requires Investment Firms employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. These regulations are comparable to the requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(D).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
13. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?		
	Annex IV for details). This requires a UK Firm to annually assess the fitness and propriety of its Certified Persons, considering the individual's qualifications and training, competence, personal characteristics. This should also include a criminal records check. Section 63F(2) and (5) FSMA, PRA Certification Rule 2.1, FCA SYSC 27.2.5G and FCA FIT 2.1, 2.2 and 2.3. **CRR Firms – management body** Separately, each member of the management body of CRR Firms must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties and to act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. FCA SYSC 4.3A.3R, PRA General Organisational Requirements Rule 5.2. The senior personnel (i.e. those persons who effectively direct the business of the CRR Firm, which could include a CRR Firm's governing body and other persons who effectively direct the business of the CRR Firm. PRA Rulebook Glossary) of a CRR Firm must be of sufficiently good repute	We note that Exchange Act rule 15Fh-3(h)(2)(iii)(D) requires personnel considerations to take place prior to the relevant individual's association with the firm. While the UK requirements do not specify that such considerations must be made prior to an individual's association with a CRR Firm, the stated obligations are on-going and therefore apply at the outset and throughout such association.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
13. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?		
	and sufficiently experienced as to ensure the sound and prudent management of the CRR Firm. PRA General Organisational Requirements Rule 3.1. **<u>Other requirements</u>** Information including, among other items, disclosure of criminal records, investigations, enforcement proceedings and dismissals, should be provided to regulators in order to enable them to assess the suitability of members of the management body. Guideline 172 of the EBA/ESMA Guidelines on Management Suitability[268]. Investment Firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Article 21(1)(a) MiFID Org Reg. Investment Firms must take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and appointed representatives or any persons directly or indirectly linked to them by control and their clients or between one client and	

[268] Please see the Introduction regarding the on-going relevance of EBA and ESMA guidance post-Brexit for interpretative purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
13. In what ways are firms required to have supervisory policies and procedures for investigating the character, business repute, qualifications, and experience of associated persons?		
	another, that arise in the course of providing any investment and ancillary services, or combinations thereof. FCA SYSC 10.1.3R.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
14. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?		
<u>Comparability of outcomes</u>: The UK requirements regarding the supervision of associated persons provide a comparable regulatory outcome to the SEC requirements regarding the supervision of associated persons. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(E) and the UK regime are consistent in that each requires that firms establish procedures to supervise actions of associated persons and ensure that such actions do not put the firm at risk. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Actions of associated persons	**Actions of associated persons**	**Actions of associated persons**

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
14. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?		
Firms are required to have procedures to consider whether associated persons may establish or maintain securities or commodities accounts or trading relationships at other firms, and, if permitted, procedures for the supervision of that outside trading. Exchange Act rule 15Fh-3(h)(2)(iii)(E) [17 CFR 240.15Fh-3(h)(2)(iii)(E)].[269]	UK law on markets in financial instruments imposes a range of requirements, including in relation to personal transactions, to ensure that an Investment Firm's staff comply with their obligations. Articles 28 and 29 MiFID Org Reg. Investment Firms must establish, implement and maintain adequate arrangements aimed at preventing certain staff from entering into personal transactions, advising or recommending that others enter into transactions, or disclosing information that would or would be likely to result in a person entering into a transaction or advising or recommending that another person enters into a transaction, in each case where doing so would be prohibited under MAR (i.e. contrary to inside information and market abuse restrictions), involve the misuse or improper disclosure of that confidential information, or would conflict or be likely to conflict with an obligation of the Investment Firm under UK law on markets in financial instruments. Article 29 MiFID Org Reg. Specific restrictions apply in respect of financial analysts and other staff involved in the	Articles 28 and 29 MiFID Org Reg. impose a range of requirements in relation to personal transactions to ensure that an Investment Firm's staff comply with their obligations. Article 29 MiFID Org Reg. requires Investment Firms, among other things, to establish, implement and maintain adequate arrangements aimed at preventing certain staff from entering into personal transactions. Article 37 MiFID Org Reg. imposes specific personal transactions restrictions on financial analysts and other staff involved in the production of investment research. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1 require the maintenance of a range of risk management records, including personal transaction records. These requirements are comparable to the requirements set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(E).

[269] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
14. In what ways are firms required to have supervisory policies and procedures for approving and supervising the outside trading of associated persons?		
	production of investment research such that they cannot trade in a personal capacity, for another person (including the relevant Investment Firm) in financial instruments to which investment research relates, or in any related financial instruments. Article 37 MiFID Org Reg. The FCA Rules require the maintenance of a range of risk management records, including personal transaction records. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
<u>Comparability of outcomes</u>: The UK prohibitions against self-supervision provide a comparable regulatory outcome to the SEC prohibitions against self-supervision. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(G) and the UK regime are consistent in that each requires that firms establish procedures to prevent self-supervision and address it where unavoidable in furtherance of risk mitigation efforts. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.		

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
<u>Comparability of specific requirements</u>: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Self-supervision Firms must keep records of descriptions of supervisory systems, including titles, qualifications, locations and responsibilities of supervisory persons. Exchange Act rule 15Fh-3(h)(2)(iii)(F) [17 CFR 240.15Fh-3(h)(2)(iii)(F)];[270] and Prohibitions against self-supervision: Firms are required to have procedures prohibiting an associated person who performs a supervisory function from supervising his or her own activities or reporting to, or having his or her compensation or continued employment determined by, a person or persons he or she is supervising.	**Self-supervision** **<u>MiFID</u>** UK law on markets in financial instruments requires the establishment of a 'three lines of defense' model in relation to governance, risk and compliance oversight by Investment Firms. The first line of defense comprises the front office, as directed by the policies and procedures (including in respect of conflicts of interest) that the Investment Firm is obliged to establish and front office staff are required to follow. The second line of defense comprises the compliance and risk management teams – these teams conduct supervision of the front office. The third line of defense comprises the internal/external audit team, which ensures the effectiveness of the compliance and risk management teams. Investment Firms must establish and maintain a permanent and effective compliance function which operates independently and has	**Self-supervision** Article 22 MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function, ensure that persons involved in the compliance function are not involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rules 8.1 and 8.2 require senior management and staff engaged in control functions (among others) to be subjected to enhanced remuneration oversight requirements. Staff in control functions must be independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rule 8.2 further require that remuneration of senior officers in the

[270] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
This prohibition does not apply if the firm determines compliance is not possible "because of the firm's size or a supervisory person's position within the firm." In that case the firm must document the factors used to reach that determination, and how the supervisory arrangement with respect to that supervisory personnel otherwise complies with the diligent supervision requirement. Exchange Act rule 15Fh-3(h)(2)(iii)(G) [17 CFR 240.15Fh-3(h)(2)(iii)(G)].[271]	responsibilities including advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under UK law on markets in financial instruments. Article 22 MiFID Org Reg. The persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 22(3)(d)-(e) MiFID Org Reg. Where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, Investment Firms must also establish an independent risk management function. Article 23 MiFID Org Reg. Together, these provisions ensure the independence of the second line of defense such that front office staff do not self-supervise.	risk management and compliance functions be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. These requirements are comparable to the requirements to establish procedures to prevent self-supervision set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(G). We note that the UK regulations are generally calibrated such that self-supervision will not arise (per the requirement in Article 22(3) MiFID Org Reg. that staff in the compliance function must not be involved in the performance of services or activities they monitor). To the extent that this is unavoidable (which is expected to be very rare), FCA SYSC 10.1.3R regarding the identification, prevention and, where necessary, management of conflicts of interests provides a robust mechanism through which such issues can be resolved. In addition, the UK SMCR requires a UK Firm to maintain records of descriptions of the titles and responsibilities of its SMFs through statements of responsibilities and management responsibilities maps aimed at demonstrating that the UK Firm has a clear organisational structure with well-defined,

[271] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

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c. Subcategory: Supervisory System Policies and Procedures		
15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
	Investment Firms must, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the Investment Firm. Article 24 MiFID Org Reg. This ensures the independence of the third line of defense such that compliance and risk management staff do not self-supervise. Further provisions on conflicts of interest apply across all three lines of defense: (a) An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. FCA SYSC 10.1.7R; (b) Investment Firms must take all reasonable steps to identify conflicts of interest between themselves, including their managers, employees and appointed representatives or	transparent and consistent reporting lines. FCA SYSC 24 – 25, SUP 10C.11. Section 60(2A) FSMA.

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15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
	any persons directly or indirectly linked to them by control and their clients or between one client and another, that arise in the course of providing any investment and ancillary services, or combinations thereof. FCA SYSC 10.1.3R; and (c) A CRR Firm's management body must define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of the CRR Firm, including the segregation of duties in the organization and the prevention of conflicts of interest. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1. **<u>CRD IV</u>** Provisions under CRD IV are focused on preventing structural conflicts of interest and self-supervision. CRR Firms must have remuneration policies and practices that are consistent with and promote sound and effective risk management. FCA SYSC	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
	19A.2.1R and 19D.2.1R and PRA Remuneration Rule 6.2. Senior management and staff engaged in control functions (among others) must be subjected to enhanced remuneration oversight requirements. FCA SYSC 19A.3.16R and 19D.3.17R and PRA Remuneration Rules 8.1 and 8.2. Staff in control functions must be independent from the business units they oversee, have appropriate authority, and be remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control. FCA SYSC 19A.3.14R and 19D.3.15R and PRA Remuneration Rule 8.1. The remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rule 8.2. **SMCR**	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
15. Are firms required to have supervisory policies and procedures to generally prevent self-supervision, and to address self-supervision when it is unavoidable? What factors must be met to conclude that self-supervision is unavoidable?		
	Each UK Firm that is subject to the SMCR must allocate certain prescribed responsibilities that are set by the FCA the PRA among their Senior Managers. In addition to allocating prescribed responsibilities among their Senior Managers, UK Firms must also ensure that a Senior Manager is responsible for each aspect of their business which is covered by the SMCR. FCA SYSC 24, PRA Allocation of Responsibilities Rule 4.1-4.2. If a UK Firm is applying for approval from the FCA or the PRA for a person to perform a designated SMF, the regulator to which the application is made must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the firm which it is intended that the person will be responsible for managing in performing the function. Section 60(2A) FSMA. This is the 'statement of responsibilities', which each Senior Manager must have and which confirms their SMF role(s), their prescribed responsibilities, and any additional responsibilities which they may have. FCA SUP 10C.11. Each UK Firm must also maintain a management responsibilities map, which sets out its SMR governance arrangements. Management	

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	responsibilities maps should also demonstrate that there are no gaps in the UK Firm's governance arrangements and demonstrate that the UK Firm has a clear organisational structure with well-defined, transparent and consistent reporting lines. FCA SYSC 25, PRA Allocation of Responsibilities Rules 7.1-7.2. Record-keeping requirements also apply in relation to management responsibilities maps. FCA SYSC 25.8 and PRA Allocation of Responsibilities Rule 7.4. These include are in relation to, among other things, past versions of a UK Firm's management responsibilities map, which should be treated as an important part of its records and as an important resource for the regulator in supervising the UK Firm. FCA SYSC 25.8. Please see Annex IV for further information concerning the SMCR requirements.	

<table>
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<tr><td colspan="3">c. Subcategory: Supervisory System Policies and Procedures</td></tr>
<tr><td colspan="3">16. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?</td></tr>
<tr><td colspan="3"><u>Comparability of outcomes</u>:

The UK requirements to prevent conflicts of interest in supervisory systems provide a comparable regulatory outcome to the SEC requirements to prevent conflicts of interest in supervisory systems. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(2)(iii)(H) and Exchange Act section 15F(j)(5) and the UK regime are consistent in that each requires that firms establish procedures to prevent supervisory systems from being compromised due to conflicts of interest.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The following UK requirements taken together are comparable to those set forth in Exchange Act rule 15Fh-3(h)(2)(iii)(H) and Exchange Act section 15F(j)(5):</td></tr>
<tr><td>Conflicts of interest policies and procedures:

Firms are required to have procedures reasonably designed to prevent the supervisory system from being compromised due to the conflicts of interest with respect to associated persons, including their positions, the revenue they generate, or compensation that the supervisor may derive from the associated</td><td>Conflicts of interest policies and procedures:

A UK Firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client. FCA PRIN 2.1.1(8)R.

Please also refer to the response to the question set forth in section 3.c.7 above with regards to the following requirements:

1. Independence. Segregation of duties. The persons involved in the compliance function not being involved in the performance of</td><td>Conflicts of interest policies and procedures:

1. Independence. Segregation of duties. FCA SYSC 10.1.3R requires Investment Firms to take all reasonable steps to identify and address conflicts of interest that they know or should know between themselves, including their managers, employees and appointed representatives or any persons directly or indirectly linked to them by control and their clients or between one client and another, that arise in the course of providing any investment and ancillary services, or combinations thereof. FCA SYSC 10.1.7R requires</td></tr>
</table>

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
16. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?		
person being supervised. Exchange Act rule 15Fh-3(h)(2)(iii)(H) [17 CFR 240.15Fh-3(h)(2)(iii)(H)].[272] The supervisory system must encompass procedures for compliance with duties set forth in Exchange Act section 15F(j), including implementing conflict of interest systems and procedures. Exchange Act rule 15Fh-3(h)(2)(iii)(I) [17 CFR 240.15Fh-3(h)(2)(iii)(I)];[273] and Exchange Act section 15F(j)(5) [15 U.S.C. 78o-10(j)(5)].[274]	services or activities they monitor and the restrictions around their method of determining their remuneration. Article 22(3) MiFID Org Reg. The obligation on Investment Firms to establish and maintain an internal audit function separate and independent from the other functions and activities of the Investment Firm. Article 24 MiFID Org Reg. The obligation on Investment Firms to identify conflicts of interest and related requirements. FCA SYSC 10.1.3R. The obligation on the management body to define, oversee and be accountable for the implementation of the governance arrangements, including in relation to segregation of duties matters. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1. The obligation on an Investment Firm to maintain and operate effective organizational	an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 22 MiFID Org Reg. requires Investment Firms to appoint a compliance officer responsible for the compliance function and ensure that persons involved in the compliance function must not be involved in the performance of services or activities they monitor and the method of determining their remuneration must not, and must not be likely to, compromise their objectivity. Article 24 MiFID Org Reg. requires an Investment Firm to establish and maintain an internal audit function separate and independent from the other functions and activities of the Investment Firm. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1 require

[272] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[273] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[274] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Supervisory System Policies and Procedures		
16. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?		
	and administrative arrangements to prevent conflicts of interest. FCA SYSC 10.1.7R. 2. **Remuneration**. The obligation on CRR Firms to have remuneration policies and practices consistent with sound and effective risk management. FCA SYSC 19A.2.1R, 19D.2.1R, PRA Remuneration Rule 6.2. The requirement regarding (i) staff in control functions to be independent from the business units they oversee, have appropriate authority, and be remunerated independently of the performance of the business areas they control. FCA SYSC 19A.3.14R, 19D.3.15R, PRA Remuneration Rule 8.1; and (ii) staff and staff engaged in control functions (among others) to be subjected to enhanced remuneration oversight requirements. FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rules 8.1 and 8.2. The requirement that the remuneration of senior officers in the risk management and compliance functions to be directly overseen by the remuneration committee or by the management body in its supervisory function.	that a CRR Firm's management body oversees and is accountable for the prevention of conflicts of interest. 2. **Remuneration**. FCA SYSC 19A.2.1R, 19D.2.1R, PRA Remuneration Rule 6.2 require CRR Firms to have remuneration policies and practices consistent with sound and effective risk management. FCA SYSC 19A.3.14R, 19D.3.15R, 19A.3.16R, and 19D.3.17R, PRA Remuneration Rule 8.1 and 8.2 require staff in control functions to be remunerated independently of the performance of business areas they control and to be subjected to enhanced remuneration oversight requirements, including (where necessary) through oversight by a remuneration committee or the management body. 3. **Conflicts of interest documentation**. Article 34 MiFID Org Reg. requires Investment Firms to have a written conflicts of interest policy appropriate to the size and organization of the Investment Firm. Under Article 35 MiFID Org Reg., Investment Firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Investment Firm in which a conflict of interest entailing a material

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16. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?		
	FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rule 8.2. 3. **Conflicts of interest documentation.** Investment Firms must have a written conflicts of interest policy appropriate to the size and organization of the Investment Firm. Where the Investment Firm is in a group, this policy must also take into account the circumstances which may give rise to conflicts of interest arising as a result of the structure and business activities of other members of the group. Article 34 MiFID Org Reg. The conflicts policy must identify the circumstances which might give rise to a conflict entailing a material risk of damage to the interests of one or more client and specify procedures to be followed to manage such conflicts. The procedures must include (as necessary/appropriate): (i) procedures to prevent/control information exchange; (ii) separate supervision of persons who provide services to clients whose interests may conflict (with other clients or with the Investment Firm); (iii) removal of any direct link between the remuneration of persons engaged in one activity and the remuneration	risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

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16. In what ways are firms required to have supervisory policies and procedures to prevent the supervisory system from being compromised due to conflicts of interest?		
	of different persons, engaged in a different activity, where there may be a conflict in relation to those activities; (iv) preventing/limiting any person from exercising inappropriate influence over provision of a service; and (v) preventing/controlling the simultaneous/sequential involvement of a person in different activities where such involvement might impair management of conflicts of interest. Article 34(3) MiFID Org Reg. Investment Firms must keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the Investment Firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise. Article 35 MiFID Org Reg.	

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<tr><td colspan="3">17. When are firms required to amend their policies and procedures?</td></tr>
<tr><td colspan="3"><u>Comparability of outcomes</u>:

The UK policy and procedure amendment requirements provide a comparable regulatory outcome to the SEC policy and procedure amendment requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(4) and the UK regime are consistent in that each requires that firms establish procedures to review and amend procedures to account for deficiencies, including deficiencies caused by changes to regulations and business conduct.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:</td></tr>
<tr><td>Amendments

Firms must amend their written supervisory procedures to reflect material changes in applicable laws or regulations, or in the firm’s business or supervisory system. Material amendments must be promptly communicated to relevant associated persons. Exchange Act rule 15Fh-3(h)(4) [17 CFR 240.15Fh-3(h)(4)].[275]</td><td>Amendments

An Investment Firm must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and appointed representatives with its obligations under the regulatory system. FCA SYSC 6.1.1R, PRA Compliance and Internal Audit Rule 2.1.

The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance</td><td>Amendments

Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the UK law on markets in financial instruments, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. also requires that senior management and the supervisory function must receive on a frequent basis, and at least annually, written reports on compliance, risk management</td></tr>
</table>

[275] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

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17. When are firms required to amend their policies and procedures?		
	with its obligations under the UK law on markets in financial instruments. Article 22 MiFID Org Reg. Investment Firms must ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities; establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Investment Firm; and establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Investment Firm. Article 21 MiFID Org Reg. In practice, this means that changes to policies and procedures reflecting changes in applicable laws or regulations, or in the Investment Firm's business or supervisory system must be communicated at all levels of the Investment Firm in order to be able to comply with Article 21 MiFID Org Reg. Senior management must receive on a frequent basis, and at least annually, written reports on the matters regarding compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a	and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. These requirements are comparable to the requirements in Exchange Act rule 15Fh-3(h)(4)(i). We note that the Exchange Act requirements to promptly communicate amendments to supervisory policies to relevant associated persons are not expressly set forth in the UK rules and regulations. However, in practice this obligation applies in order for Investment Firms to meet their obligation under Article 21 MiFID Org Reg. to have effective internal reporting and communication of information at all relevant levels of the Investment Firm and for the relevant persons to be able to properly discharge their responsibilities.

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	regular basis written reports on the same matters. Article 25 MiFID Org Reg. Investment Firms must assess and periodically review, on an at least annual basis, the conflicts of interest policy. Article 34 MiFID Org Reg. Article 35 MiFID Org Reg. requires senior management to receive on a frequent basis, and at least annually, written reports on the client conflicts of interest record. Investment Firms must review their best execution policy and arrangements at least annually. FCA COBS 11.2A.25UK, Articles 65 and 66 MiFID Org Reg. CRR Firms' remuneration policies must be reviewed at least on an annual basis. FCA SYSC 19A.3.11R, 19D.3.11R, PRA Remuneration Rule 7.3.	

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c. Subcategory: Supervisory System Policies and Procedures		
18. What is the potential liability that firms or their personnel may face for failing to supervise compliance with requirements applicable to their security-based swap businesses? Does following policies and procedures provide a safe harbour from this potential liability or otherwise reduce the potential liability? If so, what are the prerequisites (e.g., no "red flags") for that safe harbour or reduction of liability?		
A firm or its associated persons will not be deemed to have failed to diligently supervise if the firm establishes, maintains and applies written policies and procedures that would reasonably be expected to prevent and detect violations, so long as the firm and its associated persons reasonably have discharged the associated duties and did not have a reasonable basis to believe that the policies and procedures were not being followed. Exchange Act rule 15Fh-3(h)(3) [17 CFR 240.15Fh-3(h)(3)].[276]	There is a very broad range of supervisory actions that the FCA and the PRA can take in response to failures in CRR Firms' implementation of the FCA and PRA Rules and CRR. These include increases in own funds and liquid assets, enhancements to policies and procedures, and enhanced reporting requirements (among others). Sections 55L, 55L, 55M and 165-177 FSMA, FCA Enforcement Guide (EG 8.2.3 in particular) and FCA SUP 7.3.2G and 7.3.3G. Regulators have the power to issue public statements of breach, cease and desist orders, and monetary fines. The severity of the consequence (e.g. the amount of fines) is determined at the discretion of the regulators. FCA DEPP 6.5A.2G. There is no formal safe harbour established in UK law for compliance with a CRR Firm's policies and procedures, etc., although this may be considered a mitigating factor by the regulators when assessing the seriousness of the regulatory breach. FCA DEPP 6.5A.3G.	**Comparability of outcomes**: The regulatory outcomes pursued under Exchange Act rule 15Fh-3(h)(3) and the UK regime are consistent in that each subject firms and/or their personnel to potential liability for failure to supervise or satisfy other compliance obligations. The UK regime is more onerous in this respect, in light of its SMCR requirements and the lack of a safe harbour for compliance with a CRR Firm's policies and procedures, etc.

[276] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

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	In addition, CRR Firms' Senior Managers may also have personal liability under the SMCR. If the PRA or FCA can demonstrate that a Senior Manager has failed to take reasonable steps to prevent breaches of PRA and/or FCA requirements that fall within their statement of responsibilities from occurring or continuing, the PRA and/or FCA can take enforcement action directly against that Senior Manager. Sections 66A and 66B FSMA, FCA DEPP 6.2.9EG. Senior Managers may also face criminal liability for their actions or decisions that cause a CRR Firm to fail. Section 36 Financial Services (Banking Reform) Act 2013.	

d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security

The supervision and CCO requirements in part address the need for firms to designate individuals with responsibility and adequate authority over compliance matters. In making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[277]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security		
19. Are firms required to establish a chief compliance officer or similar function?		
CCO appointment The Exchange Act requires firms to designate an individual to serve as a CCO. Exchange Act section 15F(k)(1) [15 U.S.C. 78o-10(k)(1)];[278] *see* also Exchange Act rule 15Fk-1(a) [17 CFR 240.15Fk-1(a)].[279]	**CCO appointment** An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting as to compliance. Article 22(3) MiFID Org Reg. UK Firms subject to SMCR requirements, other than certain categories of smaller and non-banking firms regulated by the FCA only, are obliged to ensure that one of their Senior Managers has allocated to it a prescribed responsibility for matters including (a) safeguarding the independence of; and (b) the oversight of the performance of the person performing the compliance oversight function for the firm. FCA SYSC 24.2.6(8)R, PRA Allocation of Responsibilities Rule 4.1(16).	**Comparability of outcomes and specific requirements**: While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **CCO appointment** Exchange Act section 15F(k)(1) and Exchange Act rule 15Fk-1(a) and the UK law on financial markets are consistent in that each requires that firms appoint a CCO. *See* Article 22(3) MiFID Org Reg., which requires that Investment Firms appoint a compliance officer responsible for the compliance function and for any reporting as to compliance. In addition, UK Firms subject to SMCR requirements must, in certain cases, appoint a Senior Manager

[277] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[278] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[279] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security		
19. Are firms required to establish a chief compliance officer or similar function?		
		responsible for the oversight of the compliance function.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security		
20. How do the requirements of your jurisdiction address lines of reporting for the chief compliance officer or similar function? How do those requirements otherwise help ensure that those persons have necessary authority and resources?		
CCO reporting line The CCO must report "directly to the board of directors or to the senior officer" of the firm. Exchange Act section 15F(k)(2)(A) [15 U.S.C. 78o-10(k)(2)(A)];[280] *see also* Exchange Act rule 15Fk-1(b)(1) [17 CFR 240.15Fk-1(b)(1)].[281]	**CCO reporting line** The compliance officer may only be appointed and replaced by the management body. Article 22(3) MiFID Org Reg. The compliance officer must submit reports directly to senior management, frequently, and at least annually, and directly to the management body. Articles 22(2)(c) and 25(2) MiFID Org Reg. In practice, these requirements dictate that the compliance officer will be a senior member of staff.	**Comparability of outcomes**: The UK requirements for compliance officer reporting, authority and resources provide a comparable regulatory outcome to the SEC requirements for compliance officer reporting, authority and resources. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2)(A) and Exchange Act rule 15Fk-1(b)(1) and the UK law on markets in financial instruments are consistent in that each ultimately requires that the CCO has a reporting line to the management body. *See* also Article 22(3) MiFID Org Reg., which provides that the CCO may only be appointed and replaced by the management body.

[280] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[281] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security		
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?		
CCO removal, compensation and sanctioning A majority of a firm's board of directors must approve the compensation and removal of a CCO. Exchange Act rule 15Fk-1(d) [17 CFR 240.15Fk-1(d)].[282]	**CCO removal, compensation and sanctioning** The remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rule 8.2. The method for determining the remuneration of staff in the compliance function, which will include the CCO, must not compromise their objectivity or be likely to do so. Article 22(3)(e) MiFID Org Reg. An Investment Firm that can demonstrate that, due to the nature, scale and complexity of its business and the nature and range of the investment services and activities that it conducts, is not obliged to meet this requirement so long as its compliance function continues to be effective. This effectiveness must be assessed on a regular basis). Article 22(4) MiFID Org Reg.	**<u>Comparability of outcomes</u>**: The UK requirements regarding the removal, compensation and sanctioning of compliance officers provide a comparable regulatory outcome to the SEC requirements regarding the removal, compensation and sanctioning of compliance officers. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fk-1(d) and the UK regime are consistent in that, although the UK regime does not specifically address CCO compensation and removal requirements, each require management to oversee and decide upon such matters. *See* FCA SYSC 19A.3.16R, 19D.3.17R, PRA Remuneration Rule 8.2, which provide that remuneration of senior officers in the risk management and compliance functions must be directly overseen by the remuneration committee or, if such a committee has not been established, by the management body in its supervisory function. *See also* Article 22(3) MiFID Org Reg., which provides that the CCO may only

[282] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Chief Compliance Officer Designation, Reporting Authority and Job Security		
3. Do the requirements of your jurisdiction provide protections to the chief compliance officer or similar function with regard to removal, compensation or sanctioning? If so, what are those protections?		
	Investment Firms must establish and maintain a permanent and effective compliance function which operates independently. Article 22(2) MiFID Org Reg. In addition, Article 22(3) MiFID Org Reg. provides that the CCO may only be appointed and replaced by the management body.	be appointed and replaced by the management body.

e. Subcategory: Chief Compliance Officer Policies and Procedures

CCOs must ensure that firms establish, follow and update appropriate compliance policies and procedures. When making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[283]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
21. Is the chief compliance officer or similar function required periodically to review the firm's compliance with applicable requirements? Is a written assessment required?		
Comparability of outcomes: The UK requirements regarding periodic compliance review provide a similar regulatory outcome to the SEC requirements regarding periodic compliance review. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fk-1(b)(2)(i) and the UK regime are consistent in that each requires that the CCO or a similar function periodically reviews a firm's policies and procedures to ensure compliance with applicable laws. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Periodic review CCOs must "review the compliance" of a firm. Exchange	**Periodic review** Senior management must receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org	**Periodic review** Article 25 MiFID Org Reg. requires that senior management must receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit indicating in

[283] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
21. Is the chief compliance officer or similar function required periodically to review the firm's compliance with applicable requirements? Is a written assessment required?		
Act section 15F(k)(2)(B) [15 U.S.C. 78o-10(k)(2)(B)].[284] CCOs must review a firm's compliance with respect to requirements under Exchange Act section 15F and underlying rules and regulations, "where the review shall involve preparing the registrant's annual assessment of its written policies and procedures reasonably designed to achieve compliance with" the statute and the rules by a firm. Exchange Act rule 15Fk-1(b)(2)(i) [17 CFR 240.15Fk-1(b)(2)(i)].[285]	Reg.) indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg.	particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. This requirement is comparable to the requirement set forth in Exchange Act rule 15Fk-1(b)(2)(i).

[284] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[285] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
22. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?		
Comparability of outcomes: The UK requirements to ensure compliance and identify noncompliance provide a comparable regulatory outcome to the SEC requirements to ensure compliance and identify noncompliance. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2) and Exchange Act rule 15Fk-1(b) and the UK regime are consistent in that each requires that the CCO or a similar function ensure that firms implement policies and procedures to identify and remediate noncompliance. In practice it is likely that the CCO will head the compliance function and will ensure the implementation of changes recommended by the audit function. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Ensure compliance CCOs must "ensure compliance". Exchange Act section 15F(k)(2)(E) [15 U.S.C. 78o-10(k)(2)(E)].[286] CCOs must take "reasonable steps" to ensure that: A firm "establishes, maintains and reviews written policies and procedures reasonably designed to achieve compliance with" the	**Ensure compliance** An Investment Firm must establish a compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under the UK law on financial markets. The compliance function must report to senior management on the implementation and effectiveness of the overall control environment. Article 22 MiFID Org Reg.	**Ensure compliance** Article 22 MiFID Org Reg. requires the compliance function to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under the UK law on markets in financial instruments. Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the UK

[286] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
22. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?		
Exchange Act and underlying rules and regulations relating to its business as a dealer. Exchange Act rule 15Fk-1(b)(2) [17 CFR 240.15Fk-1(b)(2)];[287] The registrant establishes and follows procedures for the "handling, management response, remediation, retesting, and resolution" of non-compliance issues. Exchange Act rule 15Fk-1(b)(2)(iii) [17 CFR 240.15Fk-1(b)(2)(iii)];[288] and Exchange Act section 15F(k)(2)(G) [15 U.S.C. 78o-10(k)(2)(G)];[289] and	Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the UK law on markets in financial instruments, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg.	law on markets in financial instruments, and to take appropriate measures to address any deficiencies. Taken as a whole, these requirements are comparable to those set forth in Exchange Act section 15F(k)(2) and Exchange Act rule 15Fk-1(b).
Identify noncompliance A firm "establishes, maintains and reviews" policies and procedures to remediate noncompliance issues that have been identified by means such as compliance office review, look-	**Identify noncompliance** Where appropriate and proportionate, an Investment Firm must have an internal audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the	**Identify noncompliance** Article 24 MiFID Org Reg. requires, where appropriate and proportionate, an Investment Firm to have an internal audit function, separate and independent from the other functions that is responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy

[287] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[288] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[289] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
22. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?		
back, internal or external audit finding, self-reporting, and validated complaints. Exchange Act rule 15Fk-1(b)(2)(ii) [17 CFR 240.15Fk-1(b)(2)(ii)];[290] and Exchange Act section 15F(k)(2)(F) [15 U.S.C. 78o-10(k)(2)(F)].[291]	Investment Firm's systems and internal control mechanisms, issuing and overseeing the implementation of recommendations based on the plan and reporting to senior management in relation to internal audit matters. Article 24 MiFID Org Reg. Non-compliance matters should be addressed in the written compliance reports to senior management, where relevant, including: (a) a summary of major findings of the review of the policies and procedures; (b) a summary of on-site inspections or desk-based reviews performed by the compliance function; (c) a summary of major findings of the review of the policies and procedure, including risks identified in the scope of the compliance function's monitoring activities; (d) breaches and deficiencies in the Investment Firm's organisation and compliance process;	and effectiveness of the Investment Firm's systems and internal control mechanisms, and to issue and oversee the implementation of recommendations based on the plan. These requirements are comparable to those set forth in Exchange Act rule 15Fk-1(b)(2)(ii) and Exchange Act section 15F(k)(2)(F).

[290] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[291] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
22. Is the chief compliance officer or similar function required to ensure that the firm implements policies and procedures to remediate noncompliance? What methods are to be used to identify noncompliance?		
	(e) other significant compliance issues that have occurred since the last report; and (f) overview of material correspondence with competent authorities. Guideline 3 para. 28 ESMA Guidelines on compliance function.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
23. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?		

Comparability of outcomes:

The UK requirements for compliance officers and management to resolve conflicts of interest provide a similar regulatory outcome to the SEC requirements for compliance officers and management to resolve conflicts of interest. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3) and the UK regime are consistent in that each requires the CCO or a similar function to resolve conflicts of interest. Moreover, although the onus under the UK regime is on the Investment Firm, given the obligation to appoint a CCO and to establish, implement and maintain an effective conflicts of interest policy, these duties will, in practice, fall to the CCO.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

Comparability of specific requirements:

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
23. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?		
The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Conflicts of interest resolution CCOs, in consultation with the board of directors or the senior officer of the firm, must "take reasonable steps to resolve any material conflicts of interest that may arise." Exchange Act rule 15Fk-1(b)(3) [17 CFR 240.15Fk-1(b)(3)];[292] and Exchange Act section 15F(k)(2)(C) [15 U.S.C. 78o-10(k)(2)(C)].[293]	**Conflicts of interest resolution** Investment Firms must take all reasonable steps to identify conflicts of interest, as explained in response to the question set forth in section 3.c.5 above. FCA SYSC 10.1.3R. An Investment Firm must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. FCA SYSC 10.1.7R. As mentioned above in response to the question set forth in section 3.e.2, an Investment Firm must have a compliance function and, where appropriate, an audit function required, among other things, to monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations under the UK law on financial markets (i.e.,	**Conflicts of interest resolution** FCA SYSC 10.1.3R requires Investment Firms to take all reasonable steps to identify conflicts and address conflicts of which they are or should be aware. FCA SYSC 10.1.7R requires an Investment Firm to maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Article 25 MiFID Org Reg. requires senior management (and, where appropriate, the supervisory function) to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the UK law on financial markets, and to take appropriate measures to address any deficiencies. Taken as a whole, these requirements are comparable to those set forth in Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3).

[292] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[293] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
23. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?		
	including with regards to conflicts of interest matters). Articles 22 and 24 MiFID Org Reg. Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the UK law on financial markets, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg. Record-keeping requirements regarding conflicts of interest also apply, as fully described in response to the question set forth in section 3.c.8 above. Article 35 MiFID Org Reg.	
Senior management involvement CCOs, in consultation with the board of directors or the senior officer of the firm, must "take reasonable steps to resolve any material conflicts of interest that may arise." Exchange Act rule 15Fk-1(b)(3) [17 CFR 240.15Fk-1(b)(3)];[294] and Exchange Act	**Senior management involvement** The management body must define, oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management of the CRR Firm, including the segregation of duties in the organization and the prevention of conflicts of interest. FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1.	**Senior management involvement** FCA SYSC 4.3A.1R and PRA General Organisational Requirements Rule 5.1 require that management bodies oversee and be accountable for the implementation of the governance arrangements that ensure effective and prudent management, including with regards to the prevention of conflicts of interest. Article 35 MiFID Org Reg. requires senior management to receive on a frequent basis, and at least annually, written reports on the client

[294] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
23. Is the chief compliance officer or similar function required to take steps to resolve conflicts of interest? To what extent are board members or senior personnel required to participate in the resolution of conflicts of interest?		
section 15F(k)(2)(C) [15 U.S.C. 78o-10(k)(2)(C)].[295]		conflicts of interest record. These requirements are comparable to those set forth in Exchange Act section 15F(k)(2)(C) and Exchange Act rule 15Fk-1(b)(3).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
24. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?		
Comparability of outcomes: The UK compliance officer requirements provide a comparable regulatory outcome to the SEC compliance officer requirements. While administrative responsibilities are slightly different under the UK regime (responsibility rests with senior management, rather than with the CCO, to ensure that they assess and periodically review the effectiveness of the Investment Firm's policies, procedures and arrangements), in practice, the CCO of an Investment Firm will (i) head the compliance function and (ii) ensure that reports on that function are made to senior management. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		

[295] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
24. Is the chief compliance officer or similar function required to administer all policies and procedures that are required by law?		
Required policies and procedures CCOs must administer each policy and procedure that is required to be established. Exchange Act rule 15Fk-1(b)(4) [17 CFR 240.15Fk-1(b)(4)];[296] and Exchange Act section 15F(k)(2)(D) [15 U.S.C. 78o-10(k)(2)(D)].[297]	**Required policies and procedures** Investment Firms must establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under the UK law on markets in financial instruments. Article 22(2)(b) MiFID Org Reg. An Investment Firm must appoint a compliance officer responsible for the compliance function and for any reporting as to compliance required by Article 22(2) MiFID Org Reg. Article 22(3)(b) MiFID Org Reg. An Investment Firm must ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under the UK law on markets in financial instruments. Article 25 MiFID Org Reg.	**Required policies and procedures** Article 22(2)(b) MiFID Org Reg. requires Investment Firms to establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons responsible for carrying out activities to comply with the Investment Firm's obligations under the UK law on markets in financial instruments. Article 25 MiFID Org Reg. requires an Investment Firm to ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the Investment Firm complies with its obligations under the UK law on markets in financial instruments. Taken as a whole, these requirements are comparable to the requirements in Exchange Act section 15F(k)(2)(D) and Exchange Act rule 15Fk-1(b)(4).

[296] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[297] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Chief Compliance Officer Policies and Procedures		
25. Are firms permitted to rely on another corporate officer to perform a similar function to a chief compliance officer? If so, to what extent is that job function similar the chief compliance officer job function described by Exchange Act requirements?		
Performance of the CCO function Firms must appoint a CCO. *See* Exchange Act rule 15Fk-1 [17 CFR 240.15Fk-1];[298] and Exchange Act section 15F(k) [15 U.S.C. 78o-10(k)].[299]	**Performance of the CCO function** As explained above in response to the questions set forth in sections 3.d.2 and 3.b.2, respectively, Investment Firms must establish and maintain a permanent and effective compliance function and must also appoint a compliance officer responsible for the compliance function. Articles 22(2) and 22(3) MiFID Org Reg.	**Comparability of outcomes**: The UK requirements to establish a compliance framework and to appoint a compliance officer provide a comparable regulatory outcome to the SEC requirements to establish a compliance framework and officer. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 and the UK law on markets in financial instruments are consistent in that each requires the CCO and, from the UK perspective, a similar function to ensure a firm's policies and procedures are compliant with applicable regulations. *See* Article 22(2) of MiFID Org Reg., which requires Investment Firms to establish and maintain a permanent and effective compliance function that operates independently and has responsibilities including advising and assisting relevant persons, such as a CCO, responsible for carrying out investment services and activities to comply with the Investment Firm's obligations under the UK law on markets in financial instruments. *See also* Article 22(3) MiFID Org Reg., which requires Investment Firms to appoint a compliance officer responsible for the

[298] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[299] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

		compliance function and for any reporting as to compliance required by Article 22(2) MiFID Org Reg.

f. Subcategory: Chief Compliance Officer Reports

The supervision and CCO requirements address the need for CCOs (or similar functions) to be responsible for appropriate periodic reports addressing compliance matters. When making a substituted compliance determination, the SEC will consider the specificity of the CCO designation, duties and annual report requirements set forth in Exchange Act section 15F, and will consider whether "the requirements of the foreign financial regulatory system regarding CCO obligations" are comparable. Exchange Act rule 3a71-6(d)(2) [17 CFR 240.3a71-6(d)(2)].[300]

The 2013 CFTC Comparability Determination for the European Union: Certain Entity-Level Requirements (**CFTC Entity-Level Guidance**) found substituted compliance to be applicable because the compliance officer requirements under MiFID, including compliance officer report requirements, are "generally identical in intent" and "comparable to and as comprehensive as" the CFTC requirements. Moreover, the CFTC Entity-Level Guidance recognized that substituted compliance is applicable despite no requirement to provide compliance reports to regulators so long as firms certify and furnish the annual compliance report to the CFTC. CFTC Entity-Level Guidance at 78928.[301]

As further explained in the Introduction and Annex III regarding Brexit on-shoring policy, we note that the UK regulatory regime is generally aligned with the EU regime, including with regards to compliance officer report requirements. In addition, in April 2019, the CFTC issued a No-action Relief letter[302] (**CFTC No-action Relief Letter**), which ensures that existing regulatory relief provided by the CFTC pursuant to certain staff letters affecting EU entities – including the CFTC Entity-Level Guidance – currently continues to be available for UK entities following Brexit for a certain period of time. In any event, this relief is currently expected to have expired by November 2021.

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
26. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?		
<u>Comparability of outcomes</u>: The UK Requirement and Policy Goal Summary provide for similar outcomes as the SEC Requirement and Policy Goal Summary. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and the UK regime are consistent in that each requires the CCO or a similar function to produce compliance reports at least annually. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.		

[300] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[301] https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf
[302] https://www.cftc.gov/system/files?file=csl/final/pdfs/19/19-08.pdf

SEC Requirement/or and Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
26. Are firms required to produce annual or other periodic compliance reports? If so, who is required to prepare them?		
<u>Comparability of specific requirements</u>: The below UK requirements are, when taken together, comparable to analogous SEC requirements in the following ways:		
Compliance report CCOs must prepare and sign a compliance report annually. Exchange Act section 15F(k)(3)(A) [15 U.S.C. 78o-10(k)(3)(A)].[303]	**Compliance report** Senior management must receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.), indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. Article 25 MiFID Org Reg. These reports must be submitted to senior management by the compliance officer, the risk management department, and the internal (or external) audit department, respectively. Articles 22(3), 23(2) and 24(c) MiFID Org Reg.	**Compliance report** Article 25 MiFID Org Reg. requires that an Investment Firm's senior management receive on a frequent basis, and at least annually, written reports on compliance, risk management and internal audit (covered by Articles 22, 23 and 24 MiFID Org Reg.) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. These reports must be submitted to senior management by the compliance officer, the risk management department, and the internal (or external) audit department, respectively. Articles 22(3), 23(2) and 24(c) MiFID Org Reg. These requirements are comparable to the requirements in Exchange Act section 15F(k)(3)(A).

[303] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
27. What are the required contents of the compliance reports?		
Compliance report contents The compliance report must include: 3. Description of the firm's written compliance policies and procedures, including the code of ethics and conflict of interest policies. Exchange Act section 15F(k)(3)(A) [15 U.S.C. 78o-10(k)(3)(A)];[304] 4. Self-assessment of the effectiveness of the compliance policies and procedures. Exchange Act rule 15Fk-1(c)(2)(i)(A) [17 CFR 240.15Fk-1(c)(2)(i)(A)];[305] 5. Material changes to the firm's policies and procedures. Exchange Act rule 15Fk-1(c)(2)(i)(B)	**Compliance report contents** The compliance report submitted to senior management must address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. Article 22(2) MiFID Org Reg. This compliance report (and any ad hoc reports, where necessary) must address any significant risk of failure by the Investment Firm to comply with its obligations under the UK law on markets in financial instruments. Article 22(3)(c) MiFID Org Reg. The following matters, among others, should be addressed in the written compliance reports, where relevant: 1. information on the adequacy and effectiveness of the Investment Firm's policies and procedures designed to ensure that the firm and its staff comply with the	**Comparability of outcomes and specific requirements**: The UK compliance report content requirements provide a comparable regulatory outcome to the SEC compliance report content requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and Exchange Act rule 15Fk-1(c)(2) and the UK law on markets in financial instruments are consistent as to the contents of compliance reports in that each requires a description of a firm's compliance procedures, assessment of such procedures, implementation of changes, areas of improvement, material non-compliance and deficiencies. *See* Article 22(2) MiFID Org Reg., which requires the compliance report submitted to senior management to address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. As this report must address compliance with all obligations under the UK law on markets in financial instruments, it must include identification of risks

[304] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[305] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
27. What are the required contents of the compliance reports?		
[17 CFR 240.15Fk-1(c)(2)(i)(B)];[306] 6. Areas for improvement. Exchange Act rule 15Fk-1(c)(2)(i)(C) [17 CFR 240.15Fk-1(c)(2)(i)(C)];[307] 7. Material non-compliance matters identified. Exchange Act rule 15Fk-1(c)(2)(i)(D) [17 CFR 240.15Fk-1(c)(2)(i)(D)];[308] and 8. Compliance resources and deficiencies. Exchange Act rule 15Fk-1(c)(2)(i)(E) [17 CFR 240.15Fk-1(c)(2)(i)(E)].[309]	obligations under UK law on markets in financial instruments; 2. a summary of major findings of the review of the policies and procedures, including risks identified in the scope of the compliance function's monitoring activities; 3. a summary of on-site inspections or desk-based reviews performed by the compliance function; 4. a summary of the planned monitoring activities for the subsequent review; 5. how the compliance function monitors the development and review of the obligations under UK law on markets in financial instruments and how possible risks of failure by the Investment Firm or its staff to comply with these obligations are identified at an early stage; 6. other significant compliance issues that have occurred since the last report; and	that may arise from any lack of resources or other deficiencies in the compliance department.

[306] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[307] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[308] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[309] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
27. What are the required contents of the compliance reports?		
	7. overview of material correspondence with competent authorities. Guideline 3 para. 28 ESMA Guidelines on compliance function. The compliance function must have the necessary authority, resources, expertise and access to all relevant information. Article 22(3)(a) MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
28. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?		
Compliance report disclosures The compliance report must include: 9. Material non-compliance matters identified. Exchange Act rule 15Fk-1(c)(2)(i)(D) [17 CFR 240.15Fk-1(c)(2)(i)(D)];[310] and	**Compliance report disclosures** The compliance report submitted to senior management must address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. Article 22(2) MiFID Org Reg.	**<u>Comparability of outcomes and specific requirements</u>**: The UK compliance report disclosure requirements provide a comparable regulatory outcome to the SEC compliance report disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(A) and Exchange Act rule 15Fk-1(c)(2) and the UK law on markets in financial instruments are consistent as to the contents of compliance reports in that each requires a description of a firm's compliance procedures,

[310] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
28. Are such reports required to disclose material non-compliance matters identified and the resources devoted to compliance efforts?		
10. Compliance resources and deficiencies. Exchange Act rule 15Fk-1(c)(2)(i)(E) [17 CFR 240.15Fk-1(c)(2)(i)(E)].[311]	This compliance report (and any ad hoc reports, where necessary) must address any significant risk of failure by the Investment Firm to comply with its obligations under the UK law on markets in financial instruments. Article 22(3)(c) MiFID Org Reg. The compliance function must have the necessary authority, resources, expertise and access to all relevant information. Article 22(3)(a) MiFID Org Reg.	assessment of such procedures, implementation of changes, areas of improvement, material non-compliance and deficiencies. *See* Article 22(2) MiFID Org Reg., which requires the compliance report submitted to senior management to address the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken. As this report must address compliance with all obligations under the UK law on markets in financial instruments, it must include identification of risks that may arise from any lack of resources or other deficiencies in the compliance department.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
29. Are compliance reports subject to certification and internal review requirements? If so, how?		
A compliance report must accompany each appropriate financial report that the firm is required to furnish to the SEC,	**Internal review of compliance reports** Any compliance-related monitoring and reporting is subject to internal review by various functions	**Comparability of outcomes and specific requirements**:

[311] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
29. Are compliance reports subject to certification and internal review requirements? If so, how?		
and include a certification that, under penalty of law, the report is accurate and complete. Exchange Act section 15F(k)(3)(B) [15 U.S.C. 78o-10(k)(3)(B)].[312] **Internal review of compliance reports** Compliance reports must be submitted to the firm's directors and audit committee (or equivalent bodies) and senior officer prior to submission to the SEC. Exchange Act rule 15Fk-1(c)(2)(ii)(B) [17 CFR 240.15Fk-1(c)(2)(ii)(B)].[313] Compliance reports and obligations must be discussed in one or more meetings conducted by the senior officer with the CCO in the preceding twelve months. Exchange Act rule 15Fk-	or senior management within the Investment Firm. This includes the following requirements: • The compliance function must monitor and regularly assess the actions taken to address any deficiencies in an Investment Firm's compliance with its obligations. Article 22(2)(a) MiFID Org Reg. The Investment Firm's audit function, where one is required, must be separate and independent from the other functions and responsible for establishing, implementing and maintaining an audit plan to evaluate the adequacy and effectiveness of the Investment Firm's systems and internal control mechanisms. Article 24 MiFID Org Reg. • Senior management (and, where appropriate, the supervisory function) must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the UK law on markets in financial instruments, and to take appropriate measures to address any deficiencies. Article 25 MiFID Org Reg.	The UK compliance report requirements provide a comparable regulatory outcome to the SEC compliance report requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(k)(3)(B) and Exchange Act rule 15Fk-1(c)(2) and the UK law on markets in financial instruments are consistent as compliance reports are subject to internal review requirements. *See* Article 25 MiFID Org Reg., which requires that an Investment Firm's senior management receives on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 (compliance, risk management and internal audit) indicating whether appropriate remedial measures have been taken in the event of any deficiencies. The supervisory function, if any, must receive on a regular basis written reports on the same matters. We note that, although the UK regulatory framework does not require certification of a compliance report, Article 21 MiFID Org Reg. requires Investment Firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent

[312] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[313] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
29. Are compliance reports subject to certification and internal review requirements? If so, how?		
1(c)(2)(ii)(C) [17 CFR 240.15Fk-1(c)(2)(ii)(C)].[314] Compliance reports must include a certification by the CCO or senior officer that, "to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all material respects." Exchange Act rule 15Fk-1(c)(2)(ii)(D) [17 CFR 240.15Fk-1(c)(2)(ii)(A)].[315]	Investment Firms must (i) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; and (ii) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally. Article 21 MiFID Org Reg. The compliance function must have, among other things, the necessary expertise in order to be able to discharge its responsibilities properly and independently. Article 22(3) MiFID Org Reg. Regulators must take into account compliance with these requirements during an Investment Firm's authorisation process and as part of their ongoing supervision of the Investment Firm.	those persons from discharging any particular function soundly, honestly, and professionally. The CFTC Entity-Level Guidance specifically addresses this with regards to the EU requirements (with which the UK regime is generally aligned), finding that substituted compliance is generally applicable despite no requirement to certify compliance reports so long as firms certify and furnish the certified annual CCO report to the CFTC. CFTC Entity-Level Guidance at 78928.[316]

[314] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[315] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[316] https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
30. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?		
Compliance reports must be submitted to the SEC within thirty days[317] following the deadline for filing the firm's annual financial report. Exchange Act rule 15Fk-1(c)(2)(ii)(A) [17 CFR 240.15Fk-1(c)(2)(ii)(A)].[318] Specific rules address amendment of reports that have material errors or omissions, and incorporation by reference. Exchange Act rule 15Fk-1(c)(2)(iv), (v) [17 CFR 240.15Fk-1(c)(2)(iv), (v)].[319]	There is no requirement to provide compliance reports to a regulator. Regulators have very broad information-gathering powers to (among other actions): have access to any document or other data in any form which the regulator considers could be relevant for the performance of its duties and receive or take a copy of it; to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information; to carry out on-site inspections or investigations; and to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an Investment Firm, a Credit Institution, or any other entity regulated by UK law on markets in financial instruments. Section 165-177 FSMA. The FCA and the PRA Rules impose general notification requirements in relation to matters having a serious regulatory impact on an Investment Firm, including (but not limited to) any	**Comparability of outcomes** We note that, although the UK regulatory framework does not require submission of a compliance report to a regulator, regulators have very broad information-gathering powers to require the provision of such information by Investment Firms when they consider this to be necessary. In addition, the FCA Rules and the PRA Rules require Investment Firms to deal with their regulators in an open and cooperative way and to disclose to the regulators appropriately anything relating to the Investment Firms of which the regulators would reasonably expect notice. The CFTC Entity-Level Guidance specifically addresses this with regards to the EU requirements (with which the UK regime is generally aligned), finding that substituted compliance is generally applicable despite no requirement to provide CCO reports so long as firms certify and furnish the annual CCO report to the CFTC. CFTC Entity-Level Guidance at 78928.[320]

[317] Subject to extensions pursuant to Exchange Act rule 15Fk1(c)(2)(iii) [17 CFR 240.15Fk-1(c)(2)(iii)].
[318] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[319] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fk_61&rgn=div8
[320] https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Chief Compliance Officer Reports		
30. Are the required reports required to be submitted to the regulator? Are reports with material errors or omissions required to be amended?		
	significant failure in the Investment Firm's systems or controls, including those reported to the Investment Firm by the its auditor. FCA SUP 15.3.1R, SUP 15.3.8G, PRA Notifications Rules 2.1-2.9. In addition, Investment Firms must deal with their regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice. FCA PRIN 2.1.1R (Principle 11), PRA Fundamental Rule 7.	

4. Category: Counterparty Protection Requirements

a. Executive Summary

The counterparty protection requirements are intended to bring professional conduct to, and increase transparency in, the security-based swap market and to require registered entities to treat parties to these transactions fairly. The SEC Guidance notes that the counterparty protection requirements set forth below generally only apply to a non-US firm's activities involving US counterparties (unless the transaction is arranged, negotiated or executed in the United States). The primary focus of the cross-border application of the counterparty protection requirements is on protecting counterparties by requiring security-based swap dealers to, among other things, provide certain disclosures to counterparties, [and] adhere to certain standards of business conduct".[321]

The comparability analysis will consider whether the foreign jurisdiction addresses the Exchange Act section 15F counterparty protection requirements of fair and balanced communications; disclosure of certain risks, characteristics, incentives and conflicts; and disclosure of daily marks. Specifically, the SEC will consider whether "the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, the counterparty protections under the requirements of the foreign financial regulatory system, . . . and the duties imposed by the foreign financial regulatory system" are comparable to those associated with the applicable Exchange Act provisions and underlying rules. Exchange Act rule 3a71-6(d)(1) [17 CFR 240.3a71-6(d)(1)].[322]

b. Subcategory: Fair and Balanced Communications[323]

The counterparty protection requirements in part address the need to promote complete and honest communications as part of firms' security-based swap businesses to promote investor protection and prohibit firms "from overstating the benefits or understating the risks to inappropriately influence counterparties' investment decisions." *See* Business Conduct Adopting Release, 81 FR at 30001-02.[324]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**UK Requirement and/or Policy Goal Summary**	**Comparability Assessment**
b. Subcategory: Fair and Balanced Communications		
31. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?		
The SEC must adopt rules providing that firms communicate with	**FCA Principles**	**<u>Comparability of outcomes</u>**:

[321] Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968, 31010 (May 23, 2013), *available at* https://www.sec.gov/rules/proposed/2013/34-69490.pdf.
[322] https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf
[323] Mandated by Exchange Act Section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[324] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
31. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?		
counterparties "in a fair and balanced manner based on principles of fair dealing and good faith." Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)];[325] and Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[326]	A UK Firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. Additionally, a UK firm must act with integrity, pay due regard to the interests of its customers and treat them fairly. FCA PRIN 2.1.1R(1), (6) and (7). **MiFID Org Reg., and FCA Rules** The UK requires that when providing investment services or, where appropriate, ancillary services to clients, an Investment Firm must act honestly, fairly and professionally in accordance with the best interests of its clients. FCA COBS 2.1.1R. All information, including marketing communications, addressed by an Investment Firm to clients or potential clients (retail clients, professional clients and MiFID ECPs) must be fair, clear and not misleading. FCA COBS 4.2.1R. All information addressed or disseminated to retail or professional clients (but not ECPs) or potential clients must satisfy certain conditions, including:	The UK's prohibitions on engaging in misleading communications provide a comparable regulatory outcome to the SEC prohibitions against misleading communications. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(C) and the FCA Principles and MiFID are consistent in that each requires that Investment Firms communicate with counterparties truthfully and fairly and prohibit misleading information or material omissions, in order to protect market participants and promote information exchange and the integrity of the market.

[325] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf
[326] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
31. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?		
	11. the information includes the name of the Investment Firm; 12. the information is accurate and always gives a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument; 13. the information uses a font size in the indication of relevant risks that is at least equal to the predominant font size used throughout the information provided, as well as a layout ensuring such indication is prominent; 14. the information is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; 15. the information does not disguise, diminish or obscure important items, statements or warnings; 16. the information is consistently presented in the same language throughout all forms of information and marketing materials that are provided to each client, unless the client has	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
31. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?		
	accepted to receive information in more than one language; and 17. the information is up-to-date and relevant to the means of communication used. (i) In addition, marketing communications must be clearly identifiable as such. (ii) Article 44(2) MiFID Org Reg and FCA COBS 1.1.2R, COBS 1 Annex 1 and COBS 4.3.1R and 4.5A.3UK. Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of such ECP and of its business. FCA COBS 2.1.1AR and COBS 4.2.1R. Additional requirements apply for retail or professional clients (but not ECPs) where the information provides comparisons between services or financial instruments, where indications are provided regarding past (including simulated) or future performance of a financial instrument, financial index or an investment service, or where the information refers to a particular tax treatment. Article 44(3)-(7) MiFID Org Reg and FCA COBS 4.5A.7 UK, COBS 4.5A.8	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
31. To what extent are firms prohibited from engaging in communications that are misleading in fact or by omission?		
	UK, COBS 4.5A.10 UK, COBS 4.5A.12 UK, and COBS 4.5A.14 UK. The dissemination of information, by any means, that gives or is likely to give false or misleading signals in relation to the supply of, demand for or price of certain financial instruments, or secures or is likely to secure the price of certain financial instruments at an abnormal or artificial level, in each case where the person knew or ought to have known that the information was false or misleading, is prohibited (in addition to certain trading conduct which would also constitute market manipulation). Article 12(1)(c) MAR.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
32. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?		
Communications with counterparties must "provide a sound basis for evaluating the facts" with regard to particular security-based swaps or	**FCA Principles** A UK Firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. Additionally, a UK firm must act with integrity,	**<u>Comparability of outcomes</u>**: The UK's requirements that Investment Firms provide counterparties with information sufficient to make informed decisions provide a comparable regulatory outcome to the SEC counterparty communications requirements. In particular, the

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
32. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?		
trading strategies. Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[327]	pay due regard to the interests of its customers and treat them fairly. FCA PRIN 2.1.1R(1), (6) and (7). **MiFID Org Reg., and FCA Rules** Investment Firms must disclose a significant range of information 'in good time' to clients before the provision of any investment services, including in relation to a general description of the nature and risks of financial instruments, the nature of the specific type of financial instrument concerned, the functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions, all costs and related charges and the risks particular to that specific type of financial instrument in sufficient detail to enable clients to take investment decisions on an informed basis. FCA COBS 2.2A.2R, Articles 46 and 48(1) MiFID Org Reg and FCA COBS 8A.1.5 UK and COBS 14.3A.5 UK. The content, timing and manner of disclosure of such information is highly prescriptive under MiFID and the supporting legislation with a view to promoting investor protection, including by	regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and the FCA Principles and MiFID are consistent in that each requires Investment Firms to provide counterparties with sufficient information in order to protect market participants and facilitate sound decision-making about security-based swap transactions. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: Both regimes require firms to provide information about the underlying securities-based swaps and transaction strategies, but the UK regime contains more detailed requirements on the manner and content of such communications.

[327] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
32. To what extent are firms required to provide counterparties with information that is sufficient to promote informed decision-making?		
	facilitating informed decision-making. The ESMA Q&As on MiFID investor protection topics further confirm that disclosures to clients are intended to enable clients to make informed decisions.[328] A detailed description of some of the specific requirements aimed at providing clients with information that is sufficient to promote their informed decision-making is set out in response to the questions set forth in section 4.c below.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
33. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?		
Communications with counterparties "may not imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast". Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[329]	MiFID imposes disclosure requirements in relation to both past and future performance statements. **Past performance statements** Where information provided to a professional client or a retail client (but not an ECP) contains an indication of past performance of a financial	**Comparability of outcomes**: The UK's requirements that Investment Firms qualify statements regarding past and future performance provide a comparable regulatory outcome to the SEC requirements on communications regarding past performance and future performance predictions. In particular, the regulatory outcomes pursued under Exchange Act

[328] See the Introduction regarding the on-going relevance of ESMA guidance post-Brexit for interpretative purposes.
[329] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
33. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?		
	instrument, a financial index or an investment service, Investment Firms must ensure that the following conditions are satisfied: (iii) that the indication is not the most prominent feature of the communication; (iv) the information must include appropriate performance information which covers the preceding five years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the Investment Firm may decide, and in every case that performance information is based on complete twelve-month periods; (v) the reference period and the source of information is clearly stated; (vi) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results; (vii) where the indication relies on figures denominated in a currency other than pounds sterling, the currency is clearly	section 15Fh-3(g) and MiFID are consistent in that each prohibit Investment Firms from making unwarranted inferences about future performances based on past performances, or about future performances, in order to protect market participants from misleading information and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both regimes regulate how firms may communicate with respect to past and future performances, but the UK regime contains more detailed requirements on the manner and content of such communications.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
33. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?		
	stated, together with a warning that the return may increase or decrease as a result of currency fluctuations; (viii) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed. (ix) Article 44(4) MiFID Org Reg., FCA COBS 1.1.2R, COBS 1 Annex 1 and COBS 4.5A.10UK. Broadly similar requirements apply in respect of information referring to or including simulated past performance. Article 44(5) MiFID Org Reg. **Future performance statements** Where information provided to a professional client or retail client (but not ECPs) contains information on future performance, Investment Firms must ensure that the following conditions are satisfied: 18. the information is not based on or refers to simulated past performance;	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
33. To what extent do relevant requirements address statements regarding past performance or predictions regarding future performance?		
	19. the information is based on reasonable assumptions supported by objective data; 20. where the information is based on gross performance, the effect of commissions, fees or other charges is disclosed; 21. the information is based on performance scenarios in different market conditions (both negative and positive scenarios), and reflects the nature and risks of the specific types of instruments included in the analysis; and 22. the information contains a prominent warning that such forecasts are not a reliable indicator of future performance. Article 44(6) MiFID Org Reg. , FCA COBS 1.1.2R, COBS 1 Annex 1 and COBS 4.5A.14UK. Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. FCA COBS 2.1.1AR and COBS 4.2.1R.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?		
Risk disclosure Communications with counterparties that refer to potential opportunities or advantages presented by a security-based swap must include "an equally detailed statement of the corresponding risks." Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)].[330] Firm "communications with counterparties will be subject to the specific antifraud provisions added to the Exchange Act under Title VII of the Dodd-Frank Act, as well as general antifraud provisions under the federal securities laws." Substituted compliance is not available in connection with those antifraud provisions. *See* Business Conduct Adopting Release, 81 FR at 30001.[331]	**FCA Principles** A UK Firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. Additionally, a UK firm must act with integrity, pay due regard to the interests of its customers and treat them fairly. FCA PRIN 2.1.1R(1), (6) and (7). **MiFID Org Reg., and FCA Rules** The UK legislation aimed at promoting investor protection, including with regards to informed investment decision-making, generally contains broad and highly specific disclosure requirements on Investment Firms, requiring that information provided to clients or potential clients is presented in a contextual and balanced manner, containing appropriate disclaimers or warnings. Examples of such instances are set out below. **Risks disclosure**	**<u>Comparability of outcomes</u>**: The UK's disclaimer requirements provide a comparable regulatory outcome to the SEC disclaimer requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(g) and the FCA Principles and MiFID are consistent in that each prohibit Investment Firms from making fraudulent claims and require disclosure of relevant risks, in order to protect market participants and facilitate sound decision-making about securities transactions. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both regimes require firms to provide information about the underlying securities and transaction strategies, but the UK regime contains more

[330] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[331] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?		
	Investment Firms must provide disclosure that meets prescribed conditions in relation to risks associated with the financial instruments in question. The response to the question set forth in section 4.c.1 below describes these conditions in further detail. **Clear and prominent statements** There are instances where MiFID disclosure provisions specifically require that clear and prominent statements are made to the client. As part of an Investment Firm's obligation to provide fair, clear and not misleading information to clients, Investment Firms are required to ensure that, where the indication contains an indication of past performance of a financial instrument, a financial index or an investment service, a warning is included to state that the return may increase or decrease as a result of currency fluctuations where the indication relies on figures denominated in a currency other than pounds sterling. Article 44(4)(e) MiFID Org Reg. Where the information refers to a particular tax treatment, it must prominently state that the tax treatment depends on the individual	detailed requirements on the manner and content of such communications.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?		
	circumstances of each client and may be subject to change in the future. Article 44(7) MiFID Org Reg. Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, Investment Firms must ensure that: (i) the comparison is meaningful and presented in a fair and balanced way, (ii) the sources of the information used for the comparison are specified, and (iii) the key facts and assumptions used to make the comparison are included. Article 44(3) MiFID Org Reg. The requirements of Articles 36 and 44 MiFID Org Reg. apply where the client is a professional client or retail client (but not an ECP). Investment Firms are required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. FCA COBS 1.1.2R, COBS 1 Annex 1, COBS 2.1.1AR and COBS 4.2.1R. **Financial promotions**	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?		
	UK law also requires the inclusion of regulatory disclaimers or legends in offering documentation or marketing communications in relation to matters including financial promotion restrictions. For example, research recommendations that have not been prepared in accordance with legal requirements designed to promote the independence of investment research must contain a statement of that circumstance, and a statement that they are not subject to any prohibition on dealing ahead of the dissemination of investment research (and they must be identified as marketing communications rather than research recommendations). Article 36(2) MiFID Org Reg. MAR also requires that investment recommendations or other information recommending or suggesting an investment strategy are set out in such a matter that (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information; (b) all substantially material sources of information are clearly and prominently indicated; (c) all sources of information are reliable or, where there is any	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?		
	doubt as to whether a source is reliable, this is clearly indicated; (d) all projections, forecasts and price targets are clearly and prominently labelled as such, and the material assumptions made in producing or using them are indicated; (e) the date and time when the production of the recommendation was completed is clearly and prominently indicated. Article 3 MAR Investment Recommendations Regulation. **Selling restrictions** The FCA Handbook imposes product governance requirements on Investment Firms that manufacture financial instruments for sale to clients. Investment Firms must ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments is compatible with the identified target market and Investment Firms must take reasonable steps to ensure that the financial instrument is distributed to the identified target market. FCA PROD 3.2.1R. This requirement should be applied in a proportionate and	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
4. To what extent do relevant requirements mandate that certain types of communications be balanced by disclaimers and/or by contextual information?		
	appropriate manner where the client is an ECP (for purposes of MiFID). FCA PROD 3.1.2R. As part of their compliance arrangements regarding such product governance requirements, Investment Firms provide disclaimers and include selling restrictions in their offering documentation. Industry bodies such as the International Capital Markets Association and the Association for Financial Markets in Europe have assisted with the standardization of such disclaimers.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?		
Firms must communicate with all counterparties in a fair and balanced manner based on principles of fair dealing and good faith. Exchange Act rule 15Fh-3(g) [17 CFR 240.15Fh-3(g)];[332] and	The information requirements discussed above in response to the questions set forth in sections 4.b.1-4.b.4 generally apply to all types of clients except, where noted, to ECPs (for purposes of MiFID). Where the requirements do not apply where the client is an ECP (for purposes of MiFID),	**Comparability of outcomes**: The UK's requirements related to communications provide a comparable regulatory outcome to the SEC disclaimer requirements. In particular, the regulatory outcomes pursued under Exchange Act sections 15Fh-3(g) and 15F(h)(3)(C) and MiFID are

[332] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
b. Subcategory: Fair and Balanced Communications		
5. Are the relevant requirements lessened or otherwise modified in connection with certain categories of counterparties? If so, how?		
Exchange Act section 15F(h)(3)(C) [15 U.S.C. 78o-10(h)(3)(C)].[333]	Investment Firms are still required, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business. FCA COBS 2.1.1AR and COBS 4.2.1R. The MAR disclosure requirements apply irrespective of the type of client in question, as their applicability is not driven by the type of client to whom the disclosure is made.	consistent in that both regimes generally require disclaimers be made to all counterparties to promote honest communications as part of firms' security-based swap businesses. Both regimes aim to protect all market participants and facilitate sound decision-making about securities-based swap transactions. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the UK regime are comparable to those under the US regime. Whilst the UK regime stipulates that certain FCA Handbook disclosure requirements do not apply where the client is an ECP, FCA COBS 1.1.2R, COBS 1 Annex 1, COBS 2.1.1AR and COBS 4.2.1R still require Investment Firms, in their relationship with ECPs, to act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the ECP and of its business.

[333] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest[334]

The objective of the required disclosure of material risks and characteristics is to provide information to a counterparty to help them assess whether, and under what terms, they want to enter into the transaction.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
34. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?		
The SEC must adopt rules providing that firms must disclose to counterparties – other than counterparties that are dealers, participants, swap dealers or major swap participants – information regarding the material risks and characteristics[335] of the security-based swap, and any material incentives[336] or conflicts of interest that the firm may have in connection with the security-based swap. Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[337]	Investment Firms must provide appropriate information in good time to clients/potential clients with regards to matters including the financial instruments and proposed investment strategies, execution venues and all costs and related charges. FCA COBS 2.2A.2R and Articles 46-50 MiFID Org Reg. The information on financial instruments and proposed investment strategies must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended	**Comparability of outcomes**: The UK's financial instrument disclosure requirements provide a comparable regulatory outcome to the SEC financial instrument disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B) and MiFID are consistent in that both regulatory regimes require Investment Firms to provide counterparties with details of financial instruments, in order to protect market participants and facilitate sound decision-making about securities transactions.

[334] Mandated by Exchange Act section 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o10(h)(3)(B)(i), (ii)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(b) [17 CFR 240.15Fh-3(b)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[335] "Material risks and characteristics" may include: (i) market, credit, liquidity, foreign currency, legal, operational, and other applicable risks; and (ii) material economic terms of the security-based swap, terms relating to the operation of the security-based swap, and the rights and obligations of the parties during the term of the security-based swap. Exchange Act rule 15Fh3(b)(1) [17 CFR 240.15Fh-3(b)(1)].
[336] The term "incentives" does not refer "to any profit or return that the [entity] would expect to earn from the security-based swap itself, or from any related hedging or trading activities . . . but rather to any other financial arrangements pursuant to which [the entity] may have an incentive to encourage the counterparty to enter into the transaction." *See* Business Conduct Adopting Release, 81 FR at 29986.
[337] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
34. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?		
	for retail or professional clients, taking account of the identified target market. FCA COBS 14.3A.3R. Investment Firms must provide clients/potential clients in good time before the provision of investment services with a general description of the nature and risks of financial instruments, taking into account the client's classification (e.g., as an ECP (for purposes of MiFID), professional or retail client). The description must explain: (i) the nature of the specific type of instrument concerned, (ii) the functioning and performance of the instrument in different market conditions (including positive and negative conditions), and (iii) risks particular to the specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis. Article 48(1) MiFID Org Reg. The description of risks must include the following:	While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: Both the UK regime and the US regime require the disclosure of risks and other features of the financial instruments involved. Requirements under FCA COBS 4.2.1R, 2.2A.2R and 14.3A.3R and Article 48 MiFID Org Reg. are comparable to those under Exchange Act section 15F(h)(3)(B)(i), (ii); the UK requirements are, in some respects, more detailed on how Investment Firms must describe the risks and other features of financial instruments. Please also see below the comparability of outcomes and specific requirements in relation to the question set forth in section

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
34. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?		
	(iv) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment including the risks associated with insolvency of the issuer or related events, such as bail in; (v) the volatility of the price of such instruments and any limitations on the available market for such instruments; (vi) information on impediments or restrictions for disinvestment, for example as may be the case for illiquid financial instruments or financial instruments with a fixed investment term, including an illustration of the possible exit methods and consequences of any exit, possible constraints and the estimated time frame for the sale of the financial instrument before recovering the initial costs of the transaction in that type of financial instruments; (vii) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities,	4.c.2 with regards to conflicts of interest and revenues from third-parties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
34. To what extent are firms required to provide counterparties or potential counterparties with information regarding the features of financial instruments? Is there required disclosure regarding the risks of financial instruments? Is there required disclosure regarding the terms of financial instruments?		
	additional to the cost of acquiring the instruments; and (viii) any margin requirements or similar obligations, applicable to instruments of that type. (ix) Article 48(2) MiFID Org Reg. Where financial instruments incorporate a guarantee or capital protection, the Investment Firm must provide a client/potential client with information about the scope and nature of such guarantee or capital protection. Article 48(5) MiFID Org Reg. **Conflicts of interest** Please see the response below to the question set forth in 4.c.2 with regards to conflicts of interest requirements. **Incentives. Revenues from third-parties** Please see the response below to the question set forth in 4.c.2 with regards to incentives and revenues from third-parties requirements.	

<table>
<tr><th>SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)</th><th>UK Requirement and/or Policy Goal Summary</th><th>Comparability Assessment</th></tr>
<tr><td colspan="3">c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest</td></tr>
<tr><td colspan="3">35. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?</td></tr>
<tr><td colspan="3"><u>Comparability of outcomes</u>:

The UK's conflicts of interest disclosure requirements provide a comparable regulatory outcome to the SEC conflicts of interest disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B) and the UK regime are consistent in that both regulatory regimes require disclosure of conflicts of interest and revenues from third-parties, in order to protect market participants and facilitate sound decision-making about securities-based swaps transactions.

While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

<u>Comparability of specific requirements</u>:

The specific requirements under the UK regime and the US regime are comparable in the following ways:</td></tr>
<tr><td>Conflicts of interest:

The SEC must adopt rules providing that firms must disclose to counterparties – other than counterparties that are dealers, participants, swap dealers or major swap participants – information regarding the material risks and characteristics of the security-based swap, and any material incentives or conflicts of interest that the firm may have in connection with the security-based swap. Exchange Act sections</td><td>Conflicts of interest:

Investment Firms are required to take all appropriate steps to identify and to prevent or manage conflicts of interests between themselves, or any person directly or indirectly linked to them by control and their clients, or between one client and another that arise in the course of providing investment services, including those caused by the receipt of inducements from third-parties. FCA SYSC 10.1.3R.

An Investment Firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable</td><td>Conflicts of interest:

Requirements on disclosure of conflicts of interest to clients or potential clients under FCA SYSC 10.1.8R and Article 20(1) MAR are comparable to those under Exchange Act sections 15F(h)(3)(B)(i), (ii). In addition, FCA SYSC 10.1.3R and Article 34 MiFID Org Reg. focus on prevention and management of conflicts of interest, by requiring that Investment Firms take measures to detect and prevent conflict of interest</td></tr>
</table>

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
35. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?		
15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[338]	steps designed to prevent conflicts of interest from adversely affecting the interests of the clients, for example by establishing, implementing and maintaining an effective conflicts of interest policy in accordance with specific requirements. FCA SYSC 10.1.7R and Article 34 MiFID Org Reg. Where the organisational or administrative arrangements made by the Investment Firm are not sufficient to ensure with reasonable confidence that risks of damage to client interests will be prevented, the Investment Firm must clearly disclose to the client the general nature and/or sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf. The disclosure must include sufficient detail, taking into account the nature of the client, to enable the client to take an informed decision with respect to the service in the context of which the conflict of interest arises. FCA SYSC 10.1.8R. Such disclosure to clients is a measure of last resort that will only be used where the effective organisational and administrative arrangements	beforehand, which the US regime does not require. Notably, the CFTC Substituted Compliance Decision on Entity-Level Requirements found that substituted compliance for the Section 23.605(e) requirements regarding disclosure of conflicts of interest to clients or potential clients was appropriate via the general disclosure requirements of the MiFID standards (from which the UK requirements largely derive) by requiring that each dealer disclose to counterparties any material incentives or conflicts of interest regarding the decision of a counterparty to execute a derivative on a swap execution facility or designated contract maker, or to clear a derivative through a derivatives clearing organization. CFTC Substituted Compliance Decision on Entity-Level Requirements at 78933.

[338] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
35. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?		
	made by the Investment Firm are not sufficient. Article 34(4) MiFID Org Reg. MAR also requires that persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. Article 20(1) MAR. (x) Any disclosure of conflicts of interest must meet the prescribed requirements set out in Articles 5 and 6 MAR Investment Recommendations Regulation.	
Revenues from third-parties: "Material incentives or conflicts of interest" may encompass "any compensation or other incentives from any source other than the counterparty in connection with the security-based swap to be entered into with the	**Revenues from third-parties**: Investment Firms are regarded as not fulfilling their obligation to act in the client's best interest and to manage conflicts of interest where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service, to or by any party except the client, except where the payment or benefit is designed to enhance the quality of the service and does not impair	**Revenue from third-parties**: Requirements on disclosure of revenues and incentives from third-parties under FCA COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.10-14R are comparable to those under Exchange Act rule 15Fh-3(b)(2), but the limitations on permissible revenues from third-parties are more onerous under the UK regime.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
35. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?		
counterparty." Exchange Act rule 15Fh-3(b)(2) [17 CFR 240.15Fh-3(b)(2)].[339]	compliance with the Investment Firm's duty to act honestly, fairly and professionally in accordance with the best interest of the client. FCA SYSC 10.1.3R, COBS 2.3A.5R, 2.3A.6R and 2.3A.7E. The existence, nature and amount (or method of calculating that amount where the amount cannot be ascertained) of such payment or benefit must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment service. The Investment Firm must also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment service, where applicable. FCA COBS 2.3A.6R. Pursuant to this obligation, Investment Firms must disclose to a professional client or a retail client (but not to MiFID ECPs) the following information: 23. prior to the provision of the relevant investment service, the Investment Firm must disclose to the client information on the payment or benefit concerned. Minor non-monetary benefits may be	

[339] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
35. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?		
	described in a generic way. Other non-monetary benefits received or paid by the Investment Firm in connection with the service provided to a client must be priced and disclosed separately; 24. where an Investment Firm is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the Investment Firm must also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and 25. at least once a year, as long as (ongoing) inducements are received by the Investment Firm in relation to the investment services provided to the relevant clients, the Investment Firm must inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way. FCA COBS 1.1.2R, COBS 1 Annex 1 and 2.3A.10-12R. Investment Firms are required, in their relationship with MiFID ECPs, to act honestly, fairly and professionally and communicate in a way which is	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
35. To what extent are firms required to provide counterparties or potential counterparties with information regarding the incentives or conflicts of interest facing the firms? Are firms required to disclose the revenue they receive from third-parties?		
	fair, clear and not misleading, taking into account the nature of the ECP and of its business. FCA COBS 2.1.1AR and COBS 4.2.1R.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
36. What provisions govern the timing and manner of required disclosure?		
Disclosures must be made at a "reasonably sufficient time prior" to entering into the security-based swap, and in a "manner reasonably designed to allow the counterparty to assess" risks, characteristics, incentives and conflicts. However, the obligation does not apply unless "the identity of the counterparty is known" to the firm "at a reasonably sufficient time prior to execution" to permit the disclosure. Exchange Act rule 15Fh-3(b) [17 CFR 240.15Fh-3(b)].[340]	**Features, risks, terms of financial instruments** Investment Firms must provide clients/potential clients in good time before the provision of investment services with a general description of the nature and risks of financial instruments. Article 48(1) MiFID Org Reg. In assessing what constitutes the provision of information 'in good time', an Investment Firm should take into account, having regard to the urgency of the situation, the client's need for sufficient time to read and understand the information before taking an investment decision. A client is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with than a client considering	**Comparability of outcomes**: The UK's material risk disclosure requirements provide a comparable regulatory outcome to the SEC material risk disclosure requirements. In particular, the regulatory outcomes pursued under Exchange Act rule 15Fh-3(b) and MiFID are consistent in that both regulatory regimes require timely disclosure for counterparties to assess information and make decisions, in order to protect market participants and facilitate sound decision-making about securities-based swap transactions.

[340] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
36. What provisions govern the timing and manner of required disclosure?		
	a simpler or more familiar product or service, or where the client has relevant prior experience. FCA COBS 1.2.5G. **Incentives. Revenues from third-parties** The disclosure must be made, subject to the conditions outlined immediately above, prior to the provision of service to the client. Yearly disclosure may also be required where ongoing incentives are received by the Investment Firm. Please see the responses set out above to the questions set forth in sections 4.c.1 and 4.c.2 for an outline on the manner and content of disclosure required in each case.	While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under Recital 83 EU MiFID are comparable to the requirements under Exchange Act rule 15Fh-3(b), in that both aim to provide counterparties with sufficient time and information (including the risks and other features of the financial instruments involved and conflict of interest) to make decisions. The UK regime also lays out in detail factors that may affect the sufficiency of time and information provided to counterparties.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
c. Subcategory: Disclosure of Material Risks and Characteristics, and Material Incentives or Conflicts of Interest		
37. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?		
Firm duties to disclose material risks and characteristics, and material incentives and conflicts of interest do not apply when the counterparty is a dealer, participant, swap dealer or major swap participant. Exchange Act sections 15F(h)(3)(B)(i), (ii) [15 U.S.C. 78o-10(h)(3)(B)(i), (ii)].[341]	Except where noted in response to the questions set forth in sections 4.b.1, 4.b.3, 4.b.4. 4.b.5, 4.c.1 and 4.c.2 above in respect of ECPs (for purposes of MiFID), the disclosure requirements described above apply irrespective of the type of counterparty.	**Comparability of outcomes**: The UK disclosure requirements provide for comparable outcomes as the SEC disclosure requirements. The disclosure requirements under both regimes generally apply in respect of all clients, except ECPs (for purposes of MiFID) in certain cases. This exception reflects the common regulatory focus of protecting less sophisticated investors.

[341] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

d. Subcategory: Daily Mark Disclosure[342]

Market participants need access to daily mark information to effectively understand and manage their security-based swap positions. The SEC rejected the suggestion that certain counterparties have the right to opt out of the receipt of daily mark disclosures. Business Conduct Adopting Release, 81 FR at 29990-91.[343]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
38. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?		
Disclosure of Daily Mark Information The SEC must adopt rules providing that firms must disclose daily mark information to counterparties that are not certain types of dealers and participants. For cleared security-based swaps, this would encompass receipt of daily mark information from the clearing organization upon request of the counterparty. For uncleared security-based swaps, this would encompass receipt of the daily mark from the firm. Exchange Act section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)].[344]	**Calculation of daily mark information** Whilst there is no strict regulatory requirement for parties to provide their counterparties with daily mark information as a matter of course, we note the following requirements relevant to the calculation of the daily mark information. **Mark-to-market**: FCs and NFC+s are required to mark the value of outstanding uncleared OTC derivative contracts to market on a daily basis. EMIR, Article 11(2). The mark-to-market value should be based on the end of day settlement price of the market (or CCP) from which the prices are taken as reference. If an end of day settlement price is not available, then the mark-to-market value should be based on the closing mid-price of the market concerned. For transactions cleared by a CCP, counterparties	**Comparability of outcomes**: The UK's daily mark disclosure and calculation requirements are not strictly analogous to the SEC daily mark disclosure and calculation requirements. However, taken as a whole, the regulatory outcomes pursued under Exchange Act section 15F(h)(3)(B)(iii) and EMIR are consistent in that the effect of both regulatory regimes is that firms are required to disclose daily mark information to counterparties, in order to allow counterparties to effectively understand and manage their transactions and portfolios. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we

[342] Mandated by Exchange Act section 15F(h)(3)(B)(iii) [15 U.S.C. 78o-10(h)(3)(B)(iii)] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf; and Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[343] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap
[344] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78o-10.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
38. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?		
	should use the CCP's valuation in accordance with EMIR RTS 148/2013, Article 3(5) (as amended by RTS 2017/104). ESMA Q&A on EMIR, TR Question 3b(a2). The mark-to-market value should represent the total value of the contract, rather than a daily change in the valuation of the contract. ESMA Q&A on EMIR, TR Question 3b(a3). **Mark-to-model**: where market conditions prevent marking-to-market, a reliable and prudent marking-to-model must be used. Market conditions which may prevent marking-to-market include: (a) the market is inactive, or (b) the range of reasonable fair values estimates is significant and the probabilities of the various estimates cannot reasonably be assessed. RTS 149/2013, Article 16. Where a marking-to-model is used, the entity subject to the requirement must have a model that: (a) incorporates all factors that counterparties would consider in setting a price, including using as much as possible marking-to-market information; (b) is consistent with accepted economic methodologies for pricing financial instruments; (c) is calibrated and tested	note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under both the UK and the US regimes are comparable in the following way: • **Daily mark information**. The daily mark information to be disclosed under EMIR, Article 11(2) and RTS 148/2013 (as amended by RTS 2017/104), Annex, Table 1, Field 17 is comparable to the information required under Exchange Act section 15F(h)(3)(B)(iii).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
38. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?		
	for validity using prices from any observable current market trades in the same financial instrument or based on any available observable market data; (d) is validated and monitored independently by another division than the division taking the risk; and (e) is duly documented and approved by the board of directors as frequently as necessary, following any material change and at least annually. This approval may be delegated to a committee. RTS 149/2013, Article 17. **Disclosure of daily mark information** Whilst there is no strict regulatory requirement for parties to provide their counterparties with daily mark information as a matter of course, we nonetheless note the following relevant obligations: **Portfolio reconciliation**: FCs and NFCs are required to have a written reconciliation process which covers key trade terms, including, at least, the valuation attributed to each contract in accordance with Article 11(2) of EMIR. Reconciliation is only required to be performed on a daily basis (i.e. on each business day) for FCs and NFC+s where the counterparties have	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
38. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?		
	500 or more OTC derivative contracts outstanding with each other. Further details are provided in response to the question set forth in section 1.f.1. EMIR, Article 11(1)(b) and RTS 149/2013, Article 13. NFC-s are not required to calculate the mark-to-market or mark-to-model valuation of their transactions and, as such, are able to rely on their counterparties' valuations or on other means for the purposes of portfolio reconciliation. ESMA Q&A on EMIR, OTC Question 14(e). **Dispute resolution**: FCs and NFCs are also required to have in place detailed procedures and processes in relation to the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract (recording at least the length of time for which the dispute remains outstanding, the counterparty and the amount which is disputed), as further detailed in response to the question set forth in section 1.f.1. RTS 149/2013, Article 15(1).	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
38. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?		
	Reporting: Counterparties[345] and CCPs are required to report the valuation of a contract on a daily basis to a trade repository registered or recognised under EMIR. For contracts cleared by a CCP, the counterparty must report the valuation provided by the CCP in accordance with Fields 17 to 20 in Table 1 of the Annex to RTS 148/2013. Field 17 relates to the value of the contract and specifically, the CCP's valuation for a cleared trade. RTS 148/2013, Article 3(5) (as amended by RTS 2017/104). For contracts not cleared by a CCP, the counterparty must report, in accordance with Fields 17 to 20 in Table 1 of the Annex to RTS 148/2013, the valuation performed in accordance with the methodology defined in International Financial Reporting Standard 13 Fair Value Measurement (as contained in UK-adopted international accounting standards – meaning (in accordance with section 474(1) of the Companies Act) international accounting standards which are adopted for use within the UK by virtue of Chapter 2 or 3 (as applicable) of	

[345] Counterparties is understood in this context to mean FCs and NFCs. *See* TR Answer 15 in the ESMA Q&A on EMIR for further details.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
38. To what extent are firms required to provide counterparties with daily mark information upon request or as a matter of course? How are daily marks calculated for those purposes?		
	Part 2 of the International Accounting Standards and European Public Limited Liability Company (Amendment etc.) (EU Exit) Regulations 2019). Field 17 relates to the value of the contract and specifically the mark-to-market valuation, or the mark-to-model valuation where applicable under Article 11(2) of EMIR. EMIR RTS 148/2013, Article 3(6) (as amended by RTS 2017/104). The reporting obligation applies to both parties to a transaction (i.e. two-sided reporting is required) subject to certain limited exceptions.[346] Whilst parties are not required to agree on the valuation reported, the valuation would be discussed between the parties for reporting purposes. EMIR, Article 9 and ESMA Q&A on EMIR, TR Question 3b(e). NFC-s shall not be required to report collateral, mark-to-market, or mark-to-model valuations of the contracts. EMIR RTS 148/2013, Article 3(4) (as amended by RTS 2017/104).	

[346] Following changes made by EMIR Refit 2.1, from June 18, 2020 onwards, FCs are solely responsible and legally liable for reporting the details of OTC derivative contracts they have concluded with NFC-s on behalf of both counterparties, as well as for ensuring the correctness of the reported details. We note that the EMIR Refit SI (the SI responsible for onshoring the majority of EMIR Refit 2.1 changes) was made in 2019 prior to these reporting changes becoming effective. As these changes are in force and operative prior to IP completion day, they will be onshored in the UK by regulation 67 of The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
39. To what extent do firms also have to disclose underlying assumptions, methodologies or information sources related to daily mark calculations?		
For uncleared security-based swaps, the firm must disclose "the midpoint between the bid and offer, or the calculated equivalent thereof, as of the close of business, unless the parties agree in writing otherwise to a different time, on each business day during the term of the security-based swap." That daily mark "may be based on market quotations for comparable security-based swaps, mathematical models or a combination thereof," and the firm must disclose its data sources and a description of the underlying methodology and assumptions, and promptly disclose any material changes to the data sources, methodology and assumptions during the term of the security-based swap. Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)].[347]	FCs and NFCs are required to have a written reconciliation process which covers key trade terms, including, at least, the valuation attributed to each contract in accordance with Article 11(2) of EMIR. FCs and NFCs are also required to have in place detailed procedures and processes in relation to the identification, recording and monitoring of disputes relating to the recognition or valuation of the contract. Consequently, to the extent there is any divergence in the valuation attributed by each counterparty, parties may be requested to clarify their underlying methodologies, assumptions and information sources relating to daily mark calculations, as part of these portfolio reconciliation and dispute resolution processes. Further details are provided in the response to the question set forth in section 1.f.1. EMIR, Article 11(1)(b) and RTS 149/2013, Article 13.	**Comparability of outcomes**: *See* response to the above question set forth in section 4.d.1. The regulatory outcome is comparable.

[347] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
40. Can firms restrict recipients' use of this daily mark information, or charge recipients for the information?		
Firms must provide the daily mark to the counterparty without charge or restrictions on internal use. Exchange Act rule 15Fh-3(c) [17 CFR 240.15Fh-3(c)].[348]	There are no specific regulatory requirements under EMIR or MiFID which relate to counterparties providing the daily mark information without charge or restrictions on internal use.	**Comparability of outcomes**: The UK requirements do not provide for comparable outcomes to the SEC requirements. Since the UK regime does not directly address this issue, firms may restrict the use of daily mark information or charge counterparties for such information.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
41. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?		
The disclosure requirement is lessened for cleared security-based swaps as firms must only disclose the daily mark received from the clearing agency upon their counterparty's request.	The required frequency of portfolio reconciliation (whereby parties compare daily mark valuations) varies depending on the status of the counterparty and the number of outstanding OTC derivative contracts between the specific counterparties. For FCs and NFC+s, portfolio reconciliation must be performed: 1. on each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other,	**Comparability of outcomes**: The UK regime does not prescribe daily mark disclosure requirements such as those required under the SEC regime, but, in practice, valuation disclosure must occur to satisfy the UK portfolio reconciliation requirements. The UK portfolio reconciliation requirements impose less frequent reconciliation requirements as the number of outstanding OTC derivative contracts decreases among the parties.

[348] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
d. Subcategory: Daily Mark Disclosure		
41. Is the disclosure requirement lessened or eliminated in connection with certain categories of counterparties? If so, how?		
	2. once per week when the counterparties have between fifty-one and 499 OTC derivative contracts outstanding with each other at any time during the week, and 3. once per quarter when the counterparties have fifty or less OTC derivative contracts outstanding with each other at any time during the quarter. For NFC-s, portfolio reconciliation must be performed: 1. once per quarter when the counterparties have more than 100 OTC derivative contracts outstanding with each other at any time during the quarter, or 2. once per year when the counterparties have 100 or less OTC derivative contracts outstanding with each other. RTS 149/2013, Article 13(3).	

e. Subcategory: Know Your Counterparty

Dealers must obtain essential counterparty information to promote effective compliance and risk management. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)][349] addresses this need.

Dealers must establish, maintain and enforce written policies and procedures "reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known . . . that are necessary for conducting business with such counterparty." Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[350] The rule further specifies that those "essential facts" are: facts required to "comply with applicable laws, regulations and rules"; facts required to implement the dealer's credit and operational risk management policies in connection with transactions involving the counterparty; and information regarding the authority of any person acting for the counterparty.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	**UK Requirement and/or Policy Goal Summary**	**Comparability Assessment**
e. Subcategory: Know Your Counterparty		
42. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?		
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the facts required to "comply with applicable laws, regulations and rules" in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[351] This requirement "is consistent with basic principles of legal and regulatory compliance . . . ." *See* Business Conduct Adopting Release, 81 FR at 29994.[352]	Investment Firms must obtain information from clients in order to categorise them as retail clients, professional clients or, to the extent relevant for the services to be provided, ECPs (for purposes of MiFID). Among other matters, Investment Firms must determine whether the client is an authorised entity (e.g. another Investment Firm), data on their financial standing (balance sheet total, net turnover and capital resources), and the knowledge and experience of the client's staff in relation to the type of transaction to be	**<u>Comparability of outcomes</u>**: The UK's requirements to obtain counterparty information provide a comparable regulatory outcome to the SEC requirements to obtain counterparty information. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MiFID (e.g., FCA COBS 3), MLD4 and MLD5 are consistent in that both require Investment Firms to collect and retain information about counterparties, in order to protect market participants and

[349] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[350] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[351] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[352] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
42. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?		
	conducted. FCA COBS 3.5.2R and COBS 3.5.3R. Investment Firms must establish adequate policies and procedures sufficient to ensure compliance of the Investment Firm including its managers, employees and tied agents with its obligations under MiFID. FCA SYSC 6.1.1R. In particular, among other things, Investment Firms must implement appropriate written internal policies and procedures to categorise clients. FCA COBS 3.8.1R. Please refer to the response to the question set forth in section 4.f.1 below regarding the suitability and appropriateness information that an Investment Firm must obtain from clients, where relevant. Credit Institutions and Investment Firms are generally subject to MLD4 and MLD5 requirements which impose customer identification obligations. Credit Institutions and Investment Firms must apply customer due diligence measures when (i) establishing a business relationship, (ii) conducting transactions that meet certain	facilitate regulatory oversight and enforcement.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
42. To what extent are firms required to obtain counterparty information necessary to promote compliance with applicable laws and regulations?		
	thresholds, and (iii) there are doubts about the veracity or adequacy of previously obtained customer identification data. Regulation 27(1) of the MLR 2017. Enhanced diligence is required in respect of a 'politically exposed person' and other high risk customers. Regulation 33(1) of the MLR 2017. Ongoing monitoring requirements also apply. Regulation 28(11) of the MLR 2017. The UK legal framework provides additional requirements with regard to customer due diligence in the JMLSG Guidance. Although not legally binding, the JMLSG Guidance provides an indication of what the UK courts and regulators expect in terms of compliance.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
43. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?		
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the facts required to implement the dealer's credit and operational risk management policies in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[353] This requirement "is consistent with basic principles of . . . operational and credit risk management." *See* Business Conduct Adopting Release, 81 FR at 29994.[354]	**Threshold Conditions** The Threshold Conditions require UK Firms to have appropriate non-financial resources, which includes in relation to risk management systems (as appropriate to the particular UK Firm, and accounting for its group context).[355] Threshold Conditions at paragraphs 2D, 3C, 5D. **PRA Fundamental Rules and FCA Principles** A UK Firm must conduct its business with due skill, care and diligence and take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. PRA Fundamental Rules 2, 5 and 6 and FCA PRIN 2.1.1.R(2) and (3). **PRA Rules and FCA Rules** CRR Firms must have robust governance arrangements, which include effective processes to identify, manage, monitor and report the risks they are or might be exposed	**Comparability of outcomes**: The UK's counterparty information collection requirements provide a comparable regulatory outcome to the SEC counterparty information collection requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and the Threshold Conditions, the PRA Fundamental Rules, the FCA Principles, MDL4 and MLD5 are consistent in that they require Investment Firms to collect and retain counterparty information pursuant to internal risk management policies in order to protect market participants and facilitate regulatory oversight and enforcement.

[353] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8.
[354] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap.
[355] Guidance on how these Threshold Conditions are applied in practice by the FCA is set out in FCA COND 2.4.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
43. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?		
	to, adequate internal control mechanisms, and practices that are consistent with and promote sound and effective risk management. FCA SYSC 4.1.1R and PRA General Organisational Requirements Rule 2.1. CRR Firms must have in place sound, effective and comprehensive strategies and processes to assess and maintain on an on-going basis the amounts, types and distribution of internal capital that they consider to be adequate to cover the nature and level of the risks to which they are exposed. FCA IFPRU 2.2.7R and PRA Internal Capital Adequacy Assessment Rule 3.1. Regulators must ensure that CRR Firms implement policies and procedures to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events, including an articulation of what constitutes operational risk. FCA IFPRU 2.2.32R and PRA Internal Capital Adequacy Assessment Rule 10.1.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
43. To what extent are firms required to obtain counterparty information necessary for purposes of the firm's credit and operational risk management policies?		
	These CRD IV requirements will oblige CRR Firms to obtain information on their counterparties to enable an assessment of credit and operational risk to be made.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
44. To what extent are firms required to obtain information regarding the authority of persons acting for the counterparty?		
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the information regarding the authority of any person acting for the counterparty in connection with counterparty transactions. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[356]	Investment Firms are required to establish a record that includes the document or documents agreed between the Investment Firm and a client that sets out the rights and obligations of the parties, and the other terms on which the Investment Firm will provide services to a client, which will typically identify the person(s) that are authorised to act on behalf of the Investment Firm's counterparty. FCA COBS 8A.1.9R. When performing customer due diligence measures, Credit Institutions and Investment Firms must verify that any person purporting to act on behalf of the customer is authorized	**Comparability of outcomes**: The UK's counterparty due diligence requirements provide a comparable regulatory outcome to the SEC counterparty due diligence requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MiFID are consistent in that they require Investment Firms to collect and retain information about the authority of persons acting on behalf of counterparties, in order to protect market participants from fraudulent acts and facilitate regulatory oversight and enforcement.

[356] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
44. To what extent are firms required to obtain information regarding the authority of persons acting for the counterparty?		
	to do so and identify and verify the identity of that person. Regulation 28(10) of the MLR 2017.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
45. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?		
Dealers must establish, maintain and enforce written policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty. Exchange Act rule 15Fh-3(e) [17 CFR 240.15Fh-3(e)].[357]	Credit Institutions and Investment Firms must conduct customer due diligence regardless of the nature of the counterparty. The MiFID customer due diligence requirements noted in response to the questions set forth in sections 4.e.1 and 4.f.1 apply in respect of all types of clients. Customer due diligence can either be simplified or enhanced, depending on a range of factors, including: (i) the types of customers in question – for example, legal persons or arrangements that are personal asset-holding vehicles, companies that have nominee shareholders or shares in bearer form, businesses that are cash-intensive, etc.	**Comparability of outcomes**: The UK's counterparty due diligence requirements provide a comparable regulatory outcome to the SEC counterparty due diligence requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(e) and MDL4 and MiFID are consistent in that they require Investment Firms to collect and retain information about all counterparties, in order to protect market participants and facilitate regulatory oversight and enforcement. While the SEC Guidance does not require that the UK have analogues to every requirement

[357] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
e. Subcategory: Know Your Counterparty		
45. Are such information gathering requirements lessened or eliminated in connection with certain categories of counterparties? If so, how?		
	may be considered higher risk customers for whom enhanced due diligence may be required; and (ii) the customers' geographical location. Chapters 2 and 3 of Part 3 of the MLR 2017. The UK legal framework provides additional requirements with regard to customer due diligence in the JMLSG Guidance. Although not legally binding, the JMLSG Guidance provides an indication of what the UK courts and regulators expect in terms of compliance.	under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the two regimes are analogous except as follows: Chapters 2 and 3 of Part 3 of the MLR 2017 allow different levels of due diligence on counterparties based on a number of risk-based factors, but the US regime does not explicitly allow or prohibit such practices.

f. Subcategory: Suitability

The counterparty protection requirements in part account for the need to guard against dealers making unsuitable recommendations.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
46. To what extent are market participants prohibited from making unsuitable recommendations?		
The SEC has noted that "the obligation to make only suitable recommendations is a core business conduct requirement for broker-dealers and other financial intermediaries." *See* Business Conduct Adopting Release, 81 FR at 29997;[358] Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)].[359]	**FCA Principles** A UK Firm must act with integrity; observe proper standards of market conduct; and pay due regard to the interests of its customers and treat them fairly. FCA PRIN 2.1.1R(1), (5). Regardless of the types of services provided, UK Firms must pay due regard to the information needs of their clients, and communicate information to them in a way which is clear, fair and not misleading. FCA PRIN 2.1.1R(7). The fair, clear and not misleading rule applies in a way that is appropriate and proportionate taking into account the means of communication, the information the communication is intended to convey and the nature of the client and of its business, if any. FCA COBS 4.2.1R, COBS 4.2.2G. **MiFID Org Reg., and FCA Rules** MiFID suitability requirements are triggered where an Investment Firm provides	**Comparability of outcomes**: The UK's suitability requirements provide a comparable regulatory outcome to the SEC suitability requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f) and the FCA Principles and MiFID are consistent in that they prohibit firms from making unsuitable recommendations in order to protect market participants and facilitate sound decision-making. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **Comparability of specific requirements**: The specific requirements under the UK regime are more detailed. In addition to the

[358] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap
[359] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
46. To what extent are market participants prohibited from making unsuitable recommendations?		
	investment advice or portfolio management services. FCA COBS 9A.2.1R. Investment Firms must undertake a suitability assessment in relation to recommendations to buy a financial instrument and for all decisions whether to trade, including whether to buy, hold or sell an investment. FCA COBS 9A.2.2G. **Provision of investment advice or portfolio management** When providing investment advice or portfolio management, Investment Firms must obtain the necessary information regarding the client's/potential client's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including their ability to bear losses, and their investment objectives including their risk tolerance, so as to enable the Investment Firm to recommend to the client/potential client the investment services and financial instruments that are suitable for the client and, in particular, are in accordance with their risk tolerance and ability to bear losses. Where the Investment Firm provides investment advice recommending a package of services or products bundled, the overall	prohibition against unsuitable recommendations under Article 54(10) MiFID Org Reg., the UK regime also lays out factors to consider for evaluation of suitability under FCA COBS 9A.2.1R and Recital 82 EU MiFID.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
46. To what extent are market participants prohibited from making unsuitable recommendations?		
	bundled package must be suitable. FCA COBS 9A.2.1R and 9A.2.16R. When providing investment advice or portfolio management, Investment Firms must not recommend or decide to trade where none of the services or instruments are suitable for the client. Article 54(10) MiFID Org Reg. **Provision of investment advice to retail clients** When providing investment advice, the Investment Firm should specify in a written statement on suitability how the advice given meets the preferences, needs and other characteristics of the retail client. The responsibility to undertake the suitability assessment and to provide an accurate suitability report to the client lies with the Investment Firm and appropriate safeguards must be in place to ensure that the client does not incur a loss as a result of the report presenting in an inaccurate or unfair manner the personal recommendation, including how the recommendation provided is suitable for the client and the disadvantages of the	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
46. To what extent are market participants prohibited from making unsuitable recommendations?		
	recommended course of action. FCA COBS 9A.3.2R.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
47. What types of activities constitute "recommendations" or otherwise trigger the application of your jurisdiction's suitability requirement?		
Whether a dealer has made a recommendation turns on the facts and circumstances of the particular situation. Relevant factors include whether the communication "reasonably could be viewed as a 'call to action'" and "reasonably would influence an investor to trade a particular security or group of securities." *See* Business Conduct Adopting Release, 81 FR at 29997.[360]	MiFID suitability requirements are triggered where an Investment Firm provides investment advice or portfolio management services. 'Investment advice' requires that a personal recommendation is made to a person in his capacity as an investor, or as an agent for the same, that is presented as suitable for that person, or based on a consideration of the circumstances of that person, and constitutes a recommendation to: buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument; or exercise or not exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a	**Comparability of outcomes**: The UK's suitability requirements provide a comparable regulatory outcome to the SEC suitability requirements. In particular, although the two regimes describe "recommendations" with different language, actions that are treated as "recommendations" under one regime would very likely be treated the same under the other. Both regimes aim to capture "recommendation" broadly to facilitate investor protection.

[360] https://www.federalregister.gov/documents/2016/05/13/2016-10918/business-conduct-standards-for-security-based-swap-dealers-and-major-security-based-swap

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
47. What types of activities constitute "recommendations" or otherwise trigger the application of your jurisdiction's suitability requirement?		
	financial instrument. A recommendation must not be considered a personal recommendation if it is issued exclusively to the public. Article 9 MiFID Org Reg.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
48. To what extent do firms and their personnel need to understand the risks and rewards of products subject to the suitability requirement?		
A dealer that recommends a security-based swap, or a trading strategy involving a security-based swap, to a counterparty (other than a counterparty that is a dealer or participant) must undertake "reasonable diligence" to understand the potential risks and rewards associated with the recommendation. Exchange Act rule 15Fh-3(f)(1) [17 CFR 240.15Fh-3(f)(1)].[361]	**FCA Principles** A UK firm must act with integrity; observe proper standards of market conduct; and conduct its business with due skill, care and diligence. FCA PRIN 2.1.1R(1), (2) and (5). **MiFID Org Reg., and FCA Rules** Investment Firms are required to ensure and to be able to demonstrate to the FCA on request that natural persons giving investment advice or information about financial instruments, investment services or	**<u>Comparability of outcomes</u>**: The UK's requirements for natural persons giving recommendations provide a comparable regulatory outcome to the SEC natural person recommendation requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f)(1) and the FCA Principles and MiFID are consistent in that they require that the person giving recommendations must have necessary knowledge about the features of the financial instruments

[361] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
48. To what extent do firms and their personnel need to understand the risks and rewards of products subject to the suitability requirement?		
	ancillary services to clients on behalf of the Investment Firm possess the necessary knowledge and competence to comply with the requirement that all information provided to clients is fair, clear and not misleading. FCA SYSC 5.1.5ABR and COBS 4.2.1R. In practice, this means that the relevant individuals at the Investment Firm must be able to understand the potential risks and rewards associated with the recommendations they make in order to be able to comply with FCA COBS 4.2.1R and SYSC 5.1.5ABR.	involved. A person that satisfies the knowledge requirement under FCA COBS 4.2.1R and SYSC 5.1.5ABR is very likely to satisfy the "reasonable diligence" requirement under Exchange Act rule 15Fh-3(f)(1). Both regimes aim to protect market participants from misleading information.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
49. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?		
A dealer that recommends a security-based swap, or a trading strategy involving a security-based swap, to a counterparty (other than a counterparty that is a dealer or	**FCA Principles** A UK firm must act with integrity; observe proper standards of market conduct; and	**<u>Comparability of outcomes</u>**: The UK's requirement that recommendations be made only after all 'necessary information'

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
49. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?		
participant) must have a "reasonable basis" to believe that the recommendation is suitable for the counterparty, based on information such as the counterparty's investment profile, trading objectives and ability to absorb potential losses. Exchange Act rule 15Fh-3(f)(1) [17 CFR 240.15Fh-3(f)(1)].[362]	conduct its business with due skill, care and diligence. FCA PRIN 2.1.1R(1), (2) and (5). **MiFID Org Reg., and FCA Rules** When providing investment advice or portfolio management services, the Investment Firm must collect from the client all 'necessary information' required by FCA COBS 9A.2.1R and Article 54(2) MiFID Org Reg. In cases where the Investment Firm does not obtain such information, it must not recommend investment services or financial instruments to that client or potential client. Article 54(8) MiFID Org Reg. The required information has to be considered in light of all the features of the investment advice or portfolio management services. The Investment Firm has to be able to assess the client's ability to understand and financially bear the relevant risks associated with the investment. The depth and detail of the required information are subject to the proportionality principle, for	has been obtained provides a comparable regulatory outcome to the SEC's requirement that recommendations be made only if the dealer has a "reasonable basis" to believe the recommendation is suitable. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f)(1) and the FCA Principles, MiFID and ESMA Q&A are consistent in that they require that firms determine the suitability of recommendations based on counterparty-specific information, in order to protect market participants and facilitate sound decision making. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness. **<u>Comparability of specific requirements</u>**: The specific requirements under the UK regime are comparable to those under the US regime. The counterparty-specific

[362] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
49. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?		
	example they can vary depending on the complexity, risks and structure of the financial instrument and on the nature and extent of the service provided. In particular, for more complex and risky products, as well as for the illiquid ones, the Investment Firm should consider whether more in-depth information may need to be collected, so as to be able to carry out the assessment. Article 54(2) MiFID Org Reg. Investment Firms are responsible for ensuring that the information collected from clients is reliable and need to take reasonable steps to this effect, in accordance with Article 54(7) MiFID Org Reg. **Examples of information required** The information regarding the financial situation of the client/potential client must include, where relevant, information on the source and extent of their regular income, their assets, investments and real property, and their regular financial commitments. Article 54(4) MiFID Org Reg.	information that Investment Firms must collect and consider when making suitability assessments under FCA COBS 9A.2.1R and Article 54 MiFID Org Reg. is comparable to the information required under Exchange Act rule 15Fh-3(f)(1).

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
49. To what extent do firms and their personnel need to have a reasonable basis to conclude that the recommendation is suitable for the counterparty? What information must they obtain about the counterparty to comply with this requirement?		
	The information regarding the investment objectives of the client/potential client must include, where relevant, information on the length of time for which the client wishes to hold the investment, their preferences regarding risk taking, their risk profile, and the purposes for their investment. Article 54(5) MiFID Org Reg. ESMA has provided guidance with regards to the requirements applicable to Investment Firms and their personnel when (i) collecting the suitability-related information and (ii) making their suitability assessments. Question 7, "Suitability and Appropriateness" in the ESMA Q&As on MiFID and MiFIR Investor Protection.[363]	

[363] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretation purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
50. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?		
A dealer may fulfil its "reasonable basis" requirement with respect to an eligible contract participant (**ECP**)[364] (except those that are non-financial corporations, benefit plans, government entities and individuals), or other persons with at least $50 million in total assets (**institutional counterparty**) if the dealer reasonably determines that the counterparty, or an agent with decision-making authority, is capable of independently evaluating investment risks; the counterparty or agent affirms it is exercising independent judgment; and the dealer discloses that it is acting as counterparty and is not assessing suitability. Exchange Act rule 15Fh-3(f)(1), (4) [17 CFR 240.15Fh-3(f)(1), (4)].[365] A dealer may satisfy its "reasonable diligence" obligation if the dealer receives written representations that, for a counterparty that is not a special entity,[366] the counterparty has complied with policies and procedures reasonably designed to ensure that the	Where an Investment Firm provides investment advice or portfolio management services to a professional client, the Investment Firm is entitled to assume that the client has the necessary level of experience and knowledge, and therefore is not required to obtain extensive information from the client. Article 54(3) MiFID Org Reg. Where the investment service consists of the provision of investment advice to a per se professional client (i.e. not a retail client that has elected to be treated as a professional client), the Investment Firm is entitled to assume that the client is able to financially bear any related investment risks consistent with the investment objectives of that client and therefore is not generally required to obtain information on the financial situation of the client. Article 54(3) MiFID Org and	**<u>Comparability of outcomes</u>**: The scope of the UK's suitability requirements provides a comparable regulatory outcome to the SEC's suitability requirements. In particular, the regulatory outcomes pursued under Exchange Act section 15Fh-3(f) and MiFID and ESMA Guidelines are consistent in that they provide for less-onerous suitability requirements for more sophisticated counterparties. The US regime allows exemptions when the counterparty is a professional, experienced market participant, while the UK regime permits Investment Firms to assume certain levels of knowledge and expertise without conducting the client suitability assessment in certain circumstances. While the SEC Guidance does not require that the UK have analogues to every requirement under SEC rules in order to be deemed comparable, we note the comparability of specific requirements below for completeness.

[364] The definition of "eligible contract participant" under Commodity Exchange Act section 1a(18) [7 U.S.C. 1a(18)] includes: corporations and other entities with more than $10 million in assets; individuals with more than $10 million invested on a discretionary basis (or $5 million if hedging); entities with a net worth of at least $1 million that are hedging commercial risk; financial institutions; insurance companies; certain investment companies; commodity pools with more than $5 million in assets under management; certain employee benefit plans; governmental entities; certain brokers and dealers; and certain futures commission merchants.

[365] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

[366] The definition of "special entity" under Exchange Act rule 15Fh-2(d) [17 CFR 240.15Fh-2(d)] includes: US persons that are federal agencies, certain state and local agencies and political subdivisions and instrumentalities, certain employee benefit plans and government plans, and endowments.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
50. Which counterparties are covered by your jurisdiction's suitability requirement? To what extent is the suitability requirement excused or otherwise lessened in connection with certain types of counterparties, such as institutional counterparties?		
persons evaluating the recommendation and making trading decisions are capable of doing so. Rule 15Fh-3(f)(3) [17 CFR 240.15Fh-3(f)(3)].[367]	paras. 40-41 of the ESMA Guidelines on suitability.[368] Unlike other activities relating to dealing in financial instruments, clients cannot be classified as ECPs for the purposes of investment advice – they must be treated as either retail clients or professional clients – and so even the most sophisticated clients must receive this protection.	**<u>Comparability of specific requirements</u>**: The specific requirements under the UK regime are comparable to those under the US regime, except the following: • **Disclosure**. One of necessary conditions for exemption under the US regimes is that the dealer must disclose that it is not assessing suitability for the counterparty. The UK regime does not require such disclosure.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
51. To what extent does the suitability requirement apply – or not apply – in connection with cross-border activities?		
The suitability requirements generally apply only to a non-US firm's activities involving US counterparties (unless the transaction is arranged, negotiated or executed in the US). *See* Exchange Act rule 15Fh-3(f) [17 CFR 240.15Fh-3(f)].[369]	MiFID suitability requirements apply to Investment Firms in the context of investment advice (and portfolio management) to retail and professional clients, irrespective of the clients' origin or	**<u>Comparability of outcomes</u>**: The applicability of the UK's suitability requirements to cross-border activities provides a comparable but more onerous, regulatory outcome to the SEC's cross-border suitability

[367] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[368] See the Introduction regarding the on-going relevance of ESMA Guidelines post-Brexit for interpretation purposes.
[369] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
f. Subcategory: Suitability		
51. To what extent does the suitability requirement apply – or not apply – in connection with cross-border activities?		
For non-US dealers, the business conduct requirements under Exchange Act section 15F(h) (other than internal supervision requirements) apply only to the dealer's transactions with US counterparties (apart from certain transactions conducted through a foreign branch of the US counterparty), or to transactions arranged, negotiated or executed in the US. *See* Exchange Act rule 3a71-3(c) [17 CFR 240.3a71-3(c)];[370] Exchange Act rules 3a71-3(a)(3), (8) and (9) [17 CFR 240.3a71-3(a)(3), (8) and (9)].[371]	their physical location. Please refer to sections 4.f.1 – 4.f.5 above for details.	requirements. The regulatory outcomes pursued under MiFID and ESMA Q&A and Guidelines have broader coverage than those under the US regime. In particular, the US regime contains a national element and is applicable to non-US firms only when the counterparty is a US person or entity (or where the relevant transaction is arranged, negotiated or executed in the US). The applicability of the UK regime does not depend on the location or nationality of the counterparty and is therefore more onerous than the US requirements.

[370] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol4/pdf/CFR-2016-title17-vol4-sec240-3a71-3.pdf
[371] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol4/pdf/CFR-2016-title17-vol4-sec240-3a71-3.pdf

g. Subcategory: Disclosure of Clearing Rights

Firms are required to disclose to a counterparty (other than a counterparty that is a dealer or participant) certain information regarding clearing rights. This obligation is only applicable if the identity of the counterparty is known "at a reasonably sufficient time prior to execution of the transaction". Exchange Act rule 15Fh-3(d) [17 CFR 240.15Fh-3(d)];[372] and Exchange Act section 3C [15 U.S.C. 78c-3].[373]

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
52. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?		
Mandatory clearing obligation The SEC requires the clearing of security-based swaps it designates to be subject to mandatory clearing. The SEC has not made any such designations to date. Exchange Act section 3C(a)-(b) 15 U.S.C. 78c-3(a)-(b).[374] **Mandatory clearing: disclosure** For security-based swaps subject to mandatory clearing, the firm would have to: (i) disclose the names of the clearing agencies that accept the security-based swap, and identify which clearing agencies the firm is authorized to use; and (ii) notify the counterparty that it has the sole right to select which clearing agency must be used	**Mandatory clearing obligation** **EMIR** All OTC derivative contracts of a class that has been declared subject to the clearing obligation entered into or novated between certain entities which are both required to clear that asset class on or after the date the clearing obligation takes effect must be cleared via a CCP authorized in accordance with Article 14 of EMIR or recognized in accordance with Article 25 of EMIR. EMIR, Article 4. FCs above the "clearing threshold" and NFC+s are subject to mandatory clearing (to the extent they transact with each other or non-UK equivalents and, in certain	**Comparability of outcomes**: The UK's clearing requirements provide a comparable regulatory outcome to the SEC's clearing requirements. In particular, the regulatory outcomes pursued under Exchange Act sections 3C(a)-(b) and (g)(5), and 15Fh-3(d) and EMIR and MiFID are consistent in that they require regulators have the power to designate certain types of derivatives to be subject to mandatory clearing. Also, under both the UK and US regimes, in respect of derivatives not subject to mandatory clearing, counterparties may choose to voluntarily clear and select the clearing agency (to the extent that a clearing agency clears the relevant contract type and, if relevant, is authorized or recognized under EMIR). The UK rules do not provide that a counterparty has the sole right to select the

[372] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[373] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c-3.pdf
[374] https://www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap2B-sec78c-3.pdf

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
52. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?		
for clearing. Exchange Act rule 15Fh-3(d)(1) [17 CFR 240.15Fh-3(d)(1)].[375] **Voluntary clearing: disclosure** For security-based swaps not subject to mandatory clearing, the firm must: (i) determine whether the security-based swap is accepted for clearing by one or more clearing agencies; (ii) disclose the names of the clearing agencies that accept the security-based swap, and identify which clearing agencies the firm is authorized to use; and (iii) notify the counterparty that it may elect to require clearing and has the sole right to select the clearing agency (provided that the firm is authorized to clear through that clearing agency). Exchange Act rule 15Fh-3(d)(2) [17 CFR 240.15Fh-3(d)(2)].[376]	cases, if two non-UK equivalents transact with each other). EMIR, Articles 4 and 4a. To date, certain interest rate and index credit derivative transactions have been declared subject to clearing and the requirements have now been phased in for all in-scope entities (*see* EMIR Clearing RTS). We note that there are various exceptions and derogations at a counterparty and transaction level. Article 5 of EMIR and the related draft technical standards set out the detailed process regarding consideration of a class of OTC derivatives for the clearing obligation. If a class of OTC derivative contracts no longer has a CCP which is authorized or recognized to clear those contracts under EMIR, it must cease to be subject to the clearing obligation in Article 4 of EMIR and the Bank of England shall identify (in	clearing agency (either in a mandatory clearing or voluntary clearing context) and, consequently, there is no related notification requirement. However, as a practical matter, both parties will need to agree the clearing agency that they wish to use for a particular transaction. We note that although the SEC has the power to require mandatory clearing for certain types of securities, it has not exercised this power. The UK rules already designate certain credit and interest rate derivatives as subject to mandatory clearing and so more detailed regulations relating to mandatory clearing under EMIR have, therefore, already been developed. *See* EMIR Clearing RTS.

[375] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[376] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
52. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?		
	accordance with Article 5(4) of EMIR) the classes of derivatives that should be subject to the clearing obligation but for which no CCP has yet received authorization. EMIR, Article 5(6). Authorization of a CCP to clear can be withdrawn in certain circumstances (*see* EMIR, Article 20). The Bank of England may, with the consent of HM Treasury, direct the temporary suspension of the mandatory clearing obligation for specific classes of OTC derivatives contracts or for a specific type of counterparty if certain conditions are met. EMIR, Article 6a. **MiFIR** All derivatives transactions concluded on a regulated market (i.e. all exchange-traded derivatives) must be cleared by a CCP. If a transaction is executed on a regulated market it will be an "exchange-traded derivative" for the purposes of MiFIR and will not be an "OTC derivative" for the purposes of EMIR (and thus will be outside	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
52. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?		
	the scope of EMIR clearing requirements). MiFIR, Article 29. The MiFIR RM Clearing Obligation RTS set out requirements that CCPs, trading venues and clearing members must comply with in respect of all cleared derivatives (both exchange-traded and OTC) relating to effective systems, procedures and arrangements to ensure that transactions are submitted and accepted for clearing as quickly as technologically practicable. **Voluntary clearing** In the absence of mandatory clearing of transactions of a particular type, counterparties may elect to clear such transactions and non-UK entities are not required to clear such transactions via a CCP authorized or recognized in accordance with EMIR (although UK entities must clear such transactions via a CCP authorized or recognized in accordance with EMIR). In such circumstances, the counterparties may	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
52. To what extent does your jurisdiction mandate the clearing of relevant transactions? In the absence of mandatory clearing of all transactions of a particular type, does your jurisdiction permit counterparties to elect to require clearing? If so, does the counterparty have the right to select the clearing agency?		
	select any CCP that clears the relevant contract type.	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
53. To what extent does your jurisdiction require disclosure of applicable clearing rights?		
Firms must disclose certain clearing rights information to counterparties that are not also dealers. This information includes: (i) a list of clearing agencies that the dealer can use and will accept the swap; (ii) notice to the counterparty that it has the sole right to select which clearing agency from the list will be used, and for non-mandatory clearing; and (iii) notice to the counterparty that it may elect to require clearing. Exchange Act rules 15Fh-3(d)(1) and (2) [17 CFR 240.15Fh-3(d)(1) and (2)].[377] Firms must make written records of non-written disclosures, and provide written versions of the disclosures "in a timely manner, but in any case no later than the	A clearing member must keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP. EMIR, Article 39(4). A clearing member must offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in Article 39(7) of EMIR associated with each option. The client must confirm its choice in writing. EMIR, Article 39(5).	**Comparability of outcomes**: The UK's clearing rights disclosure requirements provide a comparable regulatory outcome to the SEC's clearing rights disclosure requirements. In particular, both regimes require the disclosure of certain clearing information and rights to clients to enable clients to understand which clearing agencies may be used for clearing. As discussed above, the UK rules do not provide that a counterparty has the sole right to select the clearing agency (either in a mandatory clearing or voluntary clearing context) and, consequently, there is no related notification requirement. However, as a practical matter, both parties will need to agree on the clearing

[377] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
53. To what extent does your jurisdiction require disclosure of applicable clearing rights?		
delivery of the trade acknowledgement." Exchange Act rule 15Fh-3(d)(3) [17 CFR 240.15Fh-3(d)(3)].[378]	CCPs and clearing members must publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and must offer those services on reasonable commercial terms. Details of the different levels of segregation must include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions. EMIR, Article 39(7). We note that under changes made by EU EMIR Refit 2.1, with effect from June 18, 2021, without being obliged to contract, clearing members and clients which provide clearing services, whether directly or indirectly, must provide those services under fair, reasonable, non-discriminatory and transparent (**FRANDT**) commercial terms. EU EMIR Refit 2.1, introducing a new Article 4(3a). While the detail of the FRANDT rules is not yet final and may be subject to change, we note that the ESMA Final Report on FRANDT anticipates, amongst other things, a structured	agency that they wish to use for a particular transaction. The US regime stipulates the duties of firms to maintain records of clearing rights under Exchange Act rule 15Fh-3(d)(3). There is no such general requirement under EMIR. However, we note that the UK regime requires that clearing members offer their clients, at least, the choice between omnibus client segregation and individual client segregation, must inform their clients of and must publicly disclose the costs and level of protection associated with each option and must offer those services on reasonable commercial terms (EMIR, Article 39(5) and (7)). The ESMA Q&A on EMIR provide that clearing members must comply with the requirements on segregation and portability under Article 39 of EMIR by the time that a relevant CCP is authorized under EMIR. [379]

[378] https://www.ecfr.gov/cgi-bin/text-idx?SID=9b882404cd3ca1bbabc9db86a0458e48&mc=true&node=se17.4.240_115fh_63&rgn=div8
[379] See the Introduction regarding the on-going relevance of ESMA Q&A post-Brexit for interpretation purposes.

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
53. To what extent does your jurisdiction require disclosure of applicable clearing rights?		
	approach to the onboarding process with a request for proposal (**RFP**) from a prospective clearing client to a clearing service provider, a proposal from the clearing service provider to the prospective clearing client (including detailed information on the onboarding process, fees and other terms and conditions relating to the clearing service) and culminating through negotiation in agreed terms. We note that, as FRANDT changes will not be operative prior to IP completion day and, therefore, they will not automatically be on-shored in the UK. However, in June 2020, in the HM Treasury Written Statement, the UK Government stated that it intends to set out further detail on upcoming legislation in due course including legislation to complete the implementation of EMIR Refit 2.1 to ensure that smaller firms are able to access clearing on fair and reasonable terms. The requirements on clearing members that are established in EMIR (e.g. those in Articles 38 and 39 of EMIR) apply to clearing members of all CCPs established in the UK. These obligations therefore come into force at and should be met by the time	

SEC Requirement and/or Policy Goal Summary per SEC (with link to the US rule)	UK Requirement and/or Policy Goal Summary	Comparability Assessment
g. Subcategory: Disclosure of Clearing Rights		
53. To what extent does your jurisdiction require disclosure of applicable clearing rights?		
	that the CCP is authorized under EMIR. ESMA Q&A on EMIR, CCP Question 8(c).	

Annex I – Comparability Assessment of Certain Securities and Exchange Commission and UK Requirements Pursuant to SEC Staff Guidance on Substituted Compliance

This Annex to the Master Chart on Substituted Compliance contains tables that describe standard collateral haircuts that are required in connection with the exchange of margin.

The value of any eligible collateral collected or posted to satisfy initial margin requirements shall be subject to the sum of the following discounts, as applicable:

US – 17 CFR 23.156(c)[380]

Cash in same currency as swap obligation	0.0
Eligible government and related debt (e.g., central bank; multilateral development bank; publicly traded debt securities issued by, or asset-backed securities fully guaranteed as to the timely payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities (GSE securities)): Residual maturity less than one-year	0.5
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities): Residual maturity between one and five years	2.0
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities): Residual maturity greater than five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified as GSE securities above): Residual maturity less than one-year	1.0
Eligible corporate debt (including eligible GSE debt securities not identified as GSE securities above): Residual maturity between one and five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified as GSE securities above): Residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0
Additional (additive) haircut on asset in which the currency of the swap obligation differs from that of the collateral asset	8.0

[380] https://www.govinfo.gov/content/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-sec23-156.pdf

UK – EMIR Margin RTS Annex II

Table 1: Haircuts for long-term credit quality assessments

Credit quality step with which the credit assessment of the debt security is associated	Residual maturity	Haircuts for debt securities issued by entities described in Article 4(1)(c) to (e) and (h) to (k), of the EMIR Margin RTS[381] in (%)	Haircuts for debt securities issued by entities described in Article 4(1)(f), (g), (l) to (n) of the EMIR Margin RTS[382] in (%)	Haircuts for securitisation positions meeting the criteria in Article 4(1)(o) of the EMIR Margin RTS[383] in (%)
1	≤ 1 year > 1 ≤ 5 years > 5 years	0,5 2 4	1 4 8	2 8 16
2-3	≤ 1 year > 1 ≤ 5 years > 5 years	1 3 6	2 6 12	4 12 24
4 or below	≤ 1 year > 1 ≤ 5 years > 5 years	15 15 15	N/A N/A N/A	N/A N/A N/A

Table 2: Haircuts for short-term credit quality assessments

Credit quality step with which the credit assessment of a short-term debt security is associated	Haircuts for debt securities issued by entities described in Article 4(1)(c) and (j) of the EMIR Margin RTS[384] in (%)	Haircuts for debt securities issued by entities described in Article 4(1) (m) of the EMIR Margin RTS[385] in (%)	Haircuts for securitisation positions and meeting the criteria in Article 4(1) (o) of the EMIR Margin RTS[386] in (%)
1	0,5	1	2
2-3 or below	1	2	4

[381] Namely, (c) debt securities issued by the central government of the UK or the Bank of England; (d) debt securities issued by UK regional governments or local authorities whose exposures are treated as exposures to the central government of the UK in accordance with Article 115(2) of the CRR; (e) debt securities issued by UK public sector entities whose exposures are treated as exposures to the central government, regional government or local authority of the UK in accordance with Article 116(4) of the CRR; (h) debt securities issued by multilateral development banks listed in Article 117(2) of the CRR; (i) debt securities issued by the international organisations listed in Article 118 of the CRR; (j) debt securities issued by third countries' governments or central banks; and (k) debt securities issued by third countries' regional governments or local authorities that meet the requirements of points (d) and (e).

[382] Namely, (f) debt securities issued by UK regional governments or local authorities other than those referred to in point (d); (g) debt securities issued by UK public sector entities other than those referred to in point (e); (l) debt securities issued by third countries' regional governments or local authorities other than those referred to in points (d) and (e); (m) debt securities issued by credit institutions or investment firms including bonds admitted to the register of regulated covered bonds maintained under Regulation 7(1)(b) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346); and (n) corporate bonds. See previous footnote for points (d) and (e).

[383] Namely, (o) the most senior tranche of a securitization, as defined in Article 4(61) of the CRR, that is not a re-securitization as defined in Article 4(63) of the CRR.

[384] Namely, (c) debt securities issued by the central government of the UK or the Bank of England; and (j) debt securities issued by third countries' governments or central banks.

[385] Namely, (m) debt securities issued by credit institutions or investment firms including bonds admitted to the register of regulated covered bonds maintained under Regulation 7(1)(b) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346).

[386] Namely, (o) the most senior tranche of a securitization, as defined in Article 4(61) of the CRR, that is not a re-securitization as defined in Article 4(63) of the CRR.

Annex II – Glossary

This Annex to the Master Chart on Substituted Compliance contains a glossary of terms applicable to substituted compliance analysis.

AANA	Aggregate average notional amount of non-centrally cleared OTC derivatives
Accounting Directive	Directive 2013/34/EU of the European Parliament and of the Council of June 26, 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 (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034
alternative investment fund (AIF)	For the purposes of the definition of Financial Counterparty in Article 2(8) of EMIR, an alternative investment fund (AIF) (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013) which is either established in the UK or managed by an alternative investment fund manager (AIFM) (within the meaning given in regulation 4 of those Regulations) authorized or registered in accordance with those Regulations, unless that AIF is set up exclusively for the purpose of serving one or more employee share purchase plans, or unless that AIF is a securitization special purpose entity as defined in Article 4.1(an) of Directive 2011/61/EU, and, where relevant, its AIFM established in the UK.
Approach to EU Non-Legislative Materials	The PRA's and FCA's guidelines giving effect following IP completion date to EU Non-Legislative Materials, which can be accessed here: PRA: https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop-april-2019.pdf?la=en&hash=B3E75B199112645E67DA7DCC96BB12D68074F4AD FCA: https://www.fca.org.uk/publication/corporate/brexit-our-approach-to-eu-non-legislative-materials.pdf
BCBS	Basel Committee on Banking Supervision
BCBS-IOSCO Global Standards on Margin	The BCBS-IOSCO framework on margin requirements for non-centrally cleared derivatives last updated April 2020, which can be accessed here: https://www.bis.org/bcbs/publ/d499.htm
Books and Records Adopting Release	SEC final rule: Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, published in the Federal Register on December 16, 2019, which can be accessed here: https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-20678.pdf

Business Conduct Adopting Release	SEC final rule: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, published in the Federal Register on May 13, 2016, which can be accessed here: https://www.govinfo.gov/content/pkg/FR-2016-05-13/pdf/2016-10918.pdf
Capital and Margin Adopting Release	SEC final rule: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, published in the Federal Register on August 22, 2019, which can be accessed here: https://www.govinfo.gov/content/pkg/FR-2019-08-22/pdf/2019-13609.pdf
CCO	Chief compliance officer
CCP	Central counterparty
CCR	Counterparty credit risk
central securities depository	For the purposes of the definition of Financial Counterparty in Article 2(8) of EMIR, a central securities depository authorized in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended).
Certified Persons	Staff that are subject to the Certification Regime (please see Annex IV for details)
Certification Regime	The Certification Regime that forms part of the SMCR (please see Annex IV for details)
CET1	Common Equity Tier 1 capital meeting the requirements set out in Article 26 CRR
CFTC	Commodity Futures Trading Commission
CFTC No-action Relief Letter	CFTC Letter No. 19-08 No-Action April 05, 2019, which can be accessed here: https://www.cftc.gov/system/files?file=csl/final/pdfs/19/19-08.pdf
CFTC Substituted Compliance Decision on Entity-Level Requirements	CFTC Comparability Determination for the European Union: Certain Entity-Level Requirements published in the Federal Register on December 27, 2013 which can be accessed here: https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf.
CFTC Substituted Compliance Decision on Margin	CFTC Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants published in the Federal Register on October 18, 2017, which can be accessed here: https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2017-22616a.pdf
CFTC Substituted Compliance Decision on	CFTC Comparability Determination for the European Union: Certain Transaction-Level Requirements published in the Federal Register on December 27, 2013 which can be accessed here:

Transaction-Level Requirements	https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30981a.pdf.
Companies Act	Companies Act 2006
Credit Institution	As defined in Article 4(1)(1) CRR: an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.
CRD IV	Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC *(known as the Capital Requirements Directive IV)* (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended) *(known as the Capital Requirements Regulation)*, the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575
CRR Firm	Article 4(1)(2A) CRR: (1) A credit institution; or (2) an investment firm with permission to deal on own account in and/or underwrite the placing of MiFID financial instruments
CRR Reporting ITS	Commission Implementing Regulation (EU) No 680/2014 of April 16, 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_191_R_0001
dealers	Security-based swap dealers
Deposit Guarantee Scheme Directive	Directive 2014/49/EU of the European Parliament and of the Council of April 16, 2014 on deposit guarantee schemes (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0049
Dual-Regulated Firms	UK firms (including all Credit Institutions and some Investment Firms) that are supervised for prudential purposes by the PRA and for conduct purposes by the FCA

EBA	European Banking Association
EBA Guidelines on Outsourcing	EBA Guidelines on outsourcing requirements (EBA/GL/2012/02) of 25 February 2019, as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here https://eba.europa.eu/sites/default/documents/files/documents/10180/2551996/38c80601-f5d7-4855-8ba3-702423665479/EBA%20revised%20Guidelines%20on%20outsourcing%20arrangements.pdf
EBA/ESMA Guidelines on Management Suitability	Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12) of March 21, 2018, as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://eba.europa.eu/sites/default/documents/files/documents/10180/1972984/43592777-a543-4a42-8d39-530dd4401832/Joint%20ESMA%20and%20EBA%20Guidelines%20on%20the%20assessment%20of%20suitability%20of%20members%20of%20the%20management%20body%20and%20key%20function%20holders%20%28EBA-GL-2017-12%29.pdf?retry=1
EBA Opinion of July, 24 2019	EBA opinion on communications from regulators to supervised entities regarding money laundering and terrorist financing risks in prudential supervision of July 24, 2019, as this retains relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://eba.europa.eu/sites/default/documents/files/documents/10180/2622242/a8270e12-b0c2-4194-a70f-1f1ece5c71a3/Opinion%20on%20Communication%20of%20ML%20TF%20risks%20to%20supervised%20entities.pdf?retry=1
EC	European Commission
EC Q&A on EMIR	Frequently Asked Questions on EMIR published by the European Commission dated July 10, 2014, as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://ec.europa.eu/info/sites/info/files/emir-faqs-10072014_en.pdf
ECPs	Eligible counterparties. Per Article 30(1) MiFID, this category of client is only applicable to the conduct of certain investment services (being dealing on own account, executing orders on behalf of clients and receiving & transmitting orders). Per Article 30(2) MiFID, these include EU investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Union law or under the national law of a Member State, national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and

	supranational organisations. Other entities, including in third countries, can be included at the discretion of each Member State.
EEA	European Economic Area
EMIR	Regulation (EU) No 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0648-20200101&from=EN
EMIR Clearing RTS	Commission Delegated Regulation (EU) 2015/2205, Commission Delegated Regulation (EU) 2016/592 and Commission Delegated Regulation (EU) 2016/1178, each as amended from time to time (each as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU versions of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015R2205-20200416 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R0592-20190430 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R1178-20200416
EMIR Margin RTS	Commission Delegated Regulation (EU) 2016/2251 of October 4, 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R2251-20170104&from=EN
ESCB	European System of Central Banks
EMIR Refit 2.1	Regulation (EU) 2019/834 of the European Parliament and of the Council of May 20, 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0834&from=EN

EMIR Refit SI	The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No 2) Regulations 2019, which can be accessed here: https://www.legislation.gov.uk/uksi/2019/1416/contents/made
EMIR SI	The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, which can be accessed here: https://www.legislation.gov.uk/uksi/2019/335/made
ESMA	European Securities and Markets Authority
ESMA Final Report on FRANDT	ESMA final report and technical advice on FRANDT commercial terms for clearing services (Article 4(3a)) dated June 2, 2020, as this retains relevance in accordance with the Approach to EU non-Legislative Materials, which can be accessed here: https://www.esma.europa.eu/sites/default/files/library/esma70-151-3107_final_report_access_to_clearing-frandt.pdf
ESMA Guidelines on compliance function	Guidelines on certain aspects of the MiFID II compliance function requirements, as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://www.esma.europa.eu/sites/default/files/library/esma35-36-1946_final_report_guidelines_on_certain_aspects_of_the_mifid_ii_compliance_function.pdf
ESMA Guidelines on Suitability	ESMA Guidelines on certain aspects of the MiFID suitability requirements, as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://www.esma.europa.eu/press-news/esma-news/esma-publishes-official-translations-guidelines-mifid-ii-suitability
ESMA Q&A on EMIR	Questions and Answers on the implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf
ESMA Q&As on MiFID and MiFIR Investor Protection	ESMA Q&As on MiFID and MiFIR Investor Protection and Intermediaries, dated 4 December 2019, as these retain relevance in accordance with the Approach to EU Non-Legislative Materials, which can be accessed here: https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf
EUI DPR	Regulation (EU) 2018/1725 of the European Parliament and of the Council of October 23, 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended) *(known as*

	the EU Institutions Data Protection Regulation), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725
EU EMIR	Regulation (EU) No 648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time (known as the European Market Infrastructure Regulation), which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0648-20200101&from=EN
EU EMIR Margin RTS	Commission Delegated Regulation (EU) 2016/2251 of October 4, 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as amended from time to time, which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R2251-20170104&from=EN
EU EMIR Refit 2.1	Regulation (EU) 2019/834 of the European Parliament and of the Council of May 20, 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, as amended from time to time, which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0834&from=EN
EU RTS 149/2013	Commission Delegated Regulation (EU) No 149/2013 of December 19, 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as amended from time to time, which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0149-20180103&from=EN
FC or **Financial Counterparty**	As defined in Article 2(8) of EMIR, FCs include: (i) certain investment firms within the meaning given in Article 2(1A) of MiFIR; (ii) credit institutions which are CRR Firms (within the meaning given in Article 4(1)(2A) of the CRR; (iii) insurance undertakings or reinsurance undertakings; (iv) UCITS; (v) occupational pension schemes; (vi) alternative investment funds; and (vii) central securities depositories
FC+	Financial Counterparty above the Article 4 EMIR “clearing threshold”
FC-	Financial Counterparty below the Article 4 EMIR “clearing threshold”
FCA	The UK's Financial Conduct Authority

FCA Handbook	The FCA's Handbook of rules and guidance, which can be accessed here: https://www.handbook.fca.org.uk/handbook
FCA CASS	The FCA's Client Assets Sourcebook of the FCA Handbook
FCA COBS	The FCA's Conduct of Business Sourcebook of the FCA Handbook
FCA DEPP	The FCA's Decision Procedure and Penalties manual of the FCA Handbook
FCA FCG	The FCA's Financial Crime Guide of the FCA Handbook
FCA FIT	The FCA's Fit and Proper test for Employees and Senior Personnel Sourcebook of the FCA Handbook
FCA PRIN	The FCA's Principles Sourcebook of the FCA Handbook, which contains the FCA Principles
FCA Principles	The FCA's Principles for Business, set out in FCA PRIN
FCA PROD	The FCA's Product Intervention and Product Governance Sourcebook of the FCA Handbook
FCA Rules	Rules and guidance set out in the FCA Handbook
FCA SYSC	The FCA's Systems and Controls Sourcebook of the FCA Handbook
FCA TC	The FCA's Training and Competence Sourcebook of the FCA Handbook
Financial Institutions Consolidated Accounts Directive	Council Directive 86/635/EEC of December 8, 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended)
FRANDT	Fair, reasonable, non-discriminatory and transparent commercial terms
FSMA	the UK's Financial Services and Markets Act 2000, which can be accessed here: https://www.legislation.gov.uk/ukpga/2000/8/contents
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended) *(known as the General Data Protection Regulation)*, the current EU version of which can be accessed here: https://eur-lex.europa.eu/eli/reg/2016/679/oj
HMT Treasury Written Statement	The statement dated June, 23 2020 which can be accessed here: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-06-23/HCWS309/.

insurance undertakings	For the purposes of the definition of Financial Counterparty in Article 2(8) of EMIR, an insurance undertaking within the meaning given in section 417 of the FSMA.
occupational pension schemes	For the purposes of the definition of Financial Counterparty in Article 2(8) of EMIR, an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993 which is established in the UK.
institutional counterparty	Persons with at least $50 million in total assets.
Investment Firm	As defined in Article 4(1)(2) CRR and 4(1)(1) MiFID: legal person, other than a credit institution, whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.[387]
Investor Compensation Scheme Directive	Directive 97/9/EC of the European Parliament and of the Council of March 3, 1997 on investor-compensation schemes (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended)
IOSCO	International Organization of Securities Commissions
IP Completion Day	The end of the transition period (currently 11pm on 31 December 2020)
ITS 1247/2012	Commission Implementing Regulation (EU) 1247/2012 of December 19, 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, as amended from time to time (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R1247-20190411&from=EN

[387] 'Locals' and 'limited activity' investment firms and persons benefitting from an exemption under Article 2 MiFID (including Article 2(1)(d) MiFID) are excluded from this definition of an Investment Firm as these types of firm/person do not carry on their activities in a manner comparable to the way in which a dealer carries on its activities.

- A local is defined as a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets. Article 4(1)(4) CRR.
- A limited activity firm is defined as (a) investment firms that deal on own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order; (b) investment firms that meet all the following conditions: (i) they do not hold client money or securities; (ii) they undertake only dealing on own account; (iii) they have no external customers; (iv) their execution and settlement transactions take place under the responsibility of a clearing institution and are guaranteed by that clearing institution.
- Article 2(1)(d) MiFID exempts persons dealing on own account (i.e. on a proprietary basis) in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons: (i) are market makers; (ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups; (iii) apply a high-frequency algorithmic trading technique; or (iv) deal on own account when executing client orders.

JMLSG Guidance	The Joint Money Laundering Steering Group's "Prevention of money laundering/combating terrorist financing: Guidance for the UK Financial Sector"
management body	Article 3(1)(7) CRD IV: a [CRR Firm's] body or bodies which are appointed in accordance with national law, which are empowered to set the [CRR Firm's] strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business. *(See also Article 4(1)(36) MiFID)*
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of April 16, 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended) *(known as the Market Abuse Regulation)*, the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0596
MAR Investment Recommendations Regulation	Commission Delegated Regulation (EU) 2016/958 of March 9, 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.160.01.0015.01.ENG
member state	Member states of the European Union
MiFID	Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) *(known as the Markets in Financial Instruments Directive)* (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065
MiFID Delegated Directive	Commission Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (as it continues to form part of UK law by virtue of section 2 of the European Union (Withdrawal) Act, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32017L0593

MiFID financial instrument	Those financial instruments set forth in Section C to Annex I to MiFID.
MiFID Org Reg.	Commission Delegated Regulation (EU) 2017/565 of April 25, 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended) *(known as the MiFID Organisational Regulation)*, the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0565
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended) *(known as the Markets in Financial Instruments Regulation)*, the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0600
MiFIR RM Clearing Obligation RTS	Commission Delegated Regulation (EU) 2017/582 as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/eli/reg_del/2017/582/oj
MiFIR Transaction Reporting RTS	Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.087.01.0449.01.ENG&toc=OJ:L:2017:087:TOC%20
MLR 2017	The UK's Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which can be accessed here: https://www.legislation.gov.uk/uksi/2017/692/contents
MPOR	Margin period of risk
MREL	Minimum requirement for own funds and eligible liabilities
MRT Regulation	Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile, as amended from time to time (as it forms part of UK law by virtue of section 3 of

	the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0604-20160602
NFC or **Non-Financial Counterparty**	As defined in Article 2(9) of EMIR: undertakings established in the UK which are not Financial Counterparties or central counterparties (CCPs)
NFC+	Non-financial counterparty above the Article 10 EMIR "clearing threshold"
NFC-	Non-financial counterparty below the Article 10 EMIR "clearing threshold"
OTC	over-the-counter
Own Funds Regulation	Commission Delegated Regulation (EU) No 241/2014 of January 7, 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32014R0241
participants	Major security-based swap participants
PRIIPs	Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R1286
PRA	The UK's Prudential Regulation Authority
PRA Allocation of Responsibilities Rules	The Allocation of Responsibilities Part of the PRA Rulebook for CRR Firms
PRA Applications and Notifications Rules	The Applications and Notifications Part of the PRA Rulebook for CRR Firms
PRA Certification Rules	The Certification Part of the PRA Rulebook for CRR Firms
PRA Compliance and Internal Audit Rules	The Compliance and Internal Audit Part of the PRA Rulebook for CRR Firms
PRA Fitness and Propriety Rules	The Fitness and Propriety Part of the PRA Rulebook for CRR Firms

PRA Fundamental Rules	The PRA's Fundamental Rules, set out in the Fundamental Rules Part of the PRA Rulebook for CRR Firms
PRA General Organisational Requirements Rules	The General Organisational Requirements Part of the PRA Rulebook for CRR Firms
PRA Information Gathering Rules	The Information Gathering Part of the PRA Rulebook for CRR Firms
PRA Recordkeeping Rules	The Recordkeeping Part of the PRA Rulebook for CRR Firms
PRA Remuneration Rules	The Remuneration Part of the PRA Rulebook for CRR Firms
PRA Risk Control Rules	The Risk Control Part of the PRA Rulebook for CRR Firms
PRA Rulebook	The PRA's Rulebook, available here: http://www.prarulebook.co.uk/
PRA Rules	Rules set out in the PRA Rulebook
PRA Senior Management Functions Rules	The Senior Management Functions Part of the PRA Rulebook for CRR Firms
professional client	A client of an EU regulated entity who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs and meets the criteria set out in Annex II to MiFID
Proposed Cross-Border Swap Requirements	Exchange Act Release No. 85823 (May 10, 2019), 84 FR 24206, 24242-44, 24294 (May 24, 2019), which can be accessed here: https://www.sec.gov/rules/proposed/2019/34-85823.pdf
regulators	The European supervisory authorities that grant authorization to, and oversee the activities of, EU Credit Institutions and Investment Firms or the PRA and/or FCA, as appropriate to the context
reinsurance undertakings	For the purposes of the definition of Financial Counterparty in Article 2(8) of EMIR, a reinsurance undertaking within the meaning given in section 417 of the FSMA
retail client	A client of an EU regulated entity that is neither a professional client nor an ECP
Revised EMIR Margin RTS	Draft technical standards amending Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards to the timing of when certain risk management procedures will start to apply for the purposes of the exchange of collateral, as set out in

	Annex II of the Final Report on EMIR RTS on various amendments to the bilateral margin requirements in view of the international framework published May 4, 2019, which can be accessed here: https://www.esma.europa.eu/sites/default/files/library/esas_2020_09_-_final_report_-_bilateral_margin_amendments.pdf
Risk Mitigation Adopting Release	SEC final rule: Risk Mitigation Techniques for Uncleared Security-Based Swaps, published in the Federal Register on February 4, 2020, which can be accessed here: https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2019-27762.pdf
RTS 148/2013	Commission Delegated Regulation (EU) No 148/2013 of December 19, 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0148-20171101&from=EN
RTS 149/2013	Commission Delegated Regulation (EU) No 149/2013 of December 19, 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0149-20180103&from=EN
RTS 2017/104	Commission Delegated Regulation (EU) 2017/104 of 19 October 2016 amending Delegated Regulation (EU) No 148/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, as amended from time to time (as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended), the current EU version of which can be accessed here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0104&from=EN
SEC	Securities and Exchange Commission
SEC Guidance	SEC Staff Guidance – Information Regarding Foreign Regulatory Requirements for Substituted Compliance Determinations dated December 23, 2019,[388] which can be accessed here: https://www.sec.gov/files/staff-guidance-substituted-compliance-applications.pdf.

[388] Note that this is subject to change in response to future updates provided by the SEC.

Senior Managers	Staff approved by the PRA or FCA to perform one or more SMFs (please see Annex IV for details)
SI	Statutory instrument
SMCR	Senior Managers and Certification Regime (please see Annex IV for details)
SMF	Senior Management Functions as designated by the PRA in Rule 2 of the Senior Management Functions Part of the PRA Rulebook and by the FCA in FCA SUP 10C.4.3A of the FCA Handbook (please see Annex IV for further background)
SMR	The Senior Managers Regime that forms part of the SMCR (please see Annex IV for details)
Solo-Regulated Firms	UK Investment Firms (but not Credit Institutions) that are supervised for prudential and conduct purposes by the FCA
stressed data	Data representative of a period of significant financial stress
Threshold Conditions	The Threshold Conditions set out in Schedule 6 of FSMA
Trade Acknowledgement and Verification Adopting Release	SEC final rule: Trade Acknowledgement and Verification of Security-Based Swap Transactions, published in the Federal Register on June 17, 2016, which can be accessed here: https://www.govinfo.gov/content/pkg/FR-2016-06-17/pdf/2016-13915.pdf
UCITS	For the purposes of the definition of Financial Counterparty in Article 2(8) of EMIR, a UK UCITS and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA) unless that UCITS is set up exclusively for the purpose of serving one or more employee share purchase plans
UK UCITS	UK UCITS within the meaning given in section 237(3) of the FSMA.

Annex III: UK BREXIT ON-SHORING POLICY OVERVIEW TABLE

In its explanatory memoranda to the on-shoring of EU legislation, HM Treasury notes that, consistent with the UK government's objective of providing continuity to businesses and consumers as far as possible, the policy approach set out in EU legislation will generally not change post-Brexit (although the fact the UK has left the EU will affect the impact of that legislation).

The Brexit SIs[389] are intended to (i) support the fair, stable and transparent operation of UK financial markets post-Brexit, and provide for investors to generally have the same protections that they enjoyed under the EU regime; (ii) ensure that the UK's capital requirements regime continues to operate as intended in the UK post-Brexit and allow the UK prudential regime to continue to be effective and legally operable, thus ensuring that the UK's ability to regulate the financial sector and supporting market confidence and stability; and (iii) allow the UK to meet its international commitments such as those on prudential regulation agreed as part of the UK's membership of the G20.

To ensure that the UK regime continues to operate effectively post-Brexit, certain deficiency fixes to retained EU law are necessary to reflect the fact that UK has left the EU, including the following:

1. **Transfer of functions** – Functions under EU legislation (e.g., MiFID II) that are carried out by EU authorities, for example, the EC and ESMA, no longer apply in the UK post-Brexit. The SIs generally transfer the functions of the relevant European Supervisory Authorities (**ESAs**) to the relevant UK regulator(s) (i.e., the FCA, the Bank of England or the PRA, as the case may be), and the functions of the EC to HM Treasury or, in certain cases, the Bank of England.

2. **Scope and definitions** – The scope of the on-shored legislation is generally limited to UK firms, markets and infrastructure. Changes to definitions and application provisions of retained EU law have therefore been made to reflect this point. Further changes were made to refer to the relevant UK or on-shored UK legislation as opposed to EU legislation.

3. **'Level 2'** – In the EU, Level 2 legislation is often developed by the ESAs before being adopted by the EC. HM Treasury has delegated responsibility for correcting deficiencies in Level 2 legislation to UK regulators (i.e., the PRA, the Bank of England, the Payment Systems Regulator and the FCA). This function will be exercised based on the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. Changes to Level 2 legislation to correct deficiencies will be made by way of EU Exit Instruments and are subject to HM Treasury approval.

4. **Information sharing and cooperation requirements between UK and EEA regulators** – The SIs generally delete provisions in retained EU law that become redundant post-Brexit, such as requirements regarding automatic recognition of an action by an EU body and other references to EU bodies and EU Member States. EU legislation (e.g., MiFID II) contains obligations on UK authorities to cooperate and

[389] Statutory Instruments (SIs) are a form of legislation which allow the provisions of an Act of Parliament (primary legislation) to be subsequently brought into force or altered without Parliament having to pass a new Act. They are often used to provide the necessary detail that would be considered too complex to include in the body of an Act. They are also referred to as secondary, delegated or subordinate legislation.

share information with EEA authorities. UK authorities will be able to continue to cooperate and share information with EEA authorities, in the same way as they can with non-EEA authorities, based on the existing domestic framework provisions for cooperation and information sharing.

In addition, we have set out below a list of deficiency fixes specific to the SIs relevant to this analysis. In doing so, we have selected only the fixes that are relevant for the purposes of the charts above. Changes to UK legislation in response to Brexit are still in development and further on-shoring legislation, directions, guidance, decisions and other materials are likely to emerge from HM Treasury and the UK regulators. Deficiencies in each piece of EU legislation are addressed by amendments made in a number of different SIs. In each case, we have set out only the main SIs relating to the relevant points of EU legislation covered in the charts as at the date of this policy table[390]. We have not referenced EU Exit Instruments which amend deficiencies in any relevant Level 2 legislation in the table below nor any guidance, statements or other supporting materials.

EU Law	On-shored UK Law	On-shoring Policy Summary
MiFID II **MiFIR**	The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the **MiFID SI**)	Beyond the matters noted above, specific changes introduced by the MiFID SI include: 1. **Transaction reporting** – Under the MiFID II transaction reporting regime, firms are required to submit a report to their national regulatory authorities following the execution of a trade. These transaction reports are used by regulators to detect and prevent market abuse. Under the MiFID SI, firms will continue to be required to submit reports on trades in financial instruments admitted to trading, or traded, on trading venues in both the UK and in the EU. This approach is aimed at maintaining the existing scope of the FCA's monitoring of markets. 2. **Transparency** – The MiFID II transparency regime requires buyers and sellers of financial instruments to disclose price and volume information for their trades. For each class of financial instrument, there are various thresholds and waivers which apply in respect of making price and volume data of orders and transactions public. Such waivers and thresholds are generally calculated on the basis of EU-wide market data. The UK government considered that an abrupt move to use UK-only data could pose operational challenges for the FCA and could result in adverse implications for the functioning of markets. As a result, the MiFID SI grants the FCA temporary

390 Please note that this is not an exhaustive list of SIs relevant to each piece of EU legislation.

EU Law	On-shored UK Law	On-shoring Policy Summary
		powers with regards to the regime during a transitional period. In addition to such temporary powers, certain other changes will be made to the long-term operation of the transparency regime. These changes will allow the FCA to take into account trading data from countries other than the UK in determining certain transparency thresholds. The FCA will be permitted to do this where it is able to obtain sufficient, reliable trading data from other countries in respect of trading in the relevant financial instruments. This is to enable the FCA to appropriately take into account instruments which are traded significantly both in the UK and in other countries. In such cases, in order to set thresholds which achieve the intended outcomes of the transparency regime, the FCA will be able to use trading data from another country, assuming it is available to the FCA, as well as UK trading data.
EMIR	Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment) (EU Exit) Regulations 2019 (**EMIR SI**) Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment) (EU Exit) (No. 2) Regulations 2019 (**EMIR Refit SI**)[391]	Beyond the matters noted above, specific changes introduced by the EMIR SI and the EMIR Refit SI include: 1. **Reporting obligation** – EMIR imposes mandatory reporting of all derivatives contracts to a registered or recognised trade repository. The EMIR SI provides for the possibility to suspend the reporting obligation; there is no such ability to suspend the reporting obligation in EMIR. 2. **Intragroup exemptions** – Providing for a transitional regime for intragroup transactions so that market participants can continue to take advantage of the intragroup exemptions for margin and clearing following IP completion day.

[391] We note that amendments to EU EMIR which are in force and operative prior to IP completion day will be on-shored in the UK. However, the EMIR Refit SI (the SI responsible for on-shoring the majority of EU EMIR Refit 2.1 changes) was made in 2019 prior to certain changes to EU EMIR becoming operative (for example, from June 18, 2020 onwards, FCs are solely responsible and legally liable for reporting the details of OTC derivative contracts they have concluded with NFC-s on behalf of both counterparties, as well as for ensuring the correctness of the reported details). As these changes are in force and operative prior to IP completion day, they will be onshored in the UK by regulation 67 of The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020.

The EU EMIR Refit 2.1 FRANDT changes will not be operative prior to IP completion day and, therefore, they will not automatically be on-shored in the UK. However, in June 2020, in the HM Treasury Written Statement, the UK Government stated that it intends to set out further detail on upcoming legislation in due course including legislation to complete the implementation of EMIR Refit 2.1 to ensure that smaller firms are able to access clearing on fair and reasonable terms. Please see response to Question 4.g.2 in Category 4 for further details regarding the FRANDT changes.

EU Law	On-shored UK Law	On-shoring Policy Summary
		3. **Suspension of the clearing obligation** – Providing for a UK-specific procedure for suspension of the EMIR clearing obligation and MiFIR trading obligation.
CRD IV and CRR	The Capital Requirements (Amendment) (EU Exit) Regulations 2018 (**CRR SI**)	Beyond the matters noted above, there are no material changes to policy introduced by the CRR SI that are relevant to our analysis.

Annex IV: UK SENIOR MANAGERS AND CERTIFIED PERSONS REGIME

This Annex IV describes the scope and provides an overview of the UK's Senior Managers and Certification Regime (**SMCR**). It is not intended to be exhaustive. Where relevant, specific aspects of the SMCR are noted in the charts above (and these aspects are not necessarily described in this Annex). Please also refer to the definitions set out in the Glossary in Annex II.

The SMCR applies to UK Firms (including branches) that are regulated by the FCA and/or the PRA under FSMA. The SMCR replaced the UK's 'Approved Persons' regime in March 2016 for Credit Institutions and Investment Firms that are Dual-Regulated Firms, and in December 2019 for Investment Firms that are Solo-Regulated Firms (among other types of firm).[392]

Scope

There are three key elements of the SMCR:

- The Senior Managers Regime (**SMR**), which is intended to cover the most senior employees who are responsible for the running of a firm which is subject to the SMCR. These employees are known as 'Senior Managers';
- The Certification Regime, which is intended to cover employees who, although not Senior Managers, have the ability to cause significant harm to their firm and/or their firm's clients. These employees are known as 'Certified Persons'; and
- The Code of Conduct, which applies to Senior Managers and Certified Persons. The Code of Conduct also applies to all other employees of firms that are subject to the SMCR, with the exception of employees who perform 'ancillary functions' (e.g. catering staff, security guards, receptionists).

Senior Managers Regime

Every Senior Manager must be approved by the FCA or, for relevant roles at Dual-Regulated Firms, the PRA to perform one or more Senior Management Functions (**SMFs**).[393] SMFs that have been specified by the FCA and/or the PRA include the Chief Executive, the Chairman, Executive Director, the Chair of certain board committees (Risk, Audit and Remuneration), Compliance Oversight and the Money Laundering Reporting Officer. There is no territorial limit to the scope of the Senior Managers Regime. As a result, it is possible for individuals who are not located in the UK to perform one or more SMFs. Further, a Senior Manager with responsibility for business conducted with clients or counterparties outside of the UK would remain subject to the SMR irrespective of clients' or counterparties' location.

[392] For Solo-Regulated Firms, the nature of the obligations imposed by the SMCR varies with the size of the UK Firm (though, if any Solo-Regulated Firms apply to operate under the SEC's Substituted Compliance regime, it is anticipated that these will comprise only the most significant firms, being 'Enhanced SMCR Extension Firms' which are subject to similar obligations as Dual-Regulated Firms. Accordingly, no distinction is made in this Annex IV between Dual-Regulated Firms and Solo Regulated Firms).

[393] Senior Management Functions as designated by the PRA in Rule 2 of the Senior Management Functions Part of the PRA Rulebook and by the FCA in FCA SUP 10C.4.3A of the FCA Handbook

In order for an individual to be approved to perform one or more SMFs, a firm must provide detailed information to be provided to the FCA or PRA (as applicable) in a 'Form A'. The FCA or PRA may interview proposed Senior Managers before deciding to grant approval. All Senior Managers must be fit and proper to perform their roles, both at the point at which they are approved by the FCA and/or the PRA, as well as thereafter. UK Firms must re-assess the fitness and propriety of their Senior Managers annually and on an ad hoc basis where necessary (see details below under the Certification Regime, which contains equivalent requirements).

Each UK Firm that is subject to the SMCR must allocate certain '**Prescribed Responsibilities**' that are set by the FCA the PRA among their Senior Managers. In addition to allocating Prescribed Responsibilities among their Senior Managers, firms must also ensure that a Senior Manager is responsible for each aspect of their business which is covered by the SMCR. Every Senior Manager must have a 'Statement of Responsibilities', which confirms their SMF role(s), their Prescribed Responsibilities, and any additional responsibilities which they may have.

Each UK Firm must also maintain a **'**Management Responsibilities Map', which sets out its SMR governance arrangement. Management Responsibilities Maps should also demonstrate that there are no gaps in the UK Firm's governance arrangements and demonstrate that the UK Firm has a clear organisational structure with well-defined, transparent and consistent reporting lines.

If the PRA or FCA can demonstrate that a Senior Manager has failed to take reasonable steps to prevent breaches of PRA and/or FCA requirements that fall within their Statement of Responsibilities from occurring or continuing, then the PRA and/or FCA can take enforcement action directly against that Senior Manager. Senior Managers a of UK-headquartered dual-regulated firms may also face criminal liability if their actions, decisions or a decision that they contribute to the failure of such firms.

Certification Regime

Staff that are subject to the Certification Regime (**Certified Persons**) are not 'approved' by the PRA or the FCA. Instead, UK Firms must certify the fitness and propriety of Certified Persons to perform their roles on at least an annual basis and, where required, on an ad hoc basis (e.g. in the event of an investigation or a disciplinary process). The FCA requires UK Firms to consider the honesty, integrity and reputation; competence and capability; financial soundness and 'personal characteristics' of each Certified Person. Issues that arise outside of the workplace in an employee's personal life can impact their fitness and propriety (e.g. if an employee is convicted of a criminal offence due to matters that are not related to their work for a UK Firm).

The FCA and the PRA have specified certain categories of employees (known as 'Significant Harm Functions' or 'SHFs') who are required to be classified as Certified Persons.[394]

Each UK Firm must have a policy setting out how they will comply with the Certification Regime, a defined process for conducting annual reviews of fitness and propriety, as well as an up-to-date list of their Certified Persons.

[394] The certification functions are set out in PRA Certification Rule 2 and FCA SYSC 27.73R.

Code of Conduct

The SMCR also introduced a new Code of Conduct which applies to all Senior Managers and Certified Persons, as well as any other employees who do not perform 'ancillary' functions (being non-financial services roles, such as catering and security staff). The Code of Conduct applies to the role/responsibilities that employees perform for their employer.

The Code of Conduct requires relevant staff to act with integrity, due skill, care and diligence; to be co-operative with the FCA, PRA and other regulators; to pay due regard to the interests of customers and to treat them fairly, and to observe proper standards of market conduct. Additionally, the Code of Conduct requires Senior Managers to take reasonable steps to ensure that the business within their scope of responsibility is controlled effectively and complies with relevant requirements and standards of the regulatory system. Senior Managers must ensure that any delegation of their responsibilities is to an appropriate person and that they oversee the discharge of the delegated responsibility effectively. Finally, Senior Managers must also disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

The Code of Conduct therefore applies requirements on individuals that operate in parallel with the obligations on UK Firms that are established by the PRA's Fundamental Rules and the FCA's Principles for Business (please see the Introduction for further details).

UK Firms are required to train their employees in relation to the Code of Conduct and what it means for their specific roles. UK Firms must also notify the FCA and/or the PRA (depending on the type of UK firm and the employee in question) if an employee is found to have breached the Code of Conduct. The PRA and FCA can take enforcement action against employees (including, but not limited to, Senior Managers and Certified Persons) for breaches of the Code of Conduct.

Annex V – side letter for capital portion of UK substituted compliance application

20 January 2020

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Substituted Compliance Application for UK Security-based Swap Dealers from Exchange Act Section 15F(e) and Exchange Act Rule 18a-1

Dear Ms. Countryman,

We are submitting this application to request that the Securities and Exchange Commission ("Commission") make a determination with respect to the capital and related requirements of the United Kingdom ("UK") specified herein (the "UK Capital Framework") and that compliance with the UK Capital Framework by a nonbank security-based swap ("SBS") dealer licensed under the UK Financial Services and Markets Act 2000 ("FSMA") as an investment firm by the Prudential Regulation Authority ("PRA") or the Financial Conduct Authority ("FCA")[395] (a "UK SBSD") may satisfy the capital requirements applicable to a nonbank SBS dealer ("SBSD") under Section 15F(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 18a-1 thereunder.[396] As we describe in more detail below, the UK Capital Framework is designed to ensure the safety and soundness of UK SBSDs in a manner comparable to Section 15F(e) of the Exchange Act ("Section 15F(e)") and Rule 18a-1 thereunder ("Rule 18a-1")

1. Introduction

In making a substituted compliance determination pursuant to Rule 3a71-6 under the Exchange Act in regards to the capital requirements under Section 15F(e) and Rule 18a-1, the Commission intends to consider whether the capital requirements of the foreign regulatory system "are designed to help ensure the safety and soundness of registrants in a manner that is comparable" to Section 15F(e) and Rule 18a-1 thereunder.[397] The Commission has explained that it will "endeavour to take a holistic approach in considering whether regulatory requirements are comparable for purposes of substituted compliance and will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity."[398] In guidance to non-U.S. SBSDs (the "Staff Guidance"), the Commission staff request that applications for substituted compliance address the general comparability of the foreign regulatory regime's requirements and analogous requirements under the Exchange Act, including any general differences between the two sets of requirements and the consistency of the two sets' objectives,[399] as well as certain specific questions relating to particular rule areas.

In response to the Staff Guidance, this application is organised as follows: In Section II, we provide an overview addressing general comparability of the UK Capital Framework's requirements and the capital requirements of Section 15F(e) and Rule 18a-1, including any general differences between the two sets of requirements and the consistency of the two sets'

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

[396] As used herein, a "nonbank" SBSD refers to an SBSD that does not have a Prudential Regulator as defined in Section 3(a)(74) of the Exchange Act.

[397] 17 C.F.R. 240.3a71-6(d)(4)(i).

[398] Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 81 Fed. Reg. 29960, 30078 (May 13, 2016).

[399] Staff Guidance — Information Regarding Foreign Regulatory Requirements for Substituted Compliance Applications 9 (2019).

objectives. In Section III, we address the following specific questions set forth by the Staff Guidance:

A. How does the foreign jurisdiction establish minimum capital requirements?

B. What are the legal consequences if a firm falls below the minimum capital requirements? Does the foreign jurisdiction require that a firm cease conducting business if its capital falls below the required minimum?

C. How effective is the level of capital required of applicable nonbank firms under the foreign jurisdiction's approach with respect to helping ensure that the liquidation of a firm will not result in excessive delay in repayment of the firm's obligations to SBS customers and creditors, therefore assuring the continued market liquidity?

D. To what extent do the required capital levels for nonbank firms in the foreign jurisdiction reflect regulatory concerns that differ from the concerns that underpin Exchange Act Rule 18a-1? Do any differences in the regulatory concerns that underpin the jurisdiction's required capital levels lead to different regulatory outcomes from those attained under the Exchange Act? If so, are there any conditions that could be applied to substituted compliance to promote comparable regulatory outcomes, notwithstanding differences in the underlying concerns?

For the reasons set forth below, the UK Capital Framework is designed to ensure the safety and soundness of UK SBSDs in a manner comparable to the capital requirements of Section 15F(e) and Rule 18a-1.

2. Overview

Rule 18a-1. Rule 18a-1 mirrors the net liquid assets approach that Exchange Act Rule 15c3-1 applies to securities broker-dealers, requiring a nonbank SBSD to compute its "net capital" requirement by determining its net worth according to U.S. generally-accepted accounting principles and then subtracting certain illiquid assets, adding certain subordinated liabilities and making specified additional adjustments. These additional adjustments include certain standardised or model-based market and credit risk deductions, as well as penalty charges for operational risks. The SBSD must maintain net capital at the greater of $20 million or 2 per cent. of its risk margin amount. The risk margin amount equals the sum of the total initial margin ("IM") required to be maintained by the SBSD at each clearing agency with respect to the SBS that the firm clears for its SBS customers and the total IM calculated by the SBSD with respect to non-cleared SBS pursuant to Exchange Act Rule 18a-3. SBSDs permitted to use models to compute market or credit risk deductions are also required to maintain tentative net capital of $100 million.

The UK Capital Framework. During its membership of the European Union ("EU"), the UK implemented the EU Capital Requirements Regulation (575/2013) ("CRR") and its related legislation, the Capital Requirements Directive IV (2013/36/EU) ("CRD IV"), which include the prudential capital requirements applicable to both banks and "investment firms,"[400] such as UK SBSDs,[401] and impose mandatory capital and liquidity requirements that address market, credit, counterparty, and liquidity risks.

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

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

The UK ceased to be a member of the EU on 31 January 2020 ("Brexit"). However, pursuant to its withdrawal agreement with the EU, the UK remains subject to EU law, including CRR and CRD IV, during an implementation period which will end on 11 pm GMT on 31 December 2020 ("IP completion day"). On IP completion day, EU laws which are in effect and applicable as at IP completion day, will be "on-shored" (retained) in UK law[402] with amendments that remedy, mitigate, or prevent "deficiencies" in the on-shored EU law arising from the withdrawal of the UK from the EU.[403] EU law which applies after IP completion day will not automatically apply in the UK.

On 20 May 2019, the EU passed the Capital Requirements Regulation II (2019/876) ("CRR II") and the Capital Requirements Directive V (2019/878/EU) ("CRD V"), which further refine and implement Basel III standards by amending sections of CRR and CRD IV related to liquidity, large exposures, and market and counterparty credit risk, amongst others.[404]

In addition, on 25 December 2019, the Investment Firms Regulation (2019/2033) ("IFR") and Investment Firms Directive (2019/2034/EU) ("IFD") entered into effect. This set of legislation will tailor the existing prudential rules under the EU capital framework to investment firms based on their size and complexity, although large investment firms would continue to be subject to the capital requirements under CRR and CRD IV (as amended by CRR II and CRD V).[405]

For the purposes of this application, we address the currently applicable UK Capital Framework — *i.e.*, based on CRR (as amended by the currently effective elements of CRR II) and CRD IV.[406] However, we note that the UK Government has stated its intention to update the UK Capital Framework to enable the implementation of Basel III and a UK version of EU CRR II "in line with the intended outcomes" of the EU regime. The Government also announced that it will legislate to enable the UK to introduce a new prudential regime for investment firms, the intended outcomes of which would also be aligned to the stated outcomes of EU IFD and EU IFR.[407]

Whilst the UK Capital Framework is primarily based on CRR and CRD IV, it also comprises UK-specific requirements in respect of certain matters.

The UK Capital Framework requires an investment firm to hold equity and loss-absorbing liabilities, composed primarily of common equity, cash reserves ("Common Equity Tier 1"), and perpetual ("Additional Tier 1") or long-term subordinated ("Tier 2") debt instruments, equal to at least 8 per cent. of the sum of its risk-weighted assets.[408] In addition, an investment firm must maintain certain capital buffers above the minimum 8 per cent. capital level composed of

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[402] Directly applicable EU law such as CRR will convert into UK domestic law and UK legislation implementing EU directives, such as CRD IV, will be preserved.

[403] As a general matter, there is no intention to make policy changes as part of the on-shoring process, other than to reflect the UK's new position outside the EU.

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

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

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

[407] See "Financial Services Update:Written statement - HCWS309" issued by Chancellor of the Exchequer (https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-06-23/HCWS309/) and "Prudential standards in the Financial Services Bill: June Update" (https://www.gov.uk/government/publications/prudential-standards-in-the-financial-services-bill-june-update), both published on 23 June 2020. Under the new prudential framework for investment firms, FCA-authorised investment firms would be subject to the new prudential rules for investment firms, whereas PRA-designated investment firms would be subject to the CRD V/CRR II-based rules.

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

Common Equity Tier 1 capital instruments.[409] The Bank of England, as "resolution authority", also requires certain investment firms[410] to satisfy a minimum requirement for own funds and eligible liabilities[411] ("MREL") under the Banking Act 2009 ("Banking Act") and related secondary legislation, through which the UK transposed the Bank Recovery and Resolution Directive (2014/59/EU) ("BRRD").[412] Separately, CRR imposes liquidity requirements designed to ensure that investment firms can meet both short- and long-term obligations.

General Comparability. Like Rule 18a-1, the UK Capital Framework is designed to ensure that a UK SBSD maintains sufficiently liquid and high-quality assets to meet its obligations to customers, counterparties, and other creditors if the firm were to experience financial distress. Especially for larger UK SBSDs with approval to calculate market and credit risk using internal models, both Rule 18a-1 and the UK Capital Framework permit firms to apply risk-based market charges that are consistent with the value-at-risk ("VaR") specifications set forth in Basel II standards.[413] In addition, both Rule 18a-1 and the UK Capital Framework permit firms with model approval to apply model-based credit risk charges to their derivatives counterparties.[414] For firms without model approval, both Rule 18a-1 and the UK Capital Framework provide for standardised approaches for market and credit risk charges and deductions, depending on the asset or exposure. Both rule sets also impose operational risk capital requirements.

The minimum capital levels required by the UK Capital Framework are robust and comparable to the minimum levels required by Rule 18a-1. In particular, taking into account applicable capital buffer requirements, UK SBSDs generally must hold own funds equal to at least 10.5 per cent. of their total risk exposure amounts (composed of market, credit, settlement, credit valuation adjustment, and operational risk requirements)[415], which may be compared in some respects to the sum of the 2 per cent. risk margin amount requirement and market and credit risk charges applicable under Rule 18a-1. UK SBSDs are also required to calculate and report a leverage ratio of Tier 1 capital divided by their total exposures. In addition, the FPC has certain

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

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

[411] Eligible liabilities include, among others, instruments that are issued and fully paid up with remaining maturities of at least a year. Part 9 Bank Recovery and Resolution (No 2) Order 2014. In addition, the instruments cannot arise from a derivative, be owed to, secured, or guaranteed by the UK SBSD itself, and the UK SBSD cannot have either directly or indirectly funded its purchase. Id. In June 2018, the Bank of England published a statement of policy on its approach to setting MREL. On 7 June 2019, the EU published the Bank Recovery and Resolution Directive II (2019/879/EU) ("BRRD II") which, among other things, amends the BRRD regarding the loss-absorbing and recapitalisation capacity of credit institutions and investment firms, namely the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as MREL, through targeted amendments and generally refines and tights the requirements for eligible liabilities (BRRD II, Article 1(17)). The respective changes have to be implemented into the national laws of the member states, and the UK, by 28 December 2020. The Government has announced its intention to transpose most of BRRD II (and has launched a consultation on this). It is not intending to transpose the requirements that do not need to be complied with by firms until after the end of the Brexit transition period, in particular the revisions to the MREL framework under Article 1(17) of BRRD II. However, the UK already has in place an MREL framework in line with TLAC standards under the Banking Act.

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

[413] Compare 17 CFR § 240.18a-1(d)(1), (9)(i)–(ii), (e)(1), with CRR, Articles 143(1) and 363. See also Capital, Margin and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 Fed. Reg. 43872, 44038 n.1302 (22 Aug. 2019) ("Capital Final Rule Release") (noting the use of internal models to compute market risk charges is based on the capital rules for U.S. banking institutions which are, in turn, based on the Basel II requirements).

[414] Compare 17 CFR § 240.18a-1(d)(1), (9)(i)–(ii), (e)(2), with CRR, Article 283(1). See also Capital Final Rule Release, 84 Fed. Reg. at 44038 (noting that the final rule's approach to credit risk charges for SBS counterparties is generally consistent with the approach for banking institutions, which are based on the Basel Accords). For OTC derivatives, credit valuation adjustment requirements also apply under the UK Capital Framework but not Rule 18a-1. EU CRR II will remove the option that an investment firm with model approval may calculate counterparty credit risk using internal models when calculating large exposures. CRR II, Article 1(93) amending CRR, Article 390(4). Rather, EU CRR II replaces the existing standardised approaches and models approaches with the standardised approach to counterparty credit risk ("SA-CCR") in line with the Basel framework. SA-CCR is intended to provide a better measure of counterparty risk as opposed to the existing standardised approaches by reflecting netting, hedging, and collateral benefits, but it generally is a more conservative measurement of credit risk than internal models-based approaches.

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

"powers of direction" that allow it to set maximum ratios of total unweighted liabilities to capital and to vary those over time.[416]

The UK Capital Framework also imposes liquidity requirements on UK SBSDs. This approach differs from Rule 18a-1, which, in lieu of a specific liquidity requirement, requires nonbank SBSDs to deduct from their net capital 100 per cent. of the carrying value for unsecured receivables (except that an SBSD with credit risk model approval may instead apply a credit risk weighted charge for receivables to certain derivatives counterparties) and other assets that cannot readily be converted into cash, as well as securities that have no ready market.[417] Conversely, the UK Capital Framework imposes on UK SBSDs which are PRA-designated investment firms, the liquidity coverage requirement applied under CRR to banks.[418] This requires that the ratio of the UK SBSD's buffer of "liquid assets" to its "net liquidity outflows" over a 30-calendar-day stress period be equal to at least 100 per cent. The PRA is required to apply a liquidity supervisory review and evaluation process. For FCA-authorised UK SBSDs, the FCA has maintained its pre-CRR domestic liquidity regime requirements for large full scope investment firms. In-scope investment firms, including UK SBSDs, must carry out an individual liquidity adequacy assessment or an individual liquidity systems assessment (as applicable). The FCA also carries out a supervisory liquidity review process for relevant firms.[419] In addition, CRR, Article 413, establishes a general requirement that firms ensure that long-term obligations are adequately met with stable funding requirements.[420]

In addition, liquidity risks are generally less significant to UK SBSDs than standalone U.S. SBSDs:

Bank-Style Resolution Regimes. UK SBSDs and other large investment firms are subject to a bank-style resolution regime under the Banking Act. The existence of resolution powers permits the resolution authority (the Bank of England) to take action well in advance of resolution in order to preserve the continuity of critical services and reduce the impact of such an investment firm's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the investment firm's own funds. Accordingly, the focus of the UK resolution regime is not the liquidation of the investment firm. Also, to the extent a UK SBSD relies on the exemption from Commission segregation requirements under Exchange Act Rule 18a-4(f), it will not be subject to liquidation as a stockbroker under the U.S. Bankruptcy Code.

Minimal Risk to U.S. Customer Property. U.S. customer property should be at minimal risk if a UK SBSD were to experience financial distress. Specifically, a UK SBSD is required to segregate IM from the firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[421] More generally, UK SBSDs are subject to an overarching FCA principle for business, and strict client asset protection requirements[422], under the FCA's client asset sourcebook ("CASS"),[423] requiring the UK SBSD to ensure adequate protection for clients' assets when it is responsible for them. As a result, U.S. customer property placed with the UK SBSD to margin SBS transactions should be protected in the event the UK SBSD experiences financial difficulties, enters resolution proceedings, or is liquidated.

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[416] Under the Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015. EU CRR II will introduce, from June 2021, a leverage ratio requirement of 3 per cent.

[417] 17 CFR § 240.18a-1(c)(1)(iv).

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

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

[420] EU CRR II will apply the Net Stable Funding Ratio ("NSFR"), introduced by Basel III, as of June 2021.

[421] European Market Infrastructure Regulation Margin RTS (EU) (2016/2251) ("EMIR Margin RTS"), Articles 19(1)(d)–(e), (3) & (8). While not specifically required to be segregated from the investment firm's assets, counterparties may elect for variation margin ("VM") to also be segregated and placed with a third-party custodian. See EMIR Margin RTS, Article 3(b) (stating that the "exchange of collateral agreement" must address "segregation arrangements").

422 Including segregation (where applicable) and proper recordkeeping.

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

3. Responses to the Staff's Specific Questions

I. How does the UK establish minimum capital requirements applicable to SBSDs?

a. Measurement of Assets and Total Risk Exposure

UK SBSDs are subject to bank-like capital requirements that, consistent with the Basel framework, require a firm to hold sufficient amounts of own funds, composed of Common Equity Tier 1, Additional Tier 1, and Tier 2 capital instruments subject to certain capital deductions (referred to as Pillar I of the Basel framework).[424] The amount of own funds required to be held is determined by calculating the firm's total risk exposure, which requires the firm to risk weight its assets and exposures using specified standardised weights or approved internal model-based methodologies.[425] The categories of risk charges include:[426]

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

When the total risk exposure amount is multiplied by the relevant capital ratio requirements, the calculation may be compared to the haircuts and other deductions from net capital specified under Rule 18a-1 plus 2 per cent. of the risk margin amount.

Derivative Instruments and Marketable Securities

Under the UK Capital Framework, as under Rule 18a-1, derivative instruments and marketable securities are subject to charges for market and credit risk. The comparability between the risk-weighted approach under the UK Capital Framework and Rule 18a-1 can be illustrated by comparing their respective approaches to market and credit risk.

In terms of market risk, Rule 18a-1 requires a nonbank SBSD to take certain net capital deductions for its derivatives positions and marketable securities using either standardised haircuts or, if approved to use internal models, market risk models. Rule 18a-1's model-based methodology is based on the internal model approach under Basel 2.5,[427] and the Commission will provisionally permit the use of models approved by qualifying foreign regulators.[428] Similarly, the UK's Capital Framework's model-based methodology is based on the Basel 2.5 standard.[429] Both regimes incorporate relevant aspects of Basel II in terms of requiring firms with model approval to use a VaR model with a 99 per cent, one-tailed confidence level with (i) price changes

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

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

[426] Id. Article 92(3).

[427] Compare 17 CFR § 240.18a-1(d)(1), (9) & (e)(1), 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).

[428] 17 CFR § 240.18a-1(d)(5)(ii).

[429] Compare CRR, Article 362–377, with Revisions to the Basel II Market Risk Framework, supra note 427.

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.[430] The UK Capital Framework also implements aspects of Basel 2.5, such as requirements to calculate a "stressed" VaR,[431] which we understand the Commission informally requires model-approved firms it regulates to calculate as well.

In terms of credit risk, Rule 18a-1 requires nonbank SBSDs to take a net capital deduction for unsecured current exposure and uncollected IM, but firms with model approval may instead multiply that deduction by 8 per cent. and further by a credit risk weight. Under the UK Capital Framework, an investment firm calculates its credit risk exposure by taking the accounting value of each of its on- and off-balance sheet exposures, making certain additional credit risk adjustments, and then applying specific risk weights based on the type of counterparty and the asset's credit quality.[432] For instance, high quality credit exposures, such as exposures to the Bank of England and EU member states' central banks, carry a 0 per cent. risk weight, whereas exposures to UK and EU banks, other investment firms or to other businesses may carry risk weights between 20–150 per cent. depending on the credit ratings available for the entity or (for exposures to banks and investment firms) for its central government.[433] If no credit rating is available, the investment firm must generally apply a 100 per cent. risk weight, meaning the total accounting value of the exposure is used.[434] If an investment firm is permitted to use models for determining credit risk, any positions in a basket for which the investment firm cannot determine the risk-weight using its models are assigned a risk weight of 1,250 per cent. (which is equivalent to a full capital deduction for the 8 per cent. minimum capital requirement).[435]

Accordingly, for firms with model approval the two approaches are largely similar, with the UK Capital Framework imposing potentially larger risk charges due to imposing risk charges for exposures to central counterparties,[436] credit valuation adjustment requirements to OTC derivatives instruments[437] and additional capital buffers.[438]

In addition, the internal and external supervisory process provided in Pillar II of the UK Capital Framework further helps ensure investment firms do not take on excessive uncollateralised credit risk.[439] Specifically, investment firms are required to maintain adequate internal capital to cover the nature and level of risks, including credit and counterparty risks, to which they may be exposed.[440] At least annually, PRA or FCA (as applicable) must review the investment firm's strategies and processes to manage these risks and evaluate the risks that the investment firm is or might be exposed to, the risks that the investment firm poses to the financial system, and the risks revealed by the investment firm's stress testing (taking into account the nature, scale, and complexity of the investment firm's activities).[441] The internal and external assessments of

[430] Compare 17 CFR § 240.18a-1(d)(9)(ii)(A–C), with CRR, Article 365(1).

[431] CRR, Article 365(2).

[432] Id. Article 111 & 113(1).

[433] Id. Articles 114–122.

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

[435] Id. Article 153(8).

[436] Id. Articles 300–311.

[437] Id. Article 382. The credit valuation adjustment requirement requires investment firms to calculate a capital charge for potential mark-to-market losses associated with a deterioration in the credit worthiness of a counterparty (so-called credit valuation adjustment) applicable to all derivative transactions that are not cleared through a qualifying central counterparty.

[438] For example, $100 million of exposure to a counterparty with a 100 per cent. risk weight would result in an $8 million capital requirement under Rule 18a-1 versus at least a $10.5 million capital requirement under the UK Capital Framework, taking into account the capital conservation buffer. Additional capital would then be required for credit valuation risk.

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

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

[441] Id.

risks often result in investment firms holding own funds in excess of the minimum capital requirements.[442]

We consider these requirements to be an effective backstop, especially for firms that do not have market or credit risk model approval. For these firms, Rule 18a-1 is arguably stricter than the UK Capital Framework, at least in regard to applying 100 per cent. capital charges to unsecured current exposure to OTC derivatives counterparties, without risk-weighting of these exposures. However, under the UK Capital Framework, an investment firm with such exposures that create risks that are not covered or not fully covered by the minimum own funds requirements under CRR would be expected to address those exposures as part of its Pillar II capital requirements.[443]

Other Types of Assets and Exposures

Under Rule 18a-1, other types of proprietary assets and exposures are generally subject to a 100 per cent. deduction to net capital in order to address liquidity risk. Conversely, the UK Capital Framework subjects each asset to the risk weight approach described above,3 but then addresses liquidity risk by imposing separate liquidity requirements on investment firms composed of three main obligations. First, an investment firm is required to hold an amount of sufficiently liquid assets to meet its expected payment obligations and maintain a prudent funding profile.[444] Second, an investment firm is subject to a stable funding requirement whereby it must hold a diversity of stable funding instruments[445] sufficient to meet long-term obligations under both normal and stressed conditions.[446] Third, to ensure that an investment firm continues to meet its liquidity needs, it is required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day.[447] Further, as part of the Pillar II supervisory requirements under the UK Capital Framework, the regulators annually review the exposure, measurement, and management of liquidity risk by investment firms (including the composition and quality of liquidity buffers).[448]

b. **Qualifying Components of Capital**

Rule 18a-1 permits a nonbank SBSD to include both equity capital and satisfactory subordinated debt as net capital by permitting the SBSD to exclude subordinated liabilities from the net worth calculation, with satisfactory subordinated debt allowed to comprise up to 70 per cent. of the sum of the SBSD's subordinated debt and equity.[449]

The UK Capital Framework imposes different ratios for the various capital components of own funds. The components of own funds include:

- Common Equity Tier 1 capital instruments, which are comprised of retained earnings and common equity;[450]

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

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

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

[445] Stable funding instruments include Tier 1 and Tier 2 capital instruments and other preferred shares and capital instruments in excess of the Tier 2 allowable amount with an effective maturity of one year or greater. CRR, Article 427(1).

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

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

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

[449] 17 CFR § 240.18a-1(c)(1), (g).

[450] CRR, Article 28.

- Additional Tier 1 capital instruments, which include other capital instruments and certain long-term convertible debt instruments;[451] and

- Tier 2 capital instruments, which provide an additional layer of supplementary capital that includes other reserves, hybrid capital instruments, and certain subordinated term debt.[452]

The UK Capital Framework also requires investment firms to make certain capital deductions from Common Equity Tier 1, Additional Tier 1 and Tier 2 capital instruments that further help ensure that any assets held as capital have a positive realisable value in periods of stress. Due to the Common Equity Tier 1 ratio and capital buffers, an investment firm must hold, at a minimum, 66.67 per cent. of the firm's total capital requirements as Common Equity Tier 1 instruments (e.g., shareholder's equity, retained earnings, and other immediately available reserves).[453]

In addition, investment firms are also required to maintain MREL, which includes certain subordinated debt, in an amount set by the Bank of England under the Banking Act and the Bank Recovery and Resolution (No. 2) Order 2014.[454] In effect, MREL serves as a less subordinated tier of contingent capital. The required amount of MREL varies by firm depending on its size, funding model, and risk profile, among other considerations, and is designed to absorb losses in the case that a bail-in tool were applied so that the Common Equity Tier 1 ratio of the investment firm could be restored to a level necessary to enable it to continue to comply with its capital requirements.[455]

Accordingly, both approaches permit firms to count both equity and certain subordinated debt towards their capital requirements, with the UK Capital Framework requiring investment firms to make additional capital deductions from their capital instruments and maintain a larger portion of their required capital as retained earnings and common equity, as compared to Rule 18a-1.

c. Required Minimum Amounts of Capital and Early Warning Notification Requirements

As noted above, Rule 18a-1 requires nonbank SBSDs without model approval to maintain net capital, subject to the adjustments described above, at the higher of $20 million or 2 per cent. of the SBSD's risk margin amount.[456] Nonbank SBSDs with model approval are also required to maintain tentative net capital, which is the net capital *before* taking certain market and credit risk deductions, of at least $100 million.[457]

In comparison, the UK Capital Framework sets out minimum capital ratios for each component of own funds. Specifically, investment firms must maintain sufficient levels of Common Equity Tier 1 capital, Tier 1 (Common Equity Tier 1 and Additional Tier 1) capital and Tier 2 capital, after making required capital deductions, to satisfy the following capital ratios, expressed as a percentage of the firm's total risk exposure amount:

- Common Equity Tier 1 capital ratio of 4.5 per cent,[458]

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[451] Id. Article 52.

[452] Id. Article 63.

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

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

[455] Id.

[456] 17 CFR § 240.18a-1(a)(1)(i), (i)(A).

[457] Id. § 240.18a-1(a)(2).

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

- Tier 1 capital ratio of 6 per cent,[459]
- Total capital ratio of 8 per cent,[460]
- Additional buffers that must be met with Common Equity Tier 1 capital (in addition to the Common Equity Tier 1 capital used to meet the capital ratios above):[461]
    - Capital conservation buffer of 2.5 per cent,[462]
    - Countercyclical buffer of up to 2.5 per cent. which provides a mechanism for the FPC to increase firms' capital requirements in response to threats to financial stability,[463] and
    - Systemic risk buffer, which is intended to prevent and to mitigate long-term, non-cyclical systemic, or macro-prudential risks not covered by the CRR. It is applied either to the whole financial sector, or one or more sub-sets of it.[464]

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

Accordingly, UK capital ratios are calibrated up to, at a minimum, 10.5 per cent. of the investment firm's total risk exposure, rather than 2 per cent. of the firm's risk margin amount plus applicable capital deductions.

In addition, investment firms are currently required to report their leverage ratio to the PRA or FCA (as applicable), which is calculated as a non-risk based "backstop" measure based on the amount of Tier 1 capital and gross exposures.[465] The leverage ratio calculation sits alongside the minimum risk-based capital requirement. Importantly, although this leverage ratio reporting does not yet automatically impose a binding capital requirement on investment firms, the regulators will take the leverage of an investment firm into account in their annual Pillar II supervisory requirements and can exercise their Pillar II powers to increase an investment firm's capital requirements in order to address any concerns regarding excessive leverage.[466] In addition, the FPC has certain powers of direction over leverage ratio requirements and buffers that may potentially apply to PRA-designated investment firms.[467]

In addition, investment firms are also subject to annual stress testing requirements,[468] and those with model approval are subject to additional internal credit risk and counterparty credit risk stress testing requirements for testing capital adequacy.[469] Identified deficiencies in a firm's

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

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

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

[462] Id.

[463] Id.

[464] Id.

[465] CRR, Article 430.

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

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

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

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

stress testing may lead to the firm holding additional own funds and act as a further check to ensure investment firms continue to hold sufficient own funds in response to evolving risks.

Both Commission rules and the UK Capital Framework provide for notification to the relevant regulators if a firm's capital level approaches its minimum capital requirements. Under Exchange Act Rule 18a-8, a nonbank SBSD is required to notify the Commission within twenty-four hours if its total net capital or tentative net capital is less than 120 per cent. of the minimums required by Rule 18a-1.[470] Similarly, the UK Capital Framework requires an investment firm to provide notice to the PRA or FCA (as applicable), if it breaches its capital buffers within five business days, along with a capital conservation plan that sets out how the firm will restore its capital levels.[471] Notably, both notification requirements ensure that firms alert the regulators to possible distress *before* actually breaching minimum capital levels. We describe the further implications under the UK Capital Framework of breaching the various MREL requirements, capital buffers and capital ratios below.

II. What are the legal consequences if a firm falls below the minimum capital requirements? Does your jurisdiction require that a firm cease conducting business if its capital falls below the required minimum?

Under the Commission's rules, a nonbank SBSD automatically must cease operations if it falls below its minimum net capital threshold and provide notice of the deficiency to the Commission the same day.[472] The UK regulators, in turn, have more flexibility, possessing wide-ranging tools to deal with an investment firm's financial deterioration:

- *Liquidity requirements are breached.* The regulators may impose administrative penalties or other administrative measures, including prudential charges, if an investment firm's liquidity position falls below liquidity and stable funding requirements.[473]

- *MREL is breached*. Once the investment firm falls below its required MREL, the PRA, or FCA (as applicable) may take early measures to intervene, such as requiring management to take certain actions, order members of management to be removed or replaced, or require changes to the investment firm's business strategy or legal or operational structure, among others.[474] If additional requirements are met, it is also possible that resolution authorities may assess the investment firm as "failing or likely to fail," triggering a resolution action (which could occur even *before* the investment firm actually breached its minimum capital requirements).[475] In addition, the investment firm must notify the competent resolution authority if it considers the firm to be failing or likely to fail.[476]

- *Capital buffers are breached*. A breach of an investment firm's capital buffers automatically triggers restrictions on the firm's ability to make certain distributions (e.g., paying certain dividends or employee bonuses).[477] Investment firms also must prepare a capital conservation plan and submit it to the relevant regulator within five business

[470] 17 CFR § 240.18a-8(b).

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

[472] 17 CFR § 240.18a-8(a)(1).

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

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

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

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

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

days after breaching the capital buffers.[478] The restrictions increase in severity with the degree of the breach. The PRA or FCA (as applicable) may also impose other requirements in case of non-compliance with regulatory requirements, such as:[479]

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

Note that while the regulators generally have broad discretion as to what powers they may exercise, the UK Capital Framework specifically requires the regulators to require investment firms to hold increased capital when:[480]

- risks or elements of risks are not covered by the capital requirements in the UK Capital Framework;
- the investment firm lacks robust governance arrangements, appropriate resolution and recovery plans, processes to manage large exposures or effective processes to maintain on an ongoing basis the amounts, types and distribution of internal capital needed to cover the nature and level of risks to which they might be exposed; or
- the sole application of other administrative measures would be unlikely to timely and sufficiently remedy the situation.

- *Minimum capital requirements are breached*. The PRA or FCA (as applicable) can also sanction an investment firm (or its management) if the firm either falls below the capital or liquidity thresholds under the UK Capital Framework or the regulator has evidence that the firm will breach such capital and liquidity thresholds in the next 12 months.[481] They may also withdraw an investment firm's authorisation.[482]

III. How effective is the level of capital required of applicable nonbank firms under your jurisdiction's approach with respect to helping ensure that the liquidation of a firm will not result in excessive delay in repayment of the

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

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

[480] Id. This rule will be replaced and further refined by CRD V, Article 1(33) which inserted CRD IV, Article 104a.

[481] Id.

[482] See Part 4A of FSMA.

firm's obligations to SBS customers and creditors, therefore assuring the continued market liquidity?

The UK Capital Framework's liquidity requirements directly address the ability of investment firms to continue to meet obligations to their customers and counterparties. As noted above, these liquidity requirements require an investment firm to hold an amount of sufficiently liquid assets to meet any expected liquidity outflows under gravely stressed conditions for thirty days.[483] Stable funding requirements also require investment firms to maintain sufficient diversity of stable funding instruments to meet long term obligations under both normal and stressed conditions.[484] To ensure that investment firms continue to meet their liquidity needs, they are required to maintain robust strategies, policies, processes, and systems for the identification of liquidity risk over an appropriate set of time horizons, including intra-day.[485] Accordingly, the liquidity requirements under the UK Capital Framework help ensure that investment firms can continue to fund their operations over various time horizons, including timely making payments to customers and counterparties.

In addition, investment firms are subject to similar resolution regimes as banks. The UK resolution regime does not focus on liquidation. Rather, it emphasises the continuity of critical services and reduction of the impact of an investment firm's failure on financial stability, including through the orderly winding down of activities or restructuring supported by the investment firm's own funds where this, among other requirements, cannot be ascertained through normal insolvency proceedings.

In particular, the Bank of England, HM Treasury, the PRA and FCA must have regard to the following resolution objectives: (i) ensuring the continuity of banking services in the UK and of critical functions; (ii) protecting and enhancing the stability of the financial system of the UK including in particular by preventing contagion (including contagion to market infrastructures and maintaining market discipline); (iii) protecting and enhancing public confidence in the stability of the financial system of the UK; (iv) protecting public funds, including by minimising reliance on extraordinary public financial support; (v) protecting depositors covered by an EU member state's deposit guarantee schemes or the UK Financial Services Compensation Scheme and investors covered by a member state investor compensation scheme; (vi) in any case in which client assets may be affected, protecting those client assets; and (vii) avoiding interfering with property rights in contravention of a "Convention right" (within the meaning of the Human Rights Act 1998).[486] A resolution action, rather than insolvency proceedings, would be instituted where the resolution objectives above would not be met under normal insolvency proceedings to the same extent as resolution, provided that the other conditions to resolution are met.[487] In order to enable resolution with a minimum impact on client funds and assets, taxpayers, and financial stability, investment firms must have sufficient loss-absorbing and recapitalisation capacity (hence the requirements for MREL and capital requirements in excess of an investment firm's Pillar I capital requirements).

Accordingly, in resolving a UK SBSD, the Bank of England would take action to resolve the firm in such a way as to restructure its business to the extent required and feasible in order to ensure the continuity of critical functions (including by way of transferring parts of such business, as the case may be) and, to the extent debts or transactions would not be transferred or continued, as the case may be, to pay outstanding debts in a reasonably timely manner to the SBS counterparties (and creditors) (to the extent such obligations are not subject to bail-in), protect client funds and assets and protect the underlying market's liquidity.

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[483] CRR, Article 412(1). Liquid assets primarily include cash, exposures to central banks, government-backed assets and other highly liquid assets with high credit quality. Id. Article 416(1). See also Commission Delegated Regulation (EU) 2015/61 and the Liquidity Coverage Requirement — UK Designated Investment Firms Part of the PRA rulebook; and chapter 12 of the BIPRU sourcebook of the FCA handbook.

[484] Id. Article 413(1).

[485] See the Internal Liquidity Adequacy Assessment Part of the PRA rulebook, and for FCA-authorised investment firms, Chapter 12 the BIPRU sourcebook of the FCA handbook.

[486] Section 4 of the Banking Act.

[487] Section 7 of the Banking Act.

With that said, if liquidation did occur, UK regulations also protect counterparties and promote continued market liquidity through margin requirements. UK margin requirements require investment firms to hold high quality, liquid assets as margin for SBS. Specifically, investment firms are required to exchange IM and VM composed of highly liquid assets, which are not exposed to excessive credit, market, or foreign exchange risk, such that a non-defaulting counterparty can liquidate the collateral in a sufficiently short time to protect against losses on non-centrally cleared OTC derivative contracts.[488] IM must be segregated from the investment firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the IM remote in the case of the firm's default or insolvency.[489] In addition, while not specifically required to be segregated from the investment firm's assets, counterparties may elect for VM to also be segregated and placed with a third-party custodian.[490] In addition, UK SBSDs must generally ensure the protection of customer assets.[491] These requirements help to further protect customers and counterparties in the event that a UK SBSD experiences financial distress and liquidation.

IV. To what extent do the required capital levels for nonbank firms in your jurisdiction reflect regulatory concerns that differ from the concerns that underpin Exchange Act Rule 18a-1? Do any differences in the regulatory concerns that underpin your jurisdiction's required capital levels lead to different regulatory outcomes from those attained under the Exchange Act? If so, are there any conditions that could be applied to substituted compliance to promote comparable regulatory outcomes, notwithstanding differences in the underlying concerns?

The UK Capital Framework and the net liquid assets test under Rule 18a-1 generally reflect similar regulatory concerns. Section 15F(e) provides for the imposition of capital requirements to help ensure the safety and soundness of the SBSD considering the risk associated with activities in non-cleared SBSs.[492] Similarly, the UK Capital Framework stresses the need for investment firms to adopt sound structures, with capital requirements that both ensure a firm's solvency and efficient, safe, and sound derivatives markets, while balancing capital requirements with the relevant risks addressed.[493] Both are designed to provide protection for counterparties and customers in accordance with the safety and soundness objectives of Section 15F(e). Although the two regimes reflect somewhat different approaches to addressing these objectives in respect of liquidity risks, these approaches are both ultimately designed to address these risks by requiring a firm to have a sufficient amount of liquid assets to satisfy its obligations.

To the extent that the Commission deems these differences significant, however, it is notable that liquidity risks are not as significant to UK SBSDs as standalone U.S. SBSDs because the former are subject to a bank-style resolution regime that is not primarily focused on liquidation. Also, to the extent the UK SBSD can rely on the segregation exemption provided in Exchange Act Rule 18a-4(f), UK SBSDs will generally not be subject to the stockbroker liquidation provisions of the U.S. Bankruptcy Code.

In addition, unlike U.S. nonbank SBSDs, PRA-designated UK SBSDs are generally eligible to access to short-term liquidity through the Bank of England's operations under the Sterling Monetary Framework.[494]

Because the UK Capital Framework resembles the capital, liquidity, and resolution regimes for U.S. banks, the approach taken to capital and liquidity for bank SBSDs by the U.S. prudential

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

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

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

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

[492] 15 U.S.C. § 78o–10(e)(3)(A)(i)-(ii).

[493] CRR, Recitals 40, 43 & 87.

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

regulators should also prove instructive. In the proposing release for the implementing regulations for U.S. bank SBSDs, the Prudential Regulators noted that existing capital and liquidity standards, which had undergone amendments to align with the Basel III frameworks in 2013 and 2014, were already "sufficient" to offset risks from SBS activities and "ensure the safety and soundness of the covered swap entity."[495] Therefore, the Prudential Regulators did not propose separate capital requirements for bank SBSDs. Rather, the Prudential Regulators reiterated the existing capital requirements imposed on bank SBSDs and required they continue to comply with already applicable risk-based and leverage capital requirements.[496] This is consistent with the approach proposed by the Commodity Futures Trading Commission ("CFTC"), which would permit a swap dealer to choose between a "Bank-Based Capital Approach" based on existing U.S. bank holding company capital rules or the net liquid assets capital approach reflected in Rule 18a-1.[497] Implicitly, the CFTC found that the Bank-Based Capital Approach, which mirrors the UK Capital Framework, meets the statutory objectives of the Commodity Exchange Act § 4s(e) for nonbank swap dealers,[498] which are identical to those in Section 15F(e) for nonbank SBSDs.

Taken together, the UK Capital Framework reflects similar regulatory concerns and leads to comparable regulatory outcomes as the capital requirements under Section 15F(e) and Rule 18a-1. Rather than require UK SBSDs to comply with two different approaches to capital and liquidity, the Commission should grant this application for the UK SBSDs to satisfy their requirements under Section 15F(e) and Rule 18a-1 by continuing to comply with the UK Capital Framework.

However, while we believe that the UK Capital Framework's capital and liquidity requirements sufficiently address concerns about a UK SBSD's ability to meet its obligations to its customers and counterparties in times of financial stress consistent with the regulatory outcomes of Section 15F(e) and Rule 18a-1, to the extent the Commission is concerned about potential inconsistencies with U.S. insolvency law, it may consider granting the requested comparability determination on the condition that a UK SBSD qualify for and rely on Exchange Act Rule 18a-4(f)'s exemption to the Commission's segregation requirements.

[495] See Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348, 57382 (24 Sept. 2014).

[496] Id. The final rule adopted this same approach. Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74847 (30 Nov. 2015).

[497] See Capital Requirements of Swap Dealers and Major Swap Participants, 84 Fed. Reg. 69,664, 69,665 (Dec. 19, 2019).

[498] 7 U.S.C. § 6s(e).

Appendix C: Supervisory Compliance Program and Enforcement Authority

Information to be included in the Application (Element 4)

1. For each of the areas of regulation for which substituted compliance is requested, identify whether the FCA or the PRA is the primary supervisory entity and/or the primary entity for enforcing such regulations.

    a. Please include areas of possible shared enforcement, such as systems and controls issues that raise both prudential and conduct violations. With respect to such areas, please explain how the determination is made of whether the FCA or PRA will pursue the enforcement matter.

    The conduct of joint investigations is set out in the FCA-PRA Memorandum of Understanding and Operating Manual. Where the matter being considered engages the objectives of both the FCA and the PRA, the regulators will determine whether any investigation against a relevant firm or relevant individual should be carried out by the FCA, by the PRA, or jointly, and how any investigation and subsequent proceedings should be co-ordinated. The PRA and FCA work closely on matters that may raise both prudential and conduct violations. The respective enforcement liaison teams meet monthly to share matters of common interest and discuss upcoming potential referrals. There is also a statutory duty of consultation between the regulators prior to the appointment of investigators in order that the respective mutual interest in and impact of the matter can be assessed. This may include the respective enforcement appetite of each regulator.

    Each or either regulator may then decide to appoint investigators. The decision of one to investigate does not preclude the other from so doing. If both regulators decide to investigate, this may be done as a joint investigation or two separate investigations in parallel. There will then be close coordination and regular contact between the investigation teams and their respective supervisory teams.

    As discussed in more detail below, there is also regular liaison between the FCA and PRA whistleblowing teams.

    The table in Annex I sets out the areas where substituted compliance is being sought and where supervisory and enforcement responsibility sits, between the FCA and PRA.

2. If any of the regulations for which substituted compliance is requested do not apply to certain cross-border transactions, please explain (e.g., transactions with counterparties located outside of the U.K.).

    With respect to investment services provided from the UK cross-border to clients in another jurisdiction, rules under the UK MiFID, EMIR and MAR regimes generally apply on the same basis as they apply to services provided within the UK.

    Note that in relation to UK MiFID/MiFIR, an FCA-authorised third country firm with a branch in the UK is generally covered when it carries on business from that establishment by FCA

Handbook provisions implementing MiFID, and by MiFIR and other MiFID regulations due to GEN 2.2.22AR. The purpose of GEN 2.2.22AR is to ensure that a third country investment firm should not be treated in a more favourable way than a UK firm.

EMIR requirements apply (directly) to a derivatives counterparty established in the UK. General risk-mitigation obligations for non-cleared trades including those relating to timely confirmation, portfolio reconciliation, portfolio compression and dispute resolution apply to all UK counterparties (art 11(1) EMIR and arts 12-15 of RTS 149 of 2013), as do transaction record-keeping requirements (art 9(2)). Requirements for exchange of collateral apply (subject to phase-in) to financial counterparties, and to non-financial counterparties that exceed the "clearing threshold". However, if such a firm's counterparty is a non-financial counterparty that is below the clearing threshold (or would be if it were established in the UK), the EMIR variation margin and initial margin requirements do not apply to the transaction: EMIR Margin RTS, Article 24. Therefore, this exemption is extended to cross-border transactions on an equivalent basis to the way in which it applies to domestic firms. Similarly, there are exemptions from the EMIR variation margin and initial margin requirements in respect of certain intragroup transactions, which may apply whether the counterparty is established in the UK or outside the UK[499]. Note for completeness that the EMIR collateral requirements also apply where two entities established in a third country enter into an OTC derivative contract through their branches in the UK, and would qualify as financial counterparties if established in the UK (art 2(2) of RTS 285 of 2014).

The UK's money laundering regulations (MLR 2017) apply to a range of specified firms (including credit and financial institutions) undertaking business in the UK. The cases where a firm is to be regarded as carrying on business in the United Kingdom include where its registered office is in the United Kingdom and the day-to-day management of the carrying on of its business is the responsibility of that office - it is irrelevant where the person with whom the business is carried on is situated: regulation 9 of the MLR 2017.

The PRA and FCA generally defer to the home state regulator in respect of prudential supervision of an authorised UK branch of a non-UK firm, conditional on the firm continuing to meet the Threshold Conditions.

Your responses to all the remaining questions should relate to those institutions that will be registering as security-based swap entities in the U.S. and should be tailored to the securities-based swap business in areas where substituted compliance has been requested.

3. Explain the FCA's day-to-day supervision over firm's security-based swap ("SBS") activities. Include the following information:

    a. The approximate number of supervisors assigned to a firm.

[499] See paragraphs 8 and 9 of Article 11 of EMIR, and reg 82(4) of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019. The latter exemption, for intragroup contracts with non-UK counterparties, is subject to a default 3 year timeframe, intended to allow time for the consideration of equivalence decisions.

Supervision currently comprises approximately a third of the FCA's staffing resource. The FCA determines the level of supervisory resource it will dedicate to a firm, based on its impact to consumers and markets. The highest impact firms have dedicated resource and a firm-specific programme of supervision ("fixed supervision"). All other firms are supervised as part of the relevant portfolio, these are the 'flexible firms'. At the time of submission of this application, all firms seeking to avail themselves of substituted compliance have fixed FCA supervision and undergo the same supervisory process. The same is applicable for PRA firms. Each portfolio comprises firms with similar business models. The firms which this request relates to are all supervised on a fixed basis, and therefore have a specific supervisory team allocated to their supervision.

b. The ways in which, and how often, the supervisors interact with the firm (including meetings, phone calls, etc.).

The level of interaction supervisors have with firms depends on several factors such as the impact of the firm. whether a firm(s) is of interest in a particular portfolio, and/or the number of issues/events that have come to its attention from various sources.

The firms which have been identified as having the highest impact will be allocated dedicated supervisors, whose role is to provide concentrated supervisory focus on that firm. Often these "fixed" supervisors only supervise one firm. Interaction with these firms is the highest and occurs regularly. Interaction can take many forms, including: calls, emails, meetings, on-site visits and video calls.

At the time of submission of this application, all firms seeking to avail themselves of substituted compliance are dual-regulated firms. Ie they are supervised by the FCA and PRA.

c. What dedicated reports the supervisor reviews on a monthly and quarterly basis and how the review works.

Supervision undertakes its core activities based on the decision-making framework set out in the FCA Mission and the FCA's Risk Management Framework:

i. **Portfolio Assessment Model (PAM)** Supervision proactively supervises approximately 59,000 firms using this model
ii. **Firm Assessment Model (FAM)** – the highest impact firms (approximately 90) are supervised using the FAM, Supervision allocates dedicated resource to the supervision of these firms.

At the time submission of this application, all firms seeking to avail themselves of substituted compliance are subject to the FAM model of supervision.

Interested parties should also have regard to the FCA's Approach to Supervision document which sets out the purpose of, and its approach to, supervision.

Regulatory Returns – the FCA requires firms it regulates to submit a range of information, including financial, transaction and remuneration information, and conduct returns, on a regular basis. The FCA uses this information to assess whether firms are operating within agreed thresholds. Where information suggests a firm is not meeting agreed thresholds, alerts automatically create cases in the FCA's case management system, which are allocated to individuals within Supervision to be actioned. In addition, information from regulatory returns feed into wider portfolio analysis to help supervisors spot emerging themes and trends and firms of interest in a portfolio.

On the FCA website, the types of returns it expects firms to submit are set out. These reports will vary, depending on the type of firm. Depending on the type of report received, they are reviewed monthly or quarterly by supervisors for any discrepancies, such as – breaches of specific requirements (e.g. capital liquidity), trends (e.g. in complaints volumes), and a general insight into the firms' business and potential warning flags.

In addition, for firms supervised under the FAM, specific Management Information (MI) - such as board packs and minutes - relating to the firm specific risks will be set during its Firm Evaluation meeting.

As well as assessing the information in these reports, supervisors will also perform reactive and, depending on the levels of resource dedicated to the firm, proactive supervision to the firm on a continuous basis and in line with the models of assessment referred to above.

d. The supervisory tools the FCA uses to correct red flags/violations of law (for example speaking with or written communication to management, requiring a deep dive, requiring a skilled person review, referring to enforcement).

Where a risk of harm, an issue or event requires remediation or further diagnostic work, the FCA will consider what action is appropriate and proportionate in the circumstances – sometimes, this may involve conversations with the senior management of a firm. If the issue is judged to only be a minor transgression which is easily resolved then Supervision may discuss with the firm how the matter is best resolved and then follow up with the firm to ensure adequate steps have been taken. Alternatively, should it be appropriate, Supervision can deploy a range of regulatory tools to achieve the desired outcome. These tools could be, for example:

- to deploy FCA resource (e.g. multi-firm work by supervisors),
- to require firm to commit to certain action (e.g. varying a firm's permission until a prescribed action is taken);
- to require action from a third party (e.g. a Skilled Person review); or
- to refer the matter to Enforcement for investigation.

The FCA's 'Remedies Toolkit' helps supervisors understand the range of tools available to them and determine the most appropriate and proportionate tool to use. Some of the more commonly used tools are as follows:

Thematic Reviews – the FCA has used Thematic Reviews to maintain consistency across the market and inform policy work. Where the organisation identifies potential harm across several firms, it will undertake wider diagnostic work. This includes Thematic Reviews that are announced in the FCA's annual Business Plan and are reported on publicly. Thematic Reviews tend to be large pieces of work and are also referred to as 'cross-firm' work. Thematic work is carried out by people with specialised expertise. This enables the FCA to tackle complex issues by using its resources appropriately and efficiently. The FCA's thematic teams deliver the outcomes through extensive desk-based review of information and on-site visits. The teams also work closely with industry practitioners and trading professional bodies, where appropriate.

Multi-firm work - Multi-firm work seeks to mitigate a risk in a targeted set of firms, which are likely to sit in a portfolio. It may also be used to address certain knowledge gaps. It does not seek to mitigate or understand the extent of a specified risk across a whole market. However, findings may be leveraged to drive improved behaviours using communication tools. Multi-firm work will generally be less intensive than thematic projects. Multi-firm work is a key element of the FCA's proactive supervision for portfolio firms. Both thematic and multi-firm work can also result in a policy response if that is an appropriate tool.

Market study - Thematic and multi-firm tools differ from a market study, which is a non-supervisory tool aimed at investigating market dynamics and diagnosing competition-related market failure. the FCA may undertake market studies where the FCA considers the drivers of harm go further than firm conduct and arise due to how the market functions. For example, the FCA may want to look at how consumers interact with the market, or how they are entering and exiting it. A market study may result in a change or amendment to policy.

Deep Dives - A deep dive is a focused, forward-looking assessment of a firm to investigate an area of potential risk. It aims to enable earlier intervention, therefore reducing the risk of detriment to consumers or market integrity occurring. Deep dives are designed to be focused assessments, looking at specific risks, rather than wide ranging assessments that, for example, look at controls within a firm in general.

Skilled person review – Under s166 of FSMA, the FCA has the power to require any regulated firm to provide it with a report, by an independent skilled person, on aspects of their activities if it has concerns or wants further analysis. The tool might be used, for example, where the firm has a history of similar issues, when the FCA lacks confidence in the firm's ability to deliver an objective report or if the organisation doesn't have the necessary expertise and/or available resources to undertake a review ourselves. The FCA carefully considers the use of s166 reports as they carry financial implications for the regulated firm.

e. How the dedicated supervisor works with FCA specialists (including AML specialists) to supervise the firm.

All parts of the FCA work closely together to ensure it has sufficient, appropriately skilled staff to meet demands. Supervisors have access to Subject Matter Experts (SMEs) for processes and skills, mentor support, peer reviews of work and quality assurance checks. Wherever possible the FCA will offer supervisors the opportunity to broaden their skill set and experience by working in different roles.

In addition to the above, a 'Supervision Capabilities Framework' was launched in 2019. It has been designed to improve capabilities and knowledge gaps, which will lead to improved judgements and decision making. A self-assessment questionnaire has helped staff identify capability gaps. These gaps will be addressed through: newly designed 'Faculties', local management and training and use of a new Supervision Knowledge Portal.

Specialist Supervision and Conduct Specialist teams provide specialist expertise across all sectors to front-line supervisors. Specialist areas include financial crime, technology and cyber resilience, financial promotions, unfair contract terms, client assets and resolution, financial resilience and culture and governance.

Also, as part of the wider FCA Data Strategy, Supervision has four Divisional Data Science Units (DSUs), which are aligned to key business priorities: Life Insurance and Financial Advice, Consumer Credit, the Joint Supervision and Enforcement Team (JSET) and Payments. The recruitment of data scientists enables the FCA to focus on developing predictive analytics and statistical approaches that enable the FCA to work smarter. The DSUs identify, implement and embed advanced analytics in response to locally identified business needs and priorities, and lead cultural change around data and analytics in Supervision.

The FCA is responsible for anti-money laundering supervision of the financial sector in the UK. All supervisory staff have a role in taking this forward, backed by a dedicated team of AML inspectors and other financial crime specialists. All firms can also be subject to "event-driven" work where supervisory attention is prompted by, for example, disclosures from whistle-blowers or intelligence from regulators abroad. The FCA has also performed thematic reviews, looking at the anti-money laundering risks in certain sectors or business lines. For example, a 2019 thematic review of money laundering risks in the capital markets visited nineteen market participants including investment banks, recognised investment exchanges, trade bodies, a custodian bank, clearing and settlement houses, inter-dealer brokers and trading firms. The findings were published on the FCA website.

However, the core of specialist AML supervision is its data- and intelligence-led approach to supervising in a risk-based and proportionate way, focusing resource on identifying and responding to the firms that pose the greatest money laundering risk. A key element of this is the modular approach, currently being introduced, that will focus on reviewing firms' financial crime systems and controls in relation to specific risks

over multiple firms at the same time. This will enable the FCA to review the largest, most systemically-important firms more frequently and will enable comparison of the mitigation of the risk across the sample. Also, firms revealed as outliers by statistical analysis of periodic data returns are subjected to bespoke, flexible, targeted and in-depth inspections.

f. How the FCA uses onsite inspections as part of the supervisory process.

The FCA is granted information gathering powers under Part XI of FSMA, which gives it the authority to require information from the firms it regulates. The FCA has powers to require authorised firms to provide information, to carry out investigations and to conduct onsite inspections, including by appointing investigators and requiring a firm to appoint skilled persons to report to the FCA.

Under the Financial Services and Markets Act, as amended by the 2012 Act, the FCA has the power to obtain a view from a third party (a 'skilled person') about aspects of a regulated firm's activities if the FCA is concerned or want further analysis.

The organisation can commission two types of skilled person review:

- s166 reports by skilled persons
- s166A appointment of skilled person to collect and update information.

There are two possible approaches to appointing the skilled person. For each review, the FCA decides what approach is the most appropriate:

- The regulated firm puts forward its preferred choice of skilled person for the FCA's approval. Once approved, the firm contracts with the skilled person.
- The FCA contracts directly with a skilled person. If the organisation contracts directly and appoint the skilled person, there will be an appropriate level of dialogue with the regulated firm during the appointment process and the review itself. The FCA will conduct a tender process, where appropriate, to identify the most suitable skilled person, assessing technical capabilities, resources available, conflicts of interest and commercial aspects. FCA rules enable it to require the regulated firm to pay the costs of such skilled person reviews as a fee.

More information about the s166 process can be found in SUP 5 of the FCA Handbook.

The FCA publishes information quarterly about how often it commissions a skilled person review – the latest report can be accessed here. Information about skilled person reviews commissioned over each financial year are also published in FCA Annual Reports.

The FCA will also use firm visits to reactively respond to issues and events. A firm visit usually involves a supervision team conducting in depth interviews and reviews at a

firm's premises. These visits can either be announced or unannounced if the issue is particularly serious and needing urgent attention.

4. Describe the FCA's annual strategy meeting, the firm evaluation (including how the FAM evaluation is used), and the firm work plan and explain how they are connected. Include in your response the fact that the final product is a letter sent to the firm summarizing the work plan for the year and that the firm typically responds to the letter.

   Each 'fixed' firm has a Firm Evaluation at the end of the regulatory cycle. Typically, regulatory cycles are no more than a maximum of every two years. The Firm Evaluation meeting is the start and end-point of the supervisory cycle for all fixed portfolio firms. It is an opportunity for the FCA's Senior Management and the supervisory team to come together to discuss and agree an overall view of the firm and the risk of harm it poses using the FAM to direct the conversation. On the panel sits senior FCA staff, including an independent manager, who is not involved in the day to day supervision of the firm. To reduce/mitigate these risks, a supervisory strategy for the cycle ahead will also be determined. As the question identifies, a letter is then sent to the firm which summarises the team's assessment of the firm including a work plan (setting out the areas of concern and how the FCA will address these areas), the Proactive Engagement schedule and any areas that will be the focus of a deep dive. The letter will also include a work programme and the firm typically responds to this.

5. Describe the process the FCA uses for deep dives, including how the specialists assigned to the deep dive interact with the supervisor for the firm. Include that the deep dive findings are communicated to the firm by letter, what corrective action is taken by the firm, and that the findings of deep dives are used in the FAM analysis.

   As mentioned previously, a deep dive is a focused, forward-looking assessment of a firm to investigate an area of potential risk. Whether it is appropriate to undertaken this exercise is often given internal consideration at an internal Firm Evaluation session, which includes a review of the supervisory team's application of the FAM. If an area of uncertainty or weakness is identified, it may be appropriate to conduct a deep dive in that area. If needed, specialists will work directly with the supervisory team, including in some cases by attending any onsite information gathering process. Deep dives are generally led by supervisory teams and will call upon specialists as appropriate.

   The results of that deep dive will usually be communicated to the firm in writing. If areas for improvement are identified then these are identified to the firm. Follow up discussions with the firm on the assessment are common – next steps are then agreed. The findings, together with the status of any corrective steps, which the firm has since taken, form part of the overall assessment of the firm at the next internal evaluation session.

   A case study has been included below, which sets out how a deep dive works in practice.

   One firm had highly aggressive growth plans in several divisions covering various sectors. During meetings, senior management could not clearly articulate how these plans would be executed safely. This raised questions around the adequacy of the governance of the group's

strategy implementation and business planning, and the potential for creating poor consumer outcomes.

To test the firm's governance arrangements, we did a deep dive assessment to explore how it set strategy, business plans and targets.

We also examined the strategy and business plans for one product in one division of the firm. This way we could understand how the plans were being developed and see the conduct risk governance arrangements working in practice. This part of the deep dive not only included a review of the senior management level but also several levels below, including operations, frontline sales staff and records of customer interactions.

At the end of the deep dive, we had a good understanding of the firm's culture and the effectiveness of conduct risk governance. We could then make judgements and conclusions which the group accepted. As a result, the group lowered its business targets and strengthened its governance.

6. Describe thematic reviews and multi-firm work and how the FCA uses each as part of its supervisory process.

   The FCA has used thematic reviews to assess a current or emerging risk regarding an issue or product across several firms in a sector or market. It can focus on finding out what is happening and suggesting ways of tackling the problem. The organisation also refers to this as 'issues and products' work or 'cross-firm' work. If the FCA plans to change its approach to the way it supervises firms, it may issue a consultation paper, seeking views from the public and market participants, before reviewing and deciding whether to proceed.

   The thematic process can be applied to a variety of situations, firms and groups of consumers. The process enables the FCA to investigate key risks. By focusing on specific risks, the organisation can do detailed work on particular concerns.

   Thematic work is done by people with specialised expertise. This enables the FCA to tackle complex issues by using its resources appropriately and efficiently, aiming for better results. Thematic teams deliver the outcomes through extensive desk-based review of information and site visits. The teams also work closely with industry practitioners and trading professional bodies, where appropriate.

   A list of FCA thematic reviews can be accessed here.

7. Explain the process the FCA uses to come up with the Sector Views and Business Plan each year. Specifically mention the role thematic reviews play in developing the priorities.

   Previously, the basis for the Business Plan is formed from the Sector Views, Sector Strategies, Corporate Priorities and Divisional Business Plans. Each were part of a cycle of events that determined where the FCA focused resources to deliver public value.

   The FCA have previously used Sector Views to bring together areas of the FCA to develop a common understanding of the sectors it regulates, how markets are operating, what is driving

change and include an assessment of the harms and drivers of harm. In prior years, the Sector Views involved cross-FCA collaboration, input and analysis, bringing together multiple perspectives and views of the markets and data sources, information and intelligence.

Sector Strategies were developed to respond to the issues identified in the Sector Views and across sectors. These included a full range of interventions of both existing and proposed interventions, to improve consumer and market outcomes, from the full range of remedies available to the FCA, focusing on where the FCA can demonstrably add value.

In previous years, the FCA Executive Committee and Board have met each year to determine the Corporate Priorities for next financial year, bringing together the outputs from the Sector Views and the Sector Strategies, alongside several other factors including operational priorities, public commitments and enterprise-wide risks. For the 2020/21 planning round, FCA Corporate Priorities focused on a 3-year horizon. The Corporate Priorities form the basis for Divisional Business Plans, where local divisions consider how divisional activities support the Corporate Priorities.

The Business Plan communicates to the outside world what the FCA are prioritising for the next financial year.

Thematic Reviews assess a current or emerging harm relating to an issue or product across several firms within a sector or market. They focus on mitigating risks and harms being investigated, including getting messages to the market at the conclusion of a thematic project. Thematic reviews are one of many tools the FCA can use to intervene to reduce or prevent harm to consumers and markets. Where relevant, they featured as part of the Sector Strategies outlining existing and proposed interventions. The findings from thematic reviews may also inform a sector view (for instance in providing a more informed view of a risk of harm). Plans for thematic work are also published in the Business Plan.

8. Explain the PRA's day-to-day supervision over firm's SBS activities. Include the following information:

    a. The approximate number of PRA supervisors assigned to a firm.

    A core part of the risk assessment is the potential impact assessment. The PRA divide all firms it supervises into the five 'categories' with category 1 (CAT1) being the most significant firms whose size, interconnectedness, complexity, and business type give them the capacity to cause very significant disruption to the UK financial system (and through that to economic activity more widely) by failing, or by carrying on their business in an unsafe manner. At the time of submitting this application, all firms who are intending to avail themselves of substituted compliance are CAT1 firms. CAT1 firms are assigned several supervisors each with home supervised groups assigned a larger number of supervisors than host supervised groups.

    The supervision teams are supported by risk specialists and other technical staff, independent advisers and relevant participants from the rest of the Bank. There is a range of specialists for supervision to draw on: market risk, credit risk, operational risk, operational resilience, governance, Internal Audit, legal and policy etc. Supervision

and specialist areas work very closely together in executing the agreed supervisory programme.

For more details see "The Prudential Regulation Authority's approach to banking supervision October 2018" p.32-35.

b. Describe the ways in which, and how often, the PRA supervisors interact with the firm (including weekly and quarterly meetings, phone calls, etc.).

To support its detailed information gathering and analysis, the PRA requires firms to participate in meetings (calls) with supervisors at a senior and working level. The intensity of such engagement is highest for CAT1 firms, typically with daily contact. Some discussions are strategic in nature, while other interactions focus on information gathering, governance, various elements of risk assessment and analytical work.

At a senior level, boards as a whole, the non-executive directors as well as executive management (CEO, CFO, CRO, COO, Treasurer and others), should expect to have regular dialogue with the PRA.

The PRA is not formulaic about the supervisory activity it performs, since the focus on key risks means that this activity depends inevitably on a firm's particular circumstances. An engagement strategy for a firm involves regular meetings and/or calls of varied frequency based around business performance, governance and management, external context impact, capital, liquidity, risk controls (including market, credit, counterparty and operational risks) and resolvability.

Firms' external auditors play a role in supporting prudential supervision, given their ability to identify and flag to the PRA current and potential risks in a firm. The PRA maintains arrangements to provide a firm's external auditors with relevant data and information, for example, if the PRA considers a firm's valuation of less liquid assets or its approach to provisioning to be significantly out of line with its peers, as well as exchanging opinions with those auditors on the implications of such information.

The PRA expects to work with firms' external auditors in an open, co-operative and constructive manner, and will maintain rules setting out the duties external auditors will have to co-operate with the PRA in connection with its supervision of PRA-authorised firms. The PRA expects auditors to disclose to it emerging concerns within firms, where this would assist it in carrying out its functions. The PRA has published a Code of Practice detailing the arrangements it will maintain with firms' external auditors in order to promote a mutually beneficial and constructive relationship. Legislation requires the PRA to meet at least once a year with the auditors of each deposit-taker and investment firm that is, in the opinion of the PRA, important to the stability of the UK financial system.

c. Describe the reports the PRA supervisors review as part of the day-to-day supervision (including the daily P&L, the quarterly credit risk report, etc.).

The PRA examines the threats to the viability of a firm's business model, and the ways a firm could create adverse effects on other participants in the system by the way it carries on its business. The analysis includes an assessment of where and how a firm makes money, the risks it takes in doing so, and how it funds itself. For CAT1 firms the analysis includes a review of the drivers of profitability (on a high frequency basis), risk appetite, performance targets and underlying assumptions, and a firm's own forecasts and their plausibility.

Peer analysis forms a core part of the PRA's supervisory programme for CAT 1 firms, providing a diagnostic tool to highlight where individual institutions may be outliers relative to their sector and so in need of further analysis. Such analysis also supports an understanding of common sectoral risks that have the potential to affect the stability of the system.

The PRA expects to receive a copy of the 'management information' packs containing an adequate and timely information on key risks and variances from the firm's agreed risk appetite, including articulation of the amount of risk the firm is willing to take across different business lines to achieve their strategic objectives.

This risk appetite should be consistent with PRA objectives, and the firm should pay appropriate attention to identifying, measuring and controlling risks, including those arising in unlikely but very severe scenarios.

The PRA gathers and analyses information regularly. For example, through regulatory returns (please see BoE website for further details). It also gathers and analyses relevant information in the public domain, for example firms' annual reports and disclosures.

The PRA also, as appropriate, conducts detailed onsite testing or inspections of a particular area. In-depth, focused reviews, for example of a firm's approach to valuations or risk weightings, involve discussions with staff, reviews of internal documents and some testing. In addition, it may review a firm's approach to stress testing, or undertake bespoke stress testing of its own. The PRA involves its risk specialists and other technical staff in onsite work, stress testing, and other assessments. Where it feels it can rely on their effectiveness, the PRA may use firms' risk, compliance, and internal audit functions to identify and measure risks.

d. The supervisory tools the PRA uses to correct red flags/violations of law (including requesting written responses, raising capital charges, internal audit reviews, external audit reviews, etc.).

The PRA's approach to supervision is set out in the Approach Document. The PRA forms its supervisory judgements by drawing on a broad set of quantitative and qualitative information and data. Supervisors require firms to submit sufficient data, of appropriate quality, to inform their judgements about key risks. The PRA undertakes information gathering and assessment, firms report data to it and the firms are required to participate in meetings with it at senior and working level. Given the importance of

this, the PRA periodically validates firms' data, either through onsite inspection by its supervisory and specialist risk staff, or by third-parties.

There are annual, internal stocktake meetings for all firms to discuss the major risks they face, the supervisory strategy, and proposed remedial actions, including guidance about the adequacy of a firm's capital and liquidity. The PRA writes to the firm setting out its concerns – see section 9.

The Proactive Intervention Framework (PIF) is designed to ensure that the PRA puts into effect its aim to identify and respond to emerging risks at an early stage. There are five PIF stages, each denoting a different proximity to failure, and every firm sits in a particular stage at each point in time. When a firm moves to a higher PIF stage (i.e. as the PRA determines the firm's viability has deteriorated), supervisors will review their supervisory actions accordingly. Senior management of firms will be expected to ensure that they take appropriate remedial action to reduce the likelihood of failure and the authorities will ensure appropriate preparedness for resolution.

To assist with its risk assessment, the PRA may at times use its statutory powers, in particular, its information gathering power and its powers to commission reports by Skilled Persons on specific areas of interest (under sections 165, 165A, 166 and 166A of FSMA. Such reviews can be undertaken where the PRA seeks additional information, an assessment, further analysis, expert advice and recommendations, or assurance around a particular subject. The PRA may enter into a contract with a Skilled Person directly, following a transparent and consistent approach to selecting and appointing them, or it may allow the regulated firm to contract with the Skilled Person. The PRA is always the end-user of a Skilled Person report, regardless of the appointment approach taken. Investigators can also be appointed in circumstances not only where the PRA suspects there has been an offence committed or regulatory breach but also where it thinks there is good reason for doing so, to (i) review the nature, conduct or state of business of that firm; a particular aspect of that business; or the ownership or control of that firm.

The PRA also makes use of the FCA's findings on firms' key conduct risks, including money laundering, and any material prudential risks in relation to FCA-authorised subsidiaries of dual-regulated groups where they are materially relevant to its objectives.

The PRA is not a conduct regulator, the organisation's onsite inspections are therefore not designed to uncover all instances of malpractice. Rather, the PRA aims to assess the adequacy of a firm's control framework in preventing operational risk (including serious fraud) that could threaten its safety and soundness, drawing to the attention of the relevant authorities any suspicion or information that may be of material interest to them.

The PRA has a variety of formal powers available to it under FSMA, which it can use in the course of its supervision, if deemed necessary to reduce risks. For all firms the PRA determines a minimum regulatory capital level and buffers on top of this, as

applicable, expressed in terms of the Basel and on-shored CRR risk-weighted framework.

The approach that the PRA uses for the setting of Pillar 2 capital for all PRA-regulated firms is described in the statement of policy December 2020 "The PRA's methodologies for setting Pillar 2 capital". Pillar 2 buffers are set to address risks not captured in Pillar 1 and are used to address specific concerns.

As mentioned above, firms' external auditors can and should play a role in supporting prudential supervision, given their ability to identify and flag to the PRA current and potential risks in a firm. As required by FSMA, the PRA imposes duties on auditors of PRA firms in relation to cooperation with the regulator and maintains arrangements to provide a firm's external auditors with relevant data and information and expect auditors to disclose to the organisation emerging concerns within firms.

Auditors are required to provide written reports to the PRA concerning the audit of major banks and building societies. Firms are required to have an Internal Audit function and an Audit Committee. The PRA may commission internal audit or external skilled persons to provide assurance or analysis of specific issues.

While the PRA looks to firms to co-operate with it in resolving supervisory issues, the PRA will not hesitate to use formal powers where it considers them to be an appropriate means of achieving the organisation's desired supervisory outcomes. This means that, in certain cases, the PRA will choose to deploy formal powers at an early stage and not merely as a last resort. This can include addressing serious failings in the culture of firms.

The PRA's powers can be used to intervene directly in a firm's business. For example, the PRA may vary a firm's permission granted under Part 4A of FSMA to prevent or curtail a firm undertaking certain regulated activities, which may require a change to a firm's business model or future strategy. The PRA's power to impose a requirement is also wide ranging, meaning that the PRA can take steps to require the Firm to take or refrain from taking specified action. This could include, for example, appointing a monitor to review certain aspects of the firm's reporting. The PRA may also, as noted above, use its powers to require information from firms.

Senior Managers and Certification Regime (SM&CR)

The PRA has the power under FSMA to specify Senior Management Functions (SMFs) that relate to the management of aspects of a firm's business that could involve serious risk to the firm or the UK. Individuals responsible for these SMFs must seek PRA approval before taking up their position. Approval is granted only if the PRA, as prudential regulator, and the FCA, as conduct regulator, are both satisfied that an individual is fit and proper. Each organisation may then request to move or vary this approval. In addition, firms themselves must carry out appropriate checks and satisfy themselves that individuals seeking to perform an SMF are fit and proper for their intended roles before applying to the PRA and the FCA for approval on their behalf.

The PRA may prohibit any individuals, not just those who currently hold an SMF, from performing any functions in relation to all regulated activity. The PRA may only do this where it appears to it that an individual is not a fit and proper person to perform such functions. The PRA will consider using this power in appropriate cases.

The PRA has disciplinary powers over individuals approved to perform an SMF by it, or an equivalent function by the FCA (e.g. as a member of the governing body), and the organisation is empowered to use these where an individual fails to comply with Conduct Rules, or has been knowingly involved in a contravention by their firm of a requirement imposed by the PRA. The powers enable the organisation to, impose financial penalties or censure an individual publicly, among other sanctions. The PRA also has the power of prohibition referred to above. These powers are discussed in more detail in response to Questions 15 to 19 below.

9. Explain the annual risk process conducted by the PRA, including describing the annual letter that is produced and presented to the Board of the firm. Include the fact that that senior managers at the firm are assigned to each risk area for follow up.

There are annual, internal PRA stocktake meetings called a "periodic summary meeting" (PSM) as well as a midpoint review to discuss the major risks each firm faces, the supervisory strategy, and proposed remedial actions, including guidance about the adequacy of a firm's capital and liquidity. There is senior level involvement in these assessments, such that major judgements are made by the PRA's most senior and experienced individuals.

These formal assessments are also subject to rigorous review by those not directly involved in day-to-day supervision, including risk specialists, independent advisers and relevant participants from the rest of the Bank, such as the Resolution department.

The PRA sends an annual letter to each firm clearly outlining the key risks that are of greatest concern, and on which it requires action. The test of materiality for points raised with firms is high, with a focus on root cause analysis rather than symptoms and with supervisory interventions clearly and directly linked to reducing risks to PRA objectives.

The PRA expects to verify that action is taken on these key risks, and communicate to the firm's board when and how it intends to do this. The PRA actively engage with a firm's Audit Committee and its non-executive directors on progress made in addressing the most significant risks identified. The PRA also requires each firm to identify as senior manager who will take forward each action in the PSM letter.

Any less significant issues that have arisen, and of which the PRA feels the firm should be aware, are conveyed to the firm but with the onus on the firm itself to address these. The organisation expects confirmation by the most appropriate senior individual within the firm, for example the Chief Executive Officer, Finance Director, or Chair of the Audit Committee, that issues have been closed.

For an independent review of the PRA firm assessment process please see this section of the IMF website.

The Senior Managers and Certification Regime (SM&CR) establishes the link between seniority and accountability strengthening individual accountability and reinforces collective responsibility. Accordingly, the PRA expects firms to allocate clear responsibilities to individuals performing Senior Management Functions (SMFs) who are required by FSMA to document them in a clear, concise and effective manner – by means of a written statement of responsibilities.

For further details on Senior Managers Regime please refer to the PRA website

10. Explain the PRA's inspection process, including risk-based inspections, thematic reviews, and core reviews for capital and liquidity. Explain that firms are sent a letter of findings and/or recommendations at the end of the inspection and how supervisors follow up on these findings and/or recommendations.

As mentioned above, the PRA conducts detailed onsite testing or inspections of a particular area, for example to validate the data seen or to assess aspects of a firm's risk management or governance. In-depth, focused reviews involve discussions with staff, reviews of internal documents and some testing. In addition, if appropriate, the organisation may review a firm's approach to stress testing, or undertake bespoke stress testing of its own. The PRA involves its risk specialists and other technical staff in onsite work, stress testing, and other assessments. Where it feels it can rely on their effectiveness, the organisation may use firms' risk, compliance, and internal audit functions to identify and measure risks. The PRA sets its assessments in writing and set actions and track their remediation, and ask firms to attest to their completion.

The PRA forms judgements about how much capital individual firms need to maintain, given the risks to which they are exposed and uncertainties about the values of assets and liabilities. Judgments should inform firms' own assessments, but the PRA expects firms, in the first instance, to take responsibility for determining the appropriate level of capital they should maintain. Firms should engage honestly and prudently in the process of assessing capital adequacy, and not rely on regulatory minima if these are inappropriate for the risks to which they are exposed.

As with capital, the PRA reaches its own view on the appropriate size and composition of the liquidity buffer that firms should hold in normal, unstressed times. The liquidity coverage ratio (LCR) is the starting point for its assessment. But the PRA expects firms in the first instance to take responsibility for determining the appropriate size of that buffer, taking into consideration the risks they face. The PRA expects firms to develop a framework for managing liquidity risk that captures the full range of liquidity risks to which they are exposed and to stress test these risks. The PRA will consider whether the stresses applied by the firm are prudent.

For further details on the capital assessment including framework for determining regulatory capital, the leverage ratio framework see p. 70-90 of "The Prudential Regulation Authority's approach to banking supervision October 2018"

Details on the Supervisory Review and Evaluation Process can be found in Supervisory Statement | SS31/15, update July 2020 p.5

11. Explain how the PRA sets priorities each year and how the priorities relate to the PRA's business plan. Explain that the priorities are sent to firms in a letter and that there is a work plan for each issue set out in the letter. If thematic reviews are planned based on these priorities, please state that.

    The PRA sets out its strategy and priorities and how it will achieve them in its business plan. It also sets out its priorities by sector to supervised firms through both public and firm-individual letters where the priorities highlighted in context of the firm's size and presence. These have recently highlighted actions such as the impact of Covid-19 on the firms it regulates and on the UK economy, and LIBOR transition.

    For further information on LIBOR transition please refer to the BoE website

    Climate financial risks are also set out here:

    Similarly, the PRA can write to the peer group firms setting out the PRA's expectations on the basis of thematic reviews and relevant findings, such as thematic feedback from the 2019/2020 round of written auditor reporting, where the letter was sent to the CFOs of selected deposit-takers as well as published on the BoE website.

12. Explain how the FCA and the PRA work together to supervise firms, including the fact that the supervisors are in frequent contact.

    The high-level framework, which outlines the relationship between the PRA and FCA, is set out in the Memorandum of Understanding. There are legal gateways in UK legislation permitting information exchange of confidential information between the regulators. There is usually a regular information exchange between the corresponding supervisory teams at FCA and PRA. It is common for members of each team to be present on the same calls with the firms they supervise and input from the corresponding team is sought ahead of and during the evaluation process for each firm.

    The FCA and PRA have established domestic 'supervisory colleges' for individual firms and groups with a view to identifying which risks and mitigating actions might have a material effect on the ability of either regulator to advance its objectives. The frequency of the meetings of such colleges will reflect the importance of the firm to each regulator's objectives.

    Either regulator may call for an ad-hoc meeting. There is a working-level engagement, the degree of which will also reflect the importance of the firm to one or both of the regulator's objectives. A significant increase in the assessed risk profile of an individual firm will prompt discussions between the regulators.

    The PRA will routinely share for all firms that are dual-regulated the conclusions from the assessment of recovery plans; the position of a firm within the PRA's Proactive Intervention Framework and details relevant to assessments of capital and liquidity requirements, including its agreement to the use of internal models, and individual capital and liquidity requirements.

    As set out in the MOU, there is routine sharing of information on all firms that are dual-regulated or part of a dual-regulated group relating to: findings on key conduct risks that are materially

relevant as to whether a firm is prudently managed or otherwise to its safety and soundness; and any material prudential risks concerning the subsidiaries of groups which contain one or more dual-regulated firms.

13. Explain the FCA and the PRA's authority to obtain records from firms through the supervisory process in the areas of law where substituted compliance has been requested.

The FCA is granted information gathering powers under Part XI of FSMA, which gives the FCA the authority to require information from the firms it regulates. The FCA has powers to require authorised firms to provide information, to carry out investigations and to conduct onsite inspections, including by appointing investigators and requiring a firm to appoint skilled persons to report to the FCA. These powers may be exercised by the FCA directly or through investigators appointed by it. The FCA or an investigator appointed by it may apply to the relevant judicial authority for entry of premises under a warrant where a person has failed to comply with an information requirement or where there are documents or information on the premises that have been required and certain other conditions are met. The FCA may also apply to the court for an injunction to restrain contraventions by a regulated entity of requirements.

The FCA is given these powers under:

- section 165 (Regulators' power to require information) of FSMA;
- section 166 (Powers to appoint a skilled person);
- sections 171 to 173 of FSMA, where investigators are appointed, which provides for broader powers to compel attendance at an interview and to provide information; and
- section 176 (Entry of premises under warrant).
- Section 380 (Injunctions).

More specifically, the FCA may use powers under section 165 of FSMA to require information or documents that are reasonably required relating to the exercise of functions under FSMA from authorised firms.

The FCA may appoint investigators to investigate an authorised person, if there is a good reason to do so under section 167 of FSMA or if there are circumstances suggesting a breach of the UK EMIR or other relevant regulations (section 168(4)(k) FSMA). Once Investigators have been appointed by the FCA, the FCA may require the firm under investigation and (depending on the nature of the breach) persons able to give information relevant to the investigation to attend an interview and answer questions and to provide documents and information, including documents in the possession of a third party (sections 170 – 175 of FSMA). The FCA has the power to carry out unannounced visits or visits on short notice to the firm in question or certain other relevant persons. The FCA also has powers to enter premises under a search warrant and to seize evidence, if specific conditions apply under section 176 of FSMA.

Authorised firms and approved persons have an obligation under the FCA's rules to be open and co-operative with the FCA (because of Principle 11 for Businesses in PRIN, Statement of Principle 4 for Approved Persons in APER and Rule 3 of COCON 2.1). The FCA will make it clear to the person concerned whether it requires them to produce information or answer questions under FSMA or whether the provision of answers is purely voluntary. The fact that the person concerned may be a regulated person does not affect the person's obligations under a notice of requirement.

The power to compel production of documents and information includes communications data from firms if the communications data is related to FCA regulated activities. To obtain communications data from an internet service provider or other third-party not related to regulated activities, the FCA would be subject to the provisions on obtaining communications data under the Investigatory Powers Act 2016.

The FCA may use the powers to compel information, documents and require a person to attend and answer questions in an interview upon the request of an overseas regulatory authority under section 169 of FSMA. In cases where the FCA is requested by an overseas regulator to obtain documents or conduct interviews on their behalf, the FCA will not necessarily adopt its standard approach. the FCA will consider with the overseas authority the most appropriate method for obtaining evidence for use in their country.

If a person does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The FCA may also choose to bring proceedings for breach of Principle 11, Statement of Principle 4 or COCON 2.1.3R as this is a serious form of non-cooperation. Providing a false or misleading response to a statutory requirement can be a criminal offence punishable by a fine and/or imprisonment.

The PRA also has a wide variety of different formal powers under Part XI FSMA to gather and obtain information. These include information requirements under s.165 (where the regulator may require an authorised firm to provide specified information or documents in connection with the exercise of its functions) and under s165A (where the PRA can request information from a wider set of persons connected to firms if required by the PRA or the Bank of England for financial stability reasons) through to investigations under s.167 (general investigations) or s.168 (where there are circumstances suggesting a breach of PRA Rules). The power of investigators appointed include the ability to request documents or information of a specified description (from firms, individuals, connected parties and in some circumstances third parties) and to compel individuals to attend interview and answer questions. The powers of investigators are addressed in more detail in response to Question 17.

14. If any part of the above supervisory process by the FCA and/or the PRA is not applicable to a branch or subsidiary located in the U.K., please explain any differences. (For example, the fact that the PRA may not require capital charges for a branch.)

FCA

Firms that wish to be authorised in the UK need to meet the minimum standards set out in the relevant legislation – for example, firms seeking Part 4A permissions under FSMA need to meet the relevant threshold conditions. When deciding whether to authorise an international firm, the

FCA applies the same standards with the same statutory objectives in mind, as for UK firms. Once authorised, firms need to meet the minimum standards at all times. The FCA consulted in CP 20/20 on how it ensures that international firms meet these minimum standards for authorisation. The FCA's wider approach to supervising the firms it regulates is set out in FCA document - 'Our Approach to Supervision'."

PRA

The Threshold Conditions are the minimum requirements that firms must meet at all times in order to be permitted to carry on the regulated activities in which they engage. They are designed to ensure that firms conduct their business in a prudent manner and are managed by persons with adequate skills, experience and probity, which are necessary to promote safety and soundness, and they are crucial to the operation of the regulatory regime. PRA-authorised firms need to meet both the PRA-specific and FCA-specific Threshold Conditions in Schedule 6 of FSMA at all times.

The PRA expect firms not merely to meet and continue to meet the letter of these requirements, but also to consider the overriding principle of safety and soundness. The PRA assess firms against the Threshold Conditions on a continual basis.

The PRA's general approach to branch authorisation and supervision, which applies to all branches, is anchored by an assessment of a range of factors including the efficacy of the arrangements for resolution, the degree of equivalence of the home state supervisor's regulatory regime and the supervisability of an international bank that operates in the UK through a branch. These factors are relevant both at the time of authorisation and on an ongoing basis during supervision. This is set out in SS 1/18. Note that the PRA is currently developing a supervisory statement that will set out its approach to both branches and subsidiaries for foreign headquartered banks, but this will not change the core approach set out in SS 1/18 for branches. See PRA consultation paper .

Regardless of the corporate structure and location of the parent, the PRA expects all UK branches, like UK subsidiaries, to act responsibly in a manner that is consistent with safety and soundness. The PRA expects the branches to appoint a senior individual with authority to act as a primary contact with it in relation to their affairs. This individual should also act as a channel for communication with the parent. (As noted above the SM&CR obligations for a branch are different from those for a UK-incorporated entity).

A branch does not have its own capital or board of directors. It follows that its operations are necessarily dependent on those of the legal entity as a whole. Hence it is important that the PRA has visibility of risks in the wider group and the level of cooperation and information it is receiving from the firm and relevant overseas regulatory authorities and the systemic importance of the firm.

The PRA needs to understand what risks the UK branch is exposed to, how they depend on the business and risk profile of the rest of the group, and how they are managed. See here for further details.

The PRA expects branches to have robust resolution plans in place and will ensure, in consultation with the Bank, that the resolution arrangement for the firm and its UK operations

are appropriate. For all firms with substantial operations outside the UK, the PRA retains an appropriate degree of co-operation with the relevant overseas authorities in order to ensure that its statutory objectives are achieved.

The PRA is also an active participant in wider international co-ordination of supervision for major firms. Where invited to do so as host supervisor, it participates in supervisory colleges for all firms with significant operations in the UK, whether a legal entity or a branch.

15. Please explain the FCA and PRA's enforcement processes. *Please include the following information for FCA and PRA enforcement:*

FCA

The FCA's use of its enforcement powers is well publicised in the Approach to Enforcement Document. In that document, the FCA sets out to the public how it identifies harm and how those harms are remedied. The FCA Handbook also sets out to the public how the FCA uses its enforcement powers. The FCA is committed to using 'its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies'. (EG 2.1.2)

a. How enforcement processes and responds to tips, complaints and referrals.

FCA

The FCA responds to information and intelligence from a range of sources. This includes complaints data, whistle-blowers, firms, consumer contact centre, regulatory returns, other regulators, MP engagement and other firms. This enables the FCA to identify problems rapidly and, where necessary, intervene swiftly to address harm or the risk of harm to consumers or markets.

There are staff in Supervision who are responsible for coordinating whistleblowing reporting. Reporting comes from a central whistleblowing team who sit in the Enforcement and Market Oversight Division. The Supervision whistleblowing team operates the whistleblowing case management process across Supervision and provides a link between the supervisors and the central Whistleblowing Team in the Enforcement and Market Oversight Division.

Whistleblowers can choose to remain anonymous, and many people do. If whistleblowers share with the FCA any personal or confidential information the FCA will keep this safe. The FCA will not confirm the existence of a whistleblower when making enquiries, or to anyone outside of the FCA, unless it is legally obliged to do so. The FCA stores the details of whistleblowers securely and limits access to this information.

Confidential information provided by a whistleblower is also subject to the restrictions on disclosure provided by s 348 of the Financial Services and Markets Act 2000, contravention of which amounts to a criminal offence. Section 352 FSMA makes a criminal offence to breach s348. In addition, personal data is subject to the UK General Data Protection Regulation and the Data Protection Act 2018

The FCA also operates a 'Supervision Hub', which acts as a first point of contact for consumers and businesses to engage with the FCA – the Hub's number is published on the FCA website. Individuals have the option to communicate with the FCA via a range of channels including, web chat, emails and over the phone. The Hub is a useful resource for receiving intelligence and receives over 200,000 enquiries a year.

Concerns are usually passed from Supervision to Enforcement via an internal FCA Committee which meets regularly and determines whether Enforcement will "accept" a referral and open an investigation. There are also teams within the Enforcement division which operate as a gateway between Supervision and Enforcement and help guide Supervision's next steps when making a referral to Enforcement.

PRA

The PRA has a dedicated intelligence and whistleblowing team ("IAWB") that sits within the PRA's Enforcement & Litigation Division ("ELD"). This team is responsible for assessing the relevant intelligence received, developing it and then distributing it appropriately both within the organisation (both to supervision and enforcement) and to other relevant authorities. IAWB and the FCA's whistleblowing function also liaise closely, meeting regularly and with the PRA having access to the FCA's whistleblowing systems so that they can ensure oversight of any information pertaining to jointly regulated entities. More information can be found here. The PRA's latest Annual Reports on Whistleblowing can also be found here.

The Financial Services Act 2012 requires the Bank of England, the FCA and the PRA, to have arrangements for the investigation of complaints against them. These arrangements are known as the complaints scheme. More details on the complaints scheme can be found here.

Referrals can originate through a variety of channels, engagement with supervision (such as during a PSM process or in reaction to a specific event), through the whistleblowing channel or through information received externally (for example via press reports, other regulators (predominantly the FCA), etc.). ELD will then appoint an individual(s) to consider the referral and will apply its published investigation referral criteria which can be found here.

The outcome of a referral involves one of three options: (i) to open an investigation (which must be a joint decision between the Head of Enforcement and the relevant Head of Supervision); (ii) request further information (which can be directly from the firm using powers listed above); or (iii) not to open an investigation. Any of the preceding decisions though do not limit or inhibit any other relevant supervisory actions that may need to be taken.

b. The role, if any, enforcement plays in detecting misconduct.

FCA

The FCA exercises regulatory and criminal enforcement powers given to it by the Financial Services and Markets Act 2000 ("FSMA") and by other legislation. It also pursues civil interventions, such as freezing orders, injunctions and restitution orders. Market integrity

and consumer confidence is stronger when misconduct is identified and dealt with quickly and fairly through legal processes. Improved detection increases public confidence in the regulatory process.

Generally, the FCA's Enforcement teams do not play a direct role in detecting misconduct - most possible misconduct is initially detected outside Enforcement by specialist teams. However once Enforcement are looking at a firm or individual, then different or additional misconduct may well be uncovered. So, there are certain instances where Enforcement may detect misconduct.

PRA

As set out above in response to Questions 8(d) and 13, investigators can be appointed where there are circumstances suggesting that there has been a breach of PRA Rules but also to investigate the nature, conduct or state of the business of a firm. If misconduct (separate from that which formed the basis of the appointment of investigators) is uncovered the PRA may apply its referral criteria set out above.

As also set out above, ELD has embedded within it the IAWB team and liaises closely with the FCA and other regulators for intelligence on the firms the PRA supervises.

c. How each regulator determines whether a matter warrants a regulatory/civil or criminal enforcement action.

FCA

The FCA, throughout the course of an investigation will use the information it has acquired to determine what the most appropriate course of action is to take. The FCA investigates and assesses the outcome of an investigation and determines what action (if any) is required. This decision isn't based solely on the harm identified, but on the risk of harm too.

The FCA does not pre-judge the outcome of an investigation. If it investigates a suspected breach that might be the subject of criminal or civil proceedings, it will not decide straight away whether it is investigating to determine a criminal or civil breach. For example, in money-laundering and market abuse cases, an investigation might lead to either regulatory or criminal proceedings. The FCA approach is to make sure it fully understands what may have happened and make a decision based on the best admissible evidence available.

PRA

The PRA has limited criminal enforcement powers. These are mainly where there has been a failure to comply with or adhere to a formal requirement (such as document destruction of information relevant to an information requirement.) The PRA does have a standalone power to pursue criminal offence of causing a financial institution to fail under the Financial Services (Banking Reform) Act 2013 but there is no directly comparable civil equivalent.

d. A description of the sanctioning processes and enforcement's role in the processes.

FCA

The FCA's approach to tackling serious misconduct is to not pre-judge the outcome of an investigation, but instead focus on gaining an understanding of the facts. The FCA will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except in specific circumstances described in the Enforcement Guide (please see below). In addition, there is a restriction imposed by Section 348 of FSMA on disclosure of confidential information received by the FCA in discharging its functions except in limited circumstances. The overriding principle in the FCA's approach to enforcement is a commitment to achieve fair and just outcomes in response to misconduct. Wrongdoers must be held to account and FCA rules and requirements must be obeyed.

The FCA Handbook contains the complete record of FCA Legal Instruments. It sets out FCA rules and guidance for firms and individuals under FSMA. The Handbook includes specific sections on the FCA's enforcement function. Most notably, the Decision Procedure and Penalties Manual (DEPP) contains sections on the FCA's policy and procedures regarding its enforcement and penal powers, statutory notices and the FCA's decision-making process. The FCA also uses the Enforcement Guide (EG). It contains general guidance on the FCA's approach to the exercise of its enforcement powers under FSMA and other statutory provisions. It includes an overview of enforcement policy and process and an explanation of the FCA's policy about specific enforcement powers such as its powers to impose penalties on firms, sponsors and primary information providers, to make prohibition orders and to prosecute criminal offences.

The FCA resolves many enforcement cases by settlement. Settlement offers potential advantages as it can result, for example, in consumers obtaining compensation earlier than would otherwise be the case, saving of FCA and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. The FCA therefore considers it is in the public interest for matters to settle, if possible.

Final Notices are part of the publication scheme under the Freedom of Information Act 2000 (FoIA) (more information can be found here). Additionally, to maximise exposure and transparency, the FCA will often publish a press release accompanying an enforcement outcome, including in criminal cases. See the latest FCA press releases.

Sanctions and remedies – The FCA can impose formal disciplinary sanctions such as financial penalties, suspensions, restrictions, conditions, limitations, prohibitions, and public censures. It may also obtain injunctive relief and redress. DEPP and the Enforcement Guide provide detailed information on the available sanctions and remedies.

When processing personal data, the FCA is subject to the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA) 2018. It processes personal data under various provisions, including Article 6(1)(e) of the GDPR (it is necessary for the performance of a task carried out in the public interest) and Section 8(c) of the DPA 2018. The Law Enforcement Directive ("LED") as implemented in Part 3 DPA 2018 applies where the organisation processes personal data for the purposes of the prevention,

investigation, detection or prosecution of criminal offences or the execution of criminal penalties". The FCA has policies and procedures in place as required by the legislation. The data protection law applies to authorised firms regulated by the FCA. Where the FCA or the Information Commissioner's Office (ICO) identify breaches of the relevant data protection legislation firms can expect appropriate action to be taken.

PRA

Once an investigation has established a breach, the investigation team will consider which, if any of the disciplinary sanctions should be applied according to the criteria set out under the Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA. If a financial penalty is considered the most appropriate sanction, it will be calculated according to a five-step process set out below, which is the same for firms and individuals:

1. Disgorgement – depriving the firm/individual of the economic benefit of their misconduct.
2. Seriousness – determine a starting point for the financial penalty by taking a relevant metric (often a firm's turnover or its turnover for a certain aspect of its business and an individual's remuneration for one year) and applying a percentage depending on the seriousness of the misconduct.
3. Adjustment for aggravating/mitigating factors.
4. Adjustment for deterrence.
5. Reductions for settlement discount and/or serious financial hardship.

Once a sanction, if any, has been determined it will be considered if it is an appropriate case for settlement. The investigation team will then put its recommended disciplinary sanction to a panel of Settlement Decision Makers who will consider: (i) the findings of the investigation including the proposed sanction; and (ii) whether to open settlement discussions.

The Settlement Decision Makers will be convened according to the PRA's *Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases.*

In the event no settlement is reached, or this is considered a matter where settlement is not appropriate, the matter will be referred to the PRA's Enforcement Decision Making Committee ("EDMC"). The EDMC is a Bank of England Committee responsible for decisions relating to contested (not settled) enforcement matters in relation to prudential regulation (as well as financial market infrastructure and resolution). The EDMC acts for and with the full authority of the PRA board and reports to the board in matters related to the PRA within its remit. It is, however, operationally independent from the PRA and its members are external appointments. .

e. Note any major enforcement process differences for various types of offenses including certain criminal offenses.

FCA

There are three main procedural routes for enforcement action: (a) the Upper Tribunal (Tax and Chancery Chamber) ("the Upper Tribunal") (b) the UK civil courts and (c) the UK criminal courts. The statutory provisions being utilised by the FCA in bringing an action will determine which procedural route is taken.

The Upper Tribunal is distinct from the UK courts in that it is a specialist tribunal that hears certain appeals, including appeals against certain regulatory enforcement decisions of the FCA. The FCA's decision will be made by the Regulatory Decisions Committee and will be set out in a prescribed form of notice. The subject of the notice can refer it on to the Upper Tribunal for a review of the FCA's decision. The nature of an Upper Tribunal hearing is similar to that of the English civil courts.

In terms of criminal action in the English courts, the FCA must make a charge decision in accordance with the Director of Public Prosecutions' Code for Crown Prosecutors. The Code only permits criminal proceedings to be instigated if a two-stage test is met. There must be sufficient admissible evidence for a realistic prospect of conviction, and a prosecution must be in the public interest. Where a prosecution is sanctioned, an Information will be presented to the Court of First Instance (Magistrates' Court) for a summons to be issued, or the police will be asked to formally charge the subject(s). Most FCA criminal cases would be sent from the Magistrates' Court to the Crown Court for trial before a jury, the Crown Court having greater sentencing powers and being the venue for more serious criminality. In Scotland, only the Crown Office may bring prosecutions.

PRA

The PRA's enforcement process is described in its Regulatory Investigations Guide, which can be found here. As set out above, the PRA's criminal sanctions remit is limited.

f. For cases that do not settle, please describe the hearing and appeals process and the regulator's role in them. Please include in the description: the fora in which cases are considered; the standard of proof that must be met to establish a violation in such cases; who determines whether the standard has been met, and the sanctioning process. In addition, please address the role of sanctioning panels at the regulator, such as the RDC at the FCA.

FCA

In respect of regulatory cases, if a regulatory enforcement case is not resolved by agreement, the case is taken by the enforcement investigation team to the Regulatory Decisions Committee (RDC). The RDC is part of the FCA, but is separate from its executive management structure. Apart from the Chair, none of the members of the RDC are employed by the FCA. None of the members of the RDC will have been involved in the investigation. Firms and individuals who wish to challenge decisions taken by the FCA against them may refer their case to the Tax and Chancery Chamber of the Upper Tribunal (Upper Tribunal).

The RDC will decide whether to issue a Warning Notice to the subject of the investigation. If it does so, the subject then has the opportunity to make written and oral representations to

the RDC. At that stage, the RDC may issue a Decision Notice to the subject. Following the issuance of a Decision Notice, the subject is able to refer the matter on for determination by the Upper Tribunal. If no such reference to the Upper Tribunal is made within the prescribed time period, the FCA issues a Final Notice which brings the action to a conclusion. If a reference to the Upper Tribunal is made, then the Upper Tribunal will issue a judgment determining the action following a substantive hearing - if the Upper Tribunal upholds the FCA's decision then the FCA will proceed to issue a Final Notice to the subject.

At all stages of a regulatory action, the burden of proof is on the FCA and the standard of proof is the balance of probabilities.

PRA

The EDMC will consider the PRA investigation team's recommendation and then determine what, if any, action to take. The EDMC will then, if appropriate, issue a Warning Notice, inviting representations on the matter from the subject of the investigation. The EDMC will then consider the representations and the investigations team's views and. if appropriate, issue a Decision Notice.

The subject can then refer the matter to the Upper Tribunal (Tax and Chancery Chamber) of the High Court. Here the Tribunal will hear the matter afresh and determine what sanction, if any, should be applied.

The standard of proof at all stages is the civil standard – namely is the breach made out on the balance of probabilities.

g. Any areas for which substituted compliance has been requested where processes addressed in response to the items above are not applicable.

16. Please describe the nature and legal source of the enforceable tools and remedies the FCA and PRA have to deter misconduct, including administrative fines, remediation, license revocation, or suspension of individuals associated with firms or institutions that will be registering as securities-based swap entities. For each regulator, please provide recent data indicating how frequently such sanctions are imposed and, if possible, indicate the number of investigations that have been conducted or sanctions imposed.

FCA

The FCA aims to make sure the sanction is sufficient to deter the firm or individual from re-offending and deter others from offending. Where the FCA takes disciplinary action against a firm or an individual, it will consider all its sanctioning powers, including public censure, financial penalty, prohibition, suspension or restriction orders, as they may apply. The FCA will also apply its penalties policy (DEPP).

When the FCA assesses the nature of the sanction, it considers all relevant circumstances. This includes what steps the firm or individual has taken to address the harm and to

cooperate with it, including, where relevant, in cooperating with any variation of permission or with the imposition of a requirement under Part 4A of FSMA. If firms fully account for any harm caused, including putting it right where there are reasonable grounds to do so, the FCA will consider this when applying sanctions. In extraordinary cases, it may determine whether a sanction is required at all.

The FCA has powers under Part XXV of FSMA to obtain a court order for restitution to those harmed by misconduct and to make rules for requiring firms to provide redress to those harmed by misconduct.

Over the last 12 months the FCA has taken 160 enforcement actions against firms and individuals as set out in the table below:

Type of sanction/action	**Firms**	**Individuals**	**Total**
Cancellation of Permissions	126		**126**
Financial Penalty	9	1	**10**
Prohibition		14	**14**
Public Censure	3		**3**
Suspension/restriction			**0**
Redress/restitution	2		**2**
Conviction			**0**
Confiscation Order		3	**3**
Civil Action	2		**2**
Total	**142**	**18**	**160**

During the same period, the FCA opened 159 new investigations and closed 202. At the time of submission, the FCA has 598 ongoing investigations and cases into firms and individuals.

The average length of an FCA investigation is 23.9 months – as set out in the FCA annual report

PRA

The applicable Enforcement Powers in respect of firms are those set out in Part XIV FSMA and include:

- Public Censure;
- Financial Penalty; and
- Suspension of permission to carry on regulated activities.

The PRA also has other relevant applicable powers that have been addressed above, including the suspension/variation or removal of permissions and the power of prohibition for individuals.

In respect of individuals, in addition to the power of prohibition for holders of Senior Management Functions referred to in question 8(d) above, the PRA also has the power under s.66 FSMA, to

- impose a penalty on that person of such amount as it considers appropriate;
- suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;
- impose, for such period as it considers appropriate, any conditions in relation to any such approval which it considers appropriate;
- limit the period for which any such approval is to have effect;
- publish a statement of his misconduct.

The full details of each disciplinary action can be found here. A summary of enforcement action to date is set out at Annex II.

Whilst the PRA do not keep formal data on average length of an investigation, experience suggests most investigations tend to take around 12-24 months.

17. Please describe the nature and source of FCA and PRA enforcement's investigative powers at its disposal and any limitations on those powers. In particular, please confirm FCA and PRA enforcement's ability to (i) require documents and interviews of relevant firms, institutions and their related individuals; and (ii) obtain records from third parties including telephone and records from internet service providers.

As noted above in relation to the FCA and the PRA's authority to obtain records from firms, the powers under section 165 of FSMA may be used by either regulator to require information or documents that are reasonably required relating to the exercise of functions under FSMA from authorised firms.

Investigators appointed by either regulator under s.167 and s.168 FSMA have those powers listed under s.171 FSMA. This includes the power to require the production of documents and/or information and to compel individuals to interview. These powers apply to the subject of the investigation and/or connected parties.

In addition, those investigators appointed under s.168 FSMA (namely an investigation into a suspected breach) may also require a person who is neither the subject of the investigation nor a person connected with the person under investigation to attend interview and answer questions and/or otherwise provide such information as the investigator may require for the purposes of the investigation.

The FCA has the power to obtain communications data (telephone and internet records) in criminal investigations.

FCA

The FCA may use experts to provide opinions in criminal cases, for example, firms that provide an expert assessment of what is Publicly Available Information, and markets experts who provide in evidence an assessment of what is Price Sensitive Information.

a. Using an example of violation of a regulatory offense in an area of which substituted compliance is sought, please describe FCA and PRA enforcement's investigation and sanction process from the initial identification of misconduct through final resolution.

FCA

This is set out above and an overview can be found in the FCA's Approach to Enforcement

PRA

This is set out above and an overview can be found in the *Regulatory Investigations Guide*.

b. Using an example of a criminal offense over which the FCA has jurisdiction and in area of which substituted compliance is sought, please describe FCA enforcement's investigation process and its role in the sanction process from the initial identification of the offense through final resolution.

An enforcement investigation at the FCA would be undertaken by an appropriate department of the Enforcement and Market Oversight Division (EMO). EMO's investigating departments are split into Unauthorised Business, Retail and Wholesale.

Most investigations of relevance here would be conducted by a team in the Wholesale departments.

The provisional steps in the process involve a triage and assessment of information received to identify what infringements are believed may have occurred (whether regulatory/administrative, civil or criminal in nature) before allocation to an appropriate team.

In allocation, depending on the nature of the case, investigators (from that team) would be formally appointed under specific provisions contained within sections 167 and 168 of FSMA. The case would be allocated to a Tier, and on allocation the team's progress would be subject to review by a board of senior staff associated with that Tier.

Where an allocated case it considered potentially either (or both) regulatory or criminal, it may be opened as a 'dual track' case. Where a criminal investigation (or dual track investigation) is pursued, prosecutors from EMO's Criminal Prosecution Team will be assigned to consider the case in tandem with the investigating team. When pursued as a 'dual track' case, regulatory and criminal elements can be investigated at the same time. For criminal matters, these are pursued within the FCA.

The FCA is both a prosecutor and the regulatory enforcer, so it is possible that it may pursue both a criminal and a civil/regulatory outcome in the same case, though not usually against the same subject. For example, a dual track case may pursue criminal liability against individuals, whilst enforcing a regulatory sanction against the firm.

If it is clear that the outcome to be pursued is a prosecution, permission is sought from the Chair of the FCA's Regulatory Decisions Committee to institute criminal proceedings. Once such permission has been obtained, the criminal process will ordinarily be initiated by way of an 'Information' at the Magistrates' Court. This results in the individual suspects (or suspect firm) being summonsed to answer the charges. Invariably,

criminal cases do not remain in the summary jurisdiction of the Magistrates' Court, but are sent for trial by jury in the Crown Court.

Where the enforcement outcome to be pursued is regulatory (or administrative), the process is as follows:

By way of relevant example, we refer to the FCA's enforcement action against Merrill Lynch for failing to report transactions.

In that case, MLR were fined £34 million for failing to report 68.5 million exchange traded derivative transactions. The failure infringed the firm's reporting obligations under Article 9(1) of EMIR and FCA Principle 3 (Management and Control). In that case, MLI had agreed to settle the case before the RDC process, and a settlement discount was applied of 30%.

More broadly, market manipulation and the anti-money laundering are areas where there may be dual regulatory and criminal enforcement jurisdiction regarding enforcement action.

Market manipulation may be proceeded with by way of regulatory sanction, or where the particulars of the offence are met, and the public interest requires it, as criminal offences. The market manipulation criminal offences in the UK are sections S.89 (Misleading Statements) and 90 (Misleading Impressions) of the Financial Services Act 2012.

Similarly, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017provide both for regulatory sanction as well as a series of prosecutable criminal offences that may be pursued against the firm in question or individuals.

A key guide to whether criminal sanction is appropriate is the Director of Public Prosecutions' Code for Crown Prosecutors. The Code sets out a two-part test, and cases being considered for prosecution by a public authority must have sufficient founding evidence for conviction to be a realistic prospect, and it must be in the public interest to prosecute – as opposed to the pursuit of an alternative sanction.

c. Please explain the circumstances under which the FCA and PRA would refer a criminal offense to criminal prosecutors in an area of which substituted compliance is sought.

FCA

This question is largely answered above. However, it should be noted that the FCA act as a dual enforcer, and pursue either regulatory/civil sanction, or criminal prosecution as appropriate in cases within its remit.

PRA

The FCA and PRA have established links with law enforcement agencies and, in addition to its obligations under the Money Laundering Regulations, the PRA will, where appropriate

share such information as is required in order to bring suspected criminality to the attention of the appropriate authority.

18. In the areas for which substituted compliance is requested, please explain whether enforcement investigations, sanction proceedings, and/or other final resolutions are made public and, if so, what information is included in such public notice.

FCA

The FCA is required under FSMA to publish various notices in respect of enforcement action.

Final Notices are part of the publication scheme under the Freedom of Information Act 2000 (FoIA) (more information can be found here). There are also obligations under s.391 FSMA. Additionally, to maximise exposure and transparency, the FCA will often publish a press release accompanying an enforcement outcome, including in criminal cases. See the latest FCA press releases.

With criminal cases, there are statutory restrictions that usually apply to public releases. However, the FCA will usually publish a short statement regarding the decision to institute proceedings either at the point of doing so, or after the subject(s) first appearance. Updates will be provided publicly as to the progress of the proceedings, and a fuller press release will be issued outlining the criminality alleged, the offences subject to convictions and relevant related facts should convictions follow. Similarly, details of confiscation proceedings will usually be published.

PRA

Under s.391 FSMA, the presumption is on publication. It states that, in respect of Final Notices (so once any right of appeal has been exhausted), the PRA must publish such information about the matter to which it relates as it considers appropriate. This though is subject to the regulator's discretion where publication would be unfair, prejudicial to the safety or soundness of a PRA firms or for the protection of policyholders.

Ordinarily the PRA will publish the facts and matters that have been established through the investigation, the breaches and failings and details of the appropriate disciplinary sanction. An example can be found here.

19. In the areas for which substituted compliance is requested, please identify and explain the application of statutes of limitations to regulatory/civil and criminal offenses under the FCA's and PRA's jurisdiction.

PRA & FCA

There is no limitation period for indictable criminal offences.

In respect of powers relating to firms there is no limitation period for disciplinary measures or the use of other regulatory powers.

In respect of individuals, the limitation period for financial penalties or censure is three years for misconduct that occurred prior to 25 July 2014 and six years for misconduct after this date. The period starts from the date that the FCA or PRA had information from which the misconduct could reasonably be inferred. There is no limitation period for the use of the prohibition power. For clarity, ‘limitation period’ is defined by Section 63A under FSMA as beginning with the first day on which the appropriate regulator knew that the person concerned had performed a controlled function without approval.

Annex I – supervisory and enforcement responsibilities for each area substituted compliance is being sought

Area of regulation	FCA	PRA
Risk control		
Capital	x	x
Margin	x	x
Risk management systems	x	x
Trade acknowledgement and verification	x	
Portfolio reconciliation, portfolio compression and trading relationship documentation	x	
Recordkeeping and reporting		
Record creation	x	x
Record maintenance	x	x
Reports	x	x
Notifications	x	x
Quarterly security counts	x	x
Supervision and chief compliance officer		
Diligent supervision	x	x
Chief compliance officers	x	x

Conflicts of interest	x	x
Antitrust considerations	x	
Counterparty protection		
Fair and balanced communication	x	
Disclosure of material risks and characteristic and material incentives or conflicts of interest	x	
Disclosure of daily marks	x	
Know your counterparty	x	
Suitability	x	
Disclosure of clearing rights	x	

Annex II – PRA Enforcement action to date

Date	Firm/ Individual	Type of Regulated Activity	Enforcement Action	Amount of financial penalty imposed	Comments
20-Nov-14	RBS, NatWest Bank and Ulster Bank (RBS Group)	Banks	financial penalty	**£14,000,000**	
11-Aug-15	Co-operative Bank	Bank	public censure	0	The PRA would have imposed a financial penalty of around £121.86 million. However, this figure would have been reduced to around £85,3 million through the application of a 30% discount if the PRA were to have reached settlement with Co-op Bank at Stage 1
27-Nov-15	R. Raphael & Sons Plc	Bank	financial penalty	**£1,278,165**	
15-Jan-16	Mr Alderson and Mr Tootel	2 individuals	(x2) fines and (x2) prohibitions from holding a significant influence function and financial penalty	**£262,692**	**(£173,802 + £88,890)**
01-Feb-16	Milburn and Mr McIntosh	Insurer and Individual	financial penalty and prohibition from holding any controlled functions to individual and financial penalty to the firm	**£2,888,239**	£25,173 (individual)+ £2,863,066 (firm). Firm in administration. As a result, the PRA will not impose the financial penalty against Millburn if to do so would leave policyholder claims unpaid.
08-Apr-16	QIB (UK) PLC	Bank (subsidiary of an overseas bank)	financial penalty	**£1,384,950**	
09-Feb-17	The Bank of Tokyo-Mitsubishi UFJ Limited/	Banks	financial penalty	**£26,775,000**	**£17,850,000 on (BTMU) + £8,925,000 on MUS(EMEA)**

Date	Firm/ Individual	Type of Regulated Activity	Enforcement Action	Amount of financial penalty imposed	Comments
	MUFG Securities EMEA plc				
07-Nov-18	MUS EMEA	Individual	financial penalty	**£22,700**	
		Individual	financial penalty	**£14,945**	
30-May-19	Raphaels Bank	Bank	financial penalty	**£1,890,000**	
26-Nov-19	Citi	Banks	financial penalty	**£43,890,000**	
06-Feb-20	4 Individuals connected to Enterprise Business Credit Union	Individual	Public censures and prohibitions	**N/A**	
21-Oct-20	Goldman Sachs International	Bank	Financial penalty	**£48,308,400**	
				£141,036,321	

Substituted Compliance Assessment Questionnaire

The Securities and Exchange Commission ("Commission" or "SEC") has adopted rules under the Securities Exchange Act of 1934 ("Exchange Act") that provide that the Commission may, conditionally or unconditionally, determine that a registered non-U.S. security-based swap dealer[500] or major security-based swap participant[501] (together, "Regulated Entities"), or class thereof, may satisfy certain Exchange Act provisions and SEC rules governing these non-U.S. Regulated Entities by complying with specified requirements under a foreign financial regulatory system. This regime is known as "substituted compliance."[502] A foreign financial regulatory authority or authorities may request substituted compliance by filing an application with the Commission.[503]

Before the Commission may make a substituted compliance determination, it must determine that the foreign requirements are comparable to the corresponding U.S. requirements, taking into account factors such as the scope and objectives of the foreign requirements, the effectiveness of

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500 Subject to certain exceptions, a security-based swap dealer is defined as any person who (a) holds itself out as a dealer in security-based swaps; (b) makes a market in security-based swaps; (c) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (d) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. See Exchange Act Rule 3a71-1 for the complete definition.

501 The definition of major security-based swap participant is set forth in Exchange Act Rule 3a67-1, and generally includes any person that is not a security-based swap dealer and (a) maintains a substantial position in security-based swaps for any of the major security-based swap categories (subject to certain exclusions); (b) whose outstanding security-based swaps create substantial counterparty exposure; or (c) is a financial entity that (i) is highly leveraged relative to the amount of capital it holds and not subject to the capital requirements of a federal banking agency and (ii) maintains a substantial position in outstanding security-based swaps in any major category.

502 See Exchange Act Rule 3a71-6, which sets forth the requirements for substituted compliance, and is available at: https://www.govinfo.gov/content/pkg/CFR-2017-title17-vol4/pdf/CFR-2017-title17-vol4-sec240-3a71-6.pdf.

503 See Exchange Act Rule 3a71-6(c). The application must be submitted pursuant to Exchange Act Rule 0-13, which requires an application in the form of a letter, along with the supporting documents necessary to make the application complete. Commission staff anticipates that the responses to this questionnaire will serve as a key part of an application for substituted compliance. For more information on the procedures to submit an application, see Exchange Act Rule 0-13, which is available at: https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4-sec240-0-13.pdf.

the foreign supervisory compliance program, and the exercise of foreign enforcement authority.[504] Substituted compliance also will be predicated, in part, on there being an arrangement between the Commission and the relevant foreign authority(ies) addressing supervisory and enforcement cooperation and other matters related to substituted compliance.

This questionnaire is intended to assist you in preparing an application for substituted compliance as well as assist the Commission in conducting its comparability assessment of your jurisdiction's regulatory regime. Part I of this questionnaire provides a list of the U.S. requirements for which substituted compliance potentially is available. The questions in Part II of the questionnaire contain questions relating to the supervision and enforcement portions of the comparability assessment. Section III of Part II has specific questions relating to supervisory and enforcement cooperation, including the requirements of Exchange Act Rule 3a-71-6(c)(3). In completing these questionnaires, please provide detailed responses and hyperlinks to the relevant laws, regulations, policies, or other sources, as applicable.

Please note, Commission staff intends to keep the information provided in response to this questionnaire non-public to the extent permitted by law. However, in accordance with Exchange Act Rule 0-13, once a completed application has been submitted, the Commission will publish a notice in the Federal Register for public comment. Commission staff anticipates that the published notice will include the information contained in the filed application, which may incorporate the information provided in response to this questionnaire. As such, please note that the information provided in response to this questionnaire could become public.

Furthermore, under the Freedom of Information Act (FOIA), the information provided in response to this questionnaire may be provided to any person unless the records are protected by an exemption to FOIA. However, certain records received from foreign securities authorities may be considered exempt from disclosure by the Commission under the Exchange Act.[505]

Part I

The Commission is considering applications for substituted compliance to permit Regulated Entities that are not U.S. persons to satisfy certain U.S. requirements by complying with comparable foreign requirements. The U.S. requirements for which substituted compliance potentially is available are set forth in the table below. Please indicate in the table below the regulations for which you would like to seek substituted compliance in your jurisdiction:

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[504] For each set of U.S. requirements described in the table below, a separate set of questions is available to assist applicants in providing relevant information about the requirements of the applicable foreign financial regulatory system. These separate questions provide (i) a plain-language explanation of each U.S. requirement for which substituted compliance potentially is available and (ii) a framework to assist the applicant in identifying comparable foreign requirements. As noted above, in assessing comparability the Commission expects to consider the scope and objectives of the relevant foreign requirements.

[505] Exchange Act Section 24(d) provides that the Commission generally shall not be compelled to disclose records obtained from a foreign securities authority if: (1) the foreign authority in good faith determines and represents that public disclosure of the records would violate the laws applicable to that foreign securities authority; and (2) the Commission obtains the records pursuant to procedures authorized for use in connection with the administration or enforcement of the securities laws, or a memorandum of understanding. Please indicate in your response whether you believe there are portions of your response that could qualify for this exemption.

Area of Regulation	**Substituted Compliance?**
1. Capital requirements for nonbank firms	Y / N
2. Margin requirements for nonbank firms	Y / N
3. Recordkeeping and reporting requirements	Y / N
4. Trade acknowledgement and verification requirements	Y / N
5. Supervision and chief compliance officer requirements	Y / N
6. Counterparty protection requirements	Y / N
7. Additional requirements regarding eligible contract participant verification, special entities and political contributions	Y / N
8. Risk mitigation requirements[506]	Y / N

Part II

Section I - Supervisory Framework

1. ***Please generally describe your jurisdiction's supervisory authority and related requirements or procedures to identify deficiencies and weaknesses in its Regulated Entities' relevant market activities. To the extent relevant, please consider the following:***

    a. ***the statutory, regulatory or other provisions under law that grant the relevant supervisory authority, or that otherwise describe or limit the scope of this supervisory authority;***
    b. ***a description of how you supervise recordkeeping and retention requirements applied to Regulated Entities;***
    c. ***a description of the authority of the applicable regulator to access and inspect the records of Regulated Entities for domestic and cross-border activities, including activities in foreign offices or branches;***
    d. ***a description of the authority of the applicable regulator to conduct on-site or off-site inspections of Regulated Entities, including the ability to inspect foreign offices or branches;***
    e. ***a description of the authority of the applicable regulator to obtain information related to the customers, clients, or employees of Regulated Entities;***

[506] Substituted compliance for risk mitigation requirements has been proposed, but not yet adopted.

f. ***a description of the ability of the applicable regulator to test or verify responses or other information obtained from the Regulated Entities during the course of supervisory efforts;***

g. ***a description of how examination priorities are developed and the process for adjusting and updating such priorities, including what factors are used in developing priorities; and***

h. ***any other information that would assist in understanding the scope of the relevant supervisory authority.***

The FCA's role and responsibilities

The Financial Services and Markets Act 2000 (**FSMA**) is the framework primary legislation for the regulation of the UK financial services sector. It establishes an overarching framework for financial services legislation and regulation in the UK. It gives powers to HM Treasury to make financial services-related secondary legislation and gives the Financial Conduct Authority (**FCA**) and the Prudential Regulation Authority (**PRA**) powers to make rules and guidance for firms within the scope of the FSMA regulatory regime.

Part 1A of the Financial Services and Markets Act 2000 (FSMA), establishes the general framework for the FCA to regulate the conduct of all regulated firms, which form the UK's financial services sector under the Act. The FCA also functions as the prudential regulator for all firms apart from banks, building societies, credit unions, insurers and large investment firms. These firms are authorised by the Prudential Regulation Authority (PRA) and regulated by both the PRA (for prudential) and the FCA (for conduct) ('dual regulated' firms).

The FCA has a single strategic objective – *to ensure that relevant markets function well* – and three operational objectives:

1. **protect consumers** – to secure an appropriate degree of protection for consumers.
2. **enhance market integrity** – to protect and enhance the integrity of the UK financial system.
3. **promote competition** – to promote effective competition in consumers' interests.

The UK left the EU on 31 January 2020 with an EU-UK Withdrawal Agreement. At that point, the UK ceased to be a member of the EU, although EU law remains binding in the UK due to an implementation ('transition') period agreed between the UK and the EU, which is due to operate until 31 December 2020. In accordance with the EU-UK Withdrawal Agreement, during the transition period, EU regulations (which have direct effect in the EU) remain binding with direct effect in the UK.

As from the end of the transition period, the European Union (Withdrawal) Act 2018[507] as amended [508] (the "EUWA 2018"), incorporates all *directly applicable* [509] EU legislation (including Regulations) into UK law, and preserves existing UK *implementation* of EU law (mainly in respect of EU directives) as it has effect in EU law immediately before the end of the Transition Period (s. 3 EUWA 2018).

[507] http://www.legislation.gov.uk/ukpga/2018/16/contents
[508] by the European Union (Withdrawal Agreement) Act 2020: http://www.legislation.gov.uk/ukpga/2020/1/contents
[509] under s 2(1) of the European Communities Act 1972.

Such directly applicable regulations include key pieces of legislation governing activities of dealers established in the UK, in relation to security-based swaps:

- the European Market Infrastructure Regulation (EMIR);
- the Markets in Financial Instruments Regulation (MiFIR);
- the Market Abuse Regulation (MAR); and
- the Capital Requirements Regulation (CRR).

The UK's implementation of EU directives includes the other key legislation in this area:

- the UK's domestic implementation of the EU's recast Markets in Financial Instruments Directive (MiFID) (also known as "MiFID II")[510]; and
- the UK's implementation of the EU's Capital Requirements Directive (CRD IV)[511].

Implementation of EU directives in this area has generally been achieved through a combination of the FCA's rule-making powers and the making of statutory instruments by HM Treasury (under powers conferred by s 2(2) of the European Communities Act 1972).

To ensure that retained EU law is operable at the end of the transition period, it has been necessary to amend certain aspects of the legislation to reflect the UK's position outside of the European Union. This process of implementing and amending retained EU law is referred to as "onshoring".

Onshoring is not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation.

Examples of the kinds of amendments made to financial services legislation include changes to ensure that functions currently carried out by EU authorities are transferred to the appropriate UK authorities. As an example, the FCA will assume functions formerly conferred on the European Securities and Markets Authority (ESMA) to make technical standards concerning collateral exchange for non-cleared derivatives.

FCA rule-making powers

Authorised firms are required to follow the FCA's rules, as set out in the FCA Handbook. The FCA Handbook sets out rules, guidance and other provisions made by the FCA under the powers given to it by FSMA. The Handbook consists of several 'blocks' that in turn contain 'modules'. A module may be either a sourcebook or a manual. The FCA maintains a Reader's Guide, which was last updated in January 2019. The guide provides a general introduction to the FCA Handbook.

Under Section 137A of FSMA, the FCA has the statutory powers to make rules applying to firms for which it is the sole regulator and dual regulator. Rules made under Section 137A are referred to in FSMA as the FCA's general rules. The FCA also has specific rulemaking powers relating to matters, amongst others, including

- Client money (Section 137B FSMA)
- Product intervention (Sections 137D&E and 138M-O FSMA)

[510] The rule-making and statutory instruments transposing MiFID in the UK are set out here.
[511] The statutory instruments transposing CRD IV in the UK are set out here. Relevant rules were made by the FCA in a new Prudential Sourcebook for Investment firms (IFPRU), and by the PRA in new Parts of its PRA Rulebook.

- Benchmarks (137F FSMA)
- Disclosure of information about the availability of financial guidance (137FC FSMA)
- Remuneration (137H&I FSMA)
- Recovery and resolution plans (Sections 137J,K,L&N FSMA)
- Supplementing the threshold conditions (137O FSMA)
- Control of information rules (137P FSMA)

The FCA is required under Section 138I FSMA to consult before making rules. Usually, it must also consult with the PRA about the proposed rules. However, the FCA does have the flexibility not to follow the general rulemaking procedure if a delay would prejudice the interests of consumers. This is also the case when the FCA exercises its product intervention powers.

The FCA's approach to supervision

We published our Approach to Supervision document in 2019. The Approach to Supervision document clearly states that our approach values outcomes over outputs, and that we expect a reciprocal approach from firms.

In practice, our focus is to:

- Raise standards of firms' businesses to prevent harm from occurring;
- Identify actual or potential harm and intervene early to remedy the issues and address root causes; and
- Identify firms unable or unwilling to improve to an acceptable standard and swiftly remove them from the industry.

Collectively the FCA is responsible for the supervision of 59,000 authorised firms and 152,000 Approved Persons that have been approved at the Authorisations ('licensing') gateway.

Firms that want to carry out regulated activities in the UK are required to seek 'authorisation' from the FCA. The FCA's authority to authorise firms is derived from Part 4A of FSMA. the minimum standards for authorisation are known as the Threshold Conditions and are set out in Schedule 6 to FSMA. To keep their authorisation, firms need to meet the Threshold Conditions continually. Even when a firm does meet the Threshold Conditions, the FCA seeks to identify risks of harm in the firm's business model or culture and engage with firms to mitigate the risks. More information about how the FCA authorises firms can be found in the FCA's 'Approach to Authorisation' document.

On key business priorities (such as those set out in the FCA Business Plan), the FCA's Supervision Divisions ('Supervision') plays a key role, alongside other parts of the FCA, in helping to determine and implement the appropriate cross-FCA regulatory strategy.

Supervision is often involved in work led by other divisions, for example, working with the Policy Division to help develop new policies by providing intelligence and input during development, or evaluation post-implementation. Supervision also provides input into the production of annual 'Sector Views' – the FCA's overarching view on risks and trends in particular sub-sectors of the UK's financial services industry - which form the basis of the FCA's supervisory portfolios and fixed firm analysis which in turn are used to determine our proactive supervisory strategy.

To deploy our resource in the most meaningful way, we make decisions about the potential risk of harm and allocate resource accordingly. When a firm is authorised, the FCA makes several decisions about how and where they will be supervised. Firstly, we identify the relevant sector they operate in based on the permissions they have been granted and their business model. For supervisory purposes, we then also allocate firms to a 'primary portfolio' based on how they make most of their money. Supervision currently comprises approximately a third of the FCA's staffing resource. There are many defined portfolios in Supervision, split across the sectors regulated by the FCA. Each of the portfolios is comprised of firms with similar business models.

The Authorisations Division provides intelligence to the Supervision Divisions on firms that are authorised, and is also planning to provide information on firms that have been refused or withdrawn to inform our supervisory approach.

We determine the level of supervisory resource we will dedicate to a firm, based on its impact on consumers and markets. The highest impact firms have dedicated resource and a firm-specific programme of supervision. All other firms are supervised as part of the relevant portfolio.

Supervision undertakes these core activities based on the decision-making framework set out in the FCA Mission and the FCA's Risk Management Framework:

- **Portfolio Assessment Model (PAM)** Supervision **proactively supervises** approximately 59,000 firms using this model
- **Firm Assessment Model (FAM)** – the highest impact firms are supervised using the FAM, which allocates dedicated resource to the supervision of these firms.

The assessment models focus on business model analysis and the assessment of the drivers of culture. These are central to the FCA's pre-emptive identification of harm for all portfolios. The FCA's 'Sector Views' provide the immediate context for the portfolio assessment, along with information gathered from a range of sources including:

- regulatory returns
- contact with firms and consumers
- intelligence from whistle-blowers
- complaints and many other sources.

The assessments require supervisors to set out: the key risks of harm, the outcomes we seek, the planned actions we will take to achieve these outcomes (which could be to deploy one or more of our regulatory tools) and the success measures that will enable us to evaluate the effectiveness of the strategy.

Supervision also **reactively responds** to issues and events that can originate from several sources including:

- supervisory work,
- firm and consumer contact,

- whistle-blowers,
- engagement with counterpart foreign regulators,
- engagement with UK Members of Parliament,
- other UK regulatory organisations and
- from other parts of the FCA (e.g. Enforcement, Authorisations etc).

The FCA has committed publicly to assessing all issues and events, as we have no tolerance for misconduct. For certain issues or events, we will always act, regardless of the materiality of the individual event. For others, we apply judgment to determine whether an individual event requires action or whether it should be analysed along with other events on an aggregate basis.

Record-keeping and retention requirements

The FCA Handbook contains rules and guidance on record-keeping within Chapter 9 and 10A of our Senior Management Arrangements, Systems and Controls (SYSC) sourcebook.

Chapter 9 of SYSC sets out general record-keeping rules authorised firms must follow. It mandates that firms must arrange for orderly records to be kept of their business and internal organisation, including all services and transactions undertaken by them. Records must be sufficient to enable the FCA to monitor their compliance with the requirements under the regulatory system, and to ascertain that they have complied with all obligations with respect to clients. Further details are specified by directly applicable Articles 74 and 75 of the MiFID Organisation Regulation ('MiFID Org Reg')[512].

Chapter 10A of SYSC sets out specific rules for the taping of telephone conversations and keeping records of electronic communications that relate to dealing and other activities in financial instruments. Further details are specified by Article 76 of the MiFID Org Reg.

Investment Firms are required to keep the relevant data relating to all transactions in financial instruments which they have carried out, whether on their own account or on behalf of a client: (Article 25(1) MiFIR). Counterparties must keep a record of any derivative contract they have concluded and any modification: (Article 9(2) EMIR.)

Where these requirements derive from EU law, they will remain materially the same after EU laws ceases to apply in the UK.[513]

FCA Information-gathering powers

The FCA is granted information gathering powers under Part XI of FSMA, which gives the FCA the authority to require information from the firms it regulates. The FCA has powers to require

[512] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02017R0565-20191011

[513] See http://www.legislation.gov.uk/uksi/2018/1403/regulation/50/made in respect of the MiFID Org Reg; http://www.legislation.gov.uk/uksi/2018/1403/regulation/29/made in respect of MiFIR; and http://www.legislation.gov.uk/uksi/2019/335/regulation/19/made, and https://www.legislation.gov.uk/uksi/2019/1416/regulation/29/made, in respect of EMIR.

authorised firms to provide information, to carry out investigations and to conduct onsite inspections, including by appointing investigators and requiring a firm to appoint skilled persons to report to the FCA. These powers may be exercised by the FCA directly or through investigators appointed by it. The FCA or an investigator appointed by it may apply to the relevant judicial authority for entry of premises under a warrant where a person has failed to comply with an information requirement or where there are documents or information on the premises that have been required and certain other conditions are met. The FCA may also apply to the court for an injunction to restrain contraventions by a regulated entity of requirements.

The FCA is given these powers under:

- section 165 (Regulators' power to require information) of FSMA;
- section 166 (Powers to appoint a skilled person);
- sections 171 to 173 of FSMA, where investigators are appointed, which provides for broader powers to compel attendance at an interview and to provide information; and
- section 176 (Entry of premises under warrant).
- Section 380 (Injunctions).

More specifically, the FCA may use powers under section 165 of FSMA to require information or documents that are reasonably required relating to the exercise of functions under FSMA from authorised firms. Depending on the circumstances, such information could include telephone records and data traffic.

The FCA may appoint investigators to investigate an authorised person, if there is a good reason to do so under section 167 of FSMA or if there are circumstances suggesting a breach of the UK EMIR (section 168 FSMA). Once Investigators have been appointed by the FCA, the FCA may require the firm under investigation and (depending on the nature of the breach) persons able to give information relevant to the investigation to attend an interview and answer questions and to provide documents and information, including documents in the possession of a third party (sections 170 – 175 of FSMA). The FCA has the power to carry out unannounced visits or visits on short notice to the firm in question or certain other relevant persons. The FCA also has powers to enter premises under a search warrant and to seize evidence, if specific conditions apply under section 176 of FSMA.

Co-operation with overseas regulators

The FCA may require information in any form it requires. Section 169 of Part XI of FSMA grants the FCA the authority to provide assistance to overseas regulators. Please see Question 2 of Section II of this document (Enforcement Framework) for further detail on our investigative powers.

The FCA Handbook contains rules and guidance, which set out the authority the FCA has to access and inspect the records of firms. Chapter 2 of the Supervision manual (SUP) in the FCA Handbook contains guidance firms must follow and note in respect of the FCA's authority to gather information.

As noted in the response to Question 5 below, we have an enforceable rule requiring cooperation by a firm with regulators (Principle 11 'Relations with Regulators'). Relevantly, that Principle requires a firm to "deal with its regulators in an open and cooperative way". Our guidance at PRIN 1.1.6G of our Handbook states that Principle 11 applies to world-wide activities.[514] See also PRIN 3.3.1R (Territorial application of the Principles).[515]

Following the UK's withdrawal from the EU, the FCA is no longer a part of ESMA. During the transition period, EU law continues to apply in the UK and the FCA can be invited to participate in ESMA discussions in exceptional circumstances. Looking ahead, we expect to continue to engage constructively with ESMA on issues of mutual benefit and importance, given the size, proximity and interconnectedness of our respective markets.

2. ***Please describe the supervisory tools your jurisdiction uses in practice to identify risk and detect potential breaches of law. To the extent relevant, please consider the following:***
    a. ***any form(s) of ongoing or ad hoc monitoring and surveillance by the regulator or another organization;***

Where a risk of harm, an issue or event requires remediation or further diagnostic work, the FCA can deploy a range of **regulatory tools** to achieve the desired outcome. These tools could be:

- to deploy FCA resource (e.g. Thematic Review or multi-firm work by supervisors),
- to require firm action (e.g. using a firm's internal audit function)
- or to require action from a third party (e.g. a Skilled Person review).

The FCA's 'Remedies Toolkit' helps supervisors understand the range of tools available to them and determine the most appropriate and proportionate tool to use. Some of the more commonly used tools are as follows:

- **Thematic Reviews** - We use Thematic Reviews to maintain consistency across the market and inform policy work. Where we identify potential harm across several firms, we will undertake wider diagnostic work. This includes Thematic Reviews that are announced in the FCA's annual Business Plan and are reported on publicly. Thematic Reviews tend to be large pieces of work and are also referred to as 'cross-firm' work. Thematic work is carried out by people with specialised expertise. This enables the FCA to tackle complex issues by using its resources appropriately and efficiently. The FCA's thematic teams deliver the outcomes through extensive desk-based review of information and on-site visits. The teams also work closely with industry practitioners and trading professional bodies, where appropriate.

- **Multi-firm work** - Multi-firm work seeks to mitigate a risk in a targeted set of firms, which are likely to sit in a portfolio. It may also be used to address certain knowledge gaps. It does not seek to mitigate or understand the extent of a specified risk across a whole market. However, findings may be leveraged to drive improved behaviours using communication tools. Multi-firm work will generally be less intensive than thematic projects. Multi-firm work is a key element of the FCA's proactive supervision

[514] See: https://www.handbook.fca.org.uk/handbook/PRIN/1/1.html.
[515] See: https://www.handbook.fca.org.uk/handbook/PRIN/3/?view=chapter

for portfolio firms. Both thematic and multi-firm work can also result in a policy response if that is an appropriate tool.

- **Market study -** Thematic and multi-firm tools differ from a market study, which is a non-supervisory tool aimed at investigating market dynamics and diagnosing competition-related market failure. We may undertake market studies where we consider the drivers of harm go further than firm conduct and arise due to how the market functions. For example, we may want to look at how consumers interact with the market, or how they are entering and exiting it. A market study may result in a change or amendment to policy.

- **Deep Dives** - A deep dive is a focused, forward-looking assessment of a firm to investigate an area of potential risk. It aims to enable earlier intervention, therefore reducing the risk of detriment to consumers or market integrity occurring. Deep dives are designed to be focused assessments, looking at specific risks, rather than wide ranging assessments that, for example, look at controls within a firm in general.

- **Skilled person review** – As noted above, under s166 of FSMA, the FCA has the power to require any regulated firm to provide us with a report, by an independent skilled person, on aspects of their activities if we have concerns or want further analysis. The tool might be used, for example, where the firm has a history of similar issues, when we lack confidence in the firm's ability to deliver an objective report or if we don't have the necessary expertise and/or available resources to undertake a review ourselves. We carefully consider the use of s166 reports as they carry financial implications for the regulated firm.

b. ***any process to receive tips or complaints about the activities of a Regulated Entity;***

The FCA systematically receives and uses intelligence from a broad set of sources. This includes complaints data, whistle-blowers, our firm and consumer contact centre, regulatory returns, other regulators and competitor firms. This enables us to identify problems rapidly and, where necessary, intervene swiftly to address harm to consumers or markets.

There are staff in Supervision who are responsible for coordinating whistleblowing reporting, which comes from a central whistleblowing team who sit in our Enforcement Division. Our Supervision whistleblowing team operates the whistleblowing case management process across Supervision and provides the link between the supervisors and the central Whistleblowing Team in Enforcement.

The FCA also operates a 'Supervision Hub', which acts as a first point of contact for consumers and businesses to engage with the FCA – we publish the Hub's number on our website. Individuals have the option to communicate with us via a range of channels including, web chat, emails and over the phone. The Supervision Hub sits in our Authorisations division, but is an FCA wide resource. The Hub is a useful resource for receiving intelligence and receives over 200,000 enquiries a year.

c. ***the submission of periodic filings from Regulated Entities; and***
d. ***the submission of reports from Regulated Entities based on any event or trigger.***

Regulatory Returns – we require firms we regulate to submit a range of information to us, including financial, transaction and remuneration information to us on a regular basis. We use this information to assess whether firms are operating within agreed thresholds. Breached

thresholds are logged on the FCA's case management systems and allocated to individuals within Supervision to be actioned. The same data are used to help assess the prudential and conduct categorisation of the firm.

On the FCA website, we set out the types of reports we expect firms to submit to us. These reports will vary, depending on the type of firm.

3. ***Please describe your jurisdiction's examination or inspection processes. In responding, please include:***

To prioritise work, the FCA makes judgments about harms and drivers of harm that pose the greatest risk. The following processes provide rigour and control to that identification and judgment.

The FCA's annual **Sector Views** identify risks of harm within a given sector and quantify the potential risk to enable prioritisation of work. This process requires input and consensus from across the FCA so does not rely on a single individual to make the judgment. The sector views then form the basis for Portfolio and Fixed Firm analysis.

a. ***a description of the examination cycle (e.g., routine periodic basis or risk-based). If the examination is periodic, please include the time frame;***

Internal **Portfolio Strategy Forum** (PSF) and **Firm Evaluation** (FE) meetings are key governance points in agreeing the FCA's supervisory strategy and priorities for a portfolio (24 months) or for a higher impact firm (12/24 months). PSFs and FEs comprise panels of Supervision senior management and key stakeholders and their role is to provide challenge to and then agree the supervisory strategy and programme of proactive supervisory work.

b. ***a description of the processes and factors considered when selecting Regulated Entities for examination (e.g. time since last examination, tip, complaint or referral, etc.);***

As described above the supervisory strategy and work programme is agreed at formal governance points throughout the regulatory cycle. The supervisory strategy should provide a clear connection between the areas of concern and how the firm is to be managed by the supervisory team. It should be a forward looking, proactive strategy that sets out the outcomes we are seeking. The strategy will be monitored to assess how it is meeting the desired outcomes.

In addition to the proactive work we also deal with reactive events. Every piece of intelligence is relevant to a firm or to a sector. We assess all the intelligence that we receive. We take several factors into account when deciding what type of action to take. We first look at the quality of the intelligence. We then assess the scale and severity of the potential harm and, importantly, the seriousness of the potential misconduct. Extra weighting can also be added for the vulnerability of the customers. Where we have prioritised an issue for further work, we use a range of tools to diagnose harm and its impact on consumers or markets.

c. ***a description of the processes, including factors considered, to determine the scope for examination or inspection and the process for amending the scope if warranted;***

(see b. above)

d. ***a description of the types of books and records typically reviewed during examinations;***

The types of information the FCA receives during firm visits varies, which means a description of the types of records the FCA reviews cannot be provided definitively. However, if the FCA is planning to seek the same information from a group of firms, the requesting team will need to approach the FCA's Information Governance Board, who will review the sensibility of the request. If the FCA is seeking information from one firm, it will approach the firm directly and there is no obligation to take the request through the Information Governance Board.

When reviewing the activity of a firm or group of firms, we will consider information from a range of sources, many of which can be accessed without examining the firms' records. This includes feedback from consumers and consumer organisations, data and intelligence from firms and their trade associations, insight shared with other regulatory organisations, information from MPs and from whistle-blowers. This enables us to identify problems rapidly and, where necessary intervene swiftly to address harm to consumers or markets.

e. ***whether you conduct interviews with employees of the Regulated Entities;***

Firms subject to fixed firm supervision have a forward looking supervisory strategy designed to address the harms generated by the firm's business model and culture. The strategy will include various mandatory and proactive engagements with the firm depending on the risks of harm that a firm poses. The mandatory meetings are meetings with the Group Chair Person, CEO, External Auditor, and Heads of Business unit. Other meetings and interviews may take place on an ad-hoc basis or as part of a wider review such as a Thematic project. We will also use firm visits to reactively respond to issues and events. A firm visit usually involves a supervision team conducting in depth interviews and reviews at a firm's premises. These visits can either be announced or unannounced if the issue is particularly serious and needing urgent attention.

f. ***whether you test or verify responses given to you by the Regulated Entities;***

Yes, we would verify through other intelligence received by the FCA.

g. ***how you communicate deficiencies or other areas of concern to Regulated Entities, whether such communications are public, and how such communications are documented;***

Following an analysis of a portfolio of firms, we write to all firms in the portfolio to inform them of our findings. This may include concerns about commonly observed issues within the portfolio and our expectations for improvement. Where a significant issue is identified within a large firm, we would raise this directly with the firm. There may be some instances where we make these letters public, depending on the circumstances. It is also worth noting that these letters are used for several purposes, not just communicating deficiencies. We may issue letters to firms to communicate best practice procedures.

We use external communication channels to communicate broad messages to the industry, for example speeches, external events and our web pages.

Where in response to a significant issue we issue a supervisory notice to a firm (which includes a notice to vary a firm's permission, or to impose a requirement on a firm) section 391(5) of FSMA requires the FCA to publish, in such manner as it considers appropriate, such information about the matter to which the notice relates as it considers appropriate, where the notice has taken effect.[516] In this regard, the FCA will always aim to balance the interests of consumers and the possibility of unfairness to the person subject to the FCA's action.[517]

h. ***to whom you direct communications (e.g., compliance office, senior management); and***

This would depend on the communication but for formal feedback following Firm Evaluation it would be the Board and CEO and for Portfolio findings letters it is the CEO/Director. Other ad-hoc communications would be directed to our regulatory contacts at the authorised firm such as compliance officers, Chief Risk Officers.

i. ***how Regulated Entities respond to identified issues.***

Where we have asked for a formal response regulated entities would usually write back to us with their feedback, setting out the actions they intend to take if applicable. This may be followed up by interviews or meetings when appropriate.

4. ***Please describe the resources available for your supervisory efforts. In responding, please include:***

a. ***the typical background and qualification of your supervisory staff;***

All parts of the FCA work closely together to ensure we have sufficient, appropriately skilled staff to meet demands. We aspire to build capabilities that are fit for the future and we recruit accordingly. Within the Supervision Division, we focus on the application of skills to develop supervisory capability. For example, supervisors have access to Subject Matter Experts for processes and skills, mentor support, peer reviews of work and quality assurance checks. Wherever possible we will offer supervisors the opportunity to broaden their skill set and experience by working in different roles.

FCA staff are drawn from a variety of professional backgrounds. Our Supervision team contains individuals who have previously worked in industry, who bring valuable contextual background to our supervisory activities. We also draw talent from the wider jobs market, bringing in people from the public and private sector, whose new perspectives contribute towards the effectiveness of the team.

b. ***the use of experts, such as persons who can analyze models or perform data analytics;***

Specialist Supervision and Conduct Supervision teams provide specialist expertise across all sectors to front-line supervisors. Specialist areas include financial crime, technology and cyber resilience, financial promotions, unfair contract terms, client assets and resolution, prudential and governance.

[516] See http://www.legislation.gov.uk/ukpga/2000/8/section/391
[517] Paragraph 6.2.21 of the Enforcement Guide.

As part of the wider FCA Data Strategy, Supervision has four Divisional Data Science Units (DSUs), which are aligned to key business priorities: Life Insurance and Financial Advice, Consumer Credit, the Joint Supervision and Enforcement Team (JSET) and Payments. The recruitment of data scientists enables us to focus on developing predictive analytics and statistical approaches that enable us to work smarter. The DSUs identify, implement and embed advanced analytics in response to locally identified business needs and priorities, and lead cultural change around data and analytics in Supervision.

c. ***the use of analytical software and tools in conducting examinations and other supervisory work;***

Supervision remains actively engaged in the FCA's data strategy and we are looking at how the use of RegTech and advanced analytics will help deliver better regulatory outcomes in a more efficient way. For example, the new Decision Hub, which we are currently developing, is a decisioning tool which will generate alerts and insights for the early detection of harm and bring efficiencies in our processes. Our data team will also help supervisors navigate more efficiently through the raft of data available to them with the development of automated alerts, based on triggers that indicate where earlier investigation is needed – significantly reducing the time needed to analyse large volumes of data.

d. ***the use of SROs or exchanges to perform supervisory functions;***

Self-regulatory organisations (SROs) do not form a formal part of the UK regulatory framework. An Exchange is defined in the UK as a Recognised Investment Exchange ("RIE") recognised by the FCA to operate a regulated market. RIEs must satisfy recognition requirements prescribed by the Treasury in the Recognition Requirements Regulations. UK RIEs must also satisfy the MIFID/MiFIR requirements.

Guidance on the FCA's approach to the supervision of RIEs is provided in the Specialist Source Book (REC), specifically REC 4. The RIE, as a market operator, is responsible for the operation of its market in accordance with clear, transparent and non-discriminatory rules and procedures. FCA supervision is responsible for ensuring this activity is undertaken in accordance with REC.

As noted earlier in this document, through Part 1A of FSMA, the FCA has a single strategic objective – to ensure that relevant markets function well – and three operational objectives. In pursuit of these objectives, the RIE is required to perform its own supervisory functions, for example market surveillance in accordance with the EU Market Abuse Regulation (MAR). RIEs (and various other regulated firms and persons – 'notifiers') are required to detect and report any suspicious behaviour or activity which is in scope of MAR to the FCA via a Suspicious Transaction and Order Report. This covers a wide range of instruments and includes RIE surveillance and monitoring of its market for suspicious orders, suspicious transactions, attempted manipulation and attempted insider dealing. RIEs must ensure its systems and controls are effective at preventing market abuse.

e. ***training programs for supervisory staff; and***

FCA Supervisors are provided with a programme of formal training. This includes a customised 'Learning Pathway' for all supervisors. These training plans consist of formal learning activities that are relevant to a supervisor's department, and are split into Foundation and Intermediate

level. All new supervisors are required to complete the foundation plan within six months of joining. Supervisors will cover topics such as

- Business Model and Strategy Analysis,
- Drivers of Culture,
- Financial Accounts and
- Risk Management.

The intermediate plan is elective and supervisors may select specific modules based on individual learning needs. The Plans are a blend of e-learning, classroom and work-based assignments. As part of performance management, the levels of capability across Supervision are closely tracked, implementing training solutions where gaps are identified. All supervisors have access to the 'FCA Academy', a programme that allows all FCA staff to access external learning and qualifications.

In addition to the 'Learning Pathway' a 'Supervision Capabilities Framework' has recently been launched. It has been designed to improve capabilities and knowledge gaps which will lead to improved judgements and decision making. A self-assessment questionnaire has helped staff identify capability gaps. These gaps will be addressed through: newly designed 'Faculties', local management and training and use of a new Supervision Knowledge Portal.

f. ***the resources/size of the supervisory group relative to the volume and complexity of Regulated Entities.***

Supervision itself currently comprises approximately a third of the FCA's resource. To deploy our resource in the most meaningful way we make some broad decisions about the potential risk of harm and allocate resource accordingly. Supervision is structured by sector to reflect the markets we supervise. This enables us to supervise firms that have similar business models and therefore may pose similar risks of harm.

5. ***Please describe whether your jurisdiction has regulatory authority and related requirements or procedures to obtain the information necessary from Regulated Entities (or their offices or branches) to support your supervisory functions.***

One of the FCAs Principles for businesses' (Principle 11) is 'Relations with Regulators'. The Principle specifies that a firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice. Where a firm is not open and cooperative, the FCA can formally use its section 165 power to require information and documents from firms to support both its supervisory and its enforcement functions.

PRIN 1.1.6G of our Handbook states that Principle 11 applies to world-wide activities.[518] See also PRIN 3.3.1R.[519] Breach of a Principle will make a firm liable to disciplinary action.

6. ***How do you communicate deficiencies or other areas of concern to Regulated Entities? For example, what remedies, or other corrective actions, are available to your supervisory***

[518] See: https://www.handbook.fca.org.uk/handbook/PRIN/1/1.html.
[519] See: https://www.handbook.fca.org.uk/handbook/PRIN/3/?view=chapter

program (e.g., deficiency letters, referrals to other regulators, enforcement actions, etc.)? Please include whether one type of action may be more prevalent than another and whether the actions are verbal or in writing. Please include recent statistics on how often each type of action is used.

Following an analysis of a portfolio of firms, we write to all firms in the portfolio to inform them of our findings. This may include concerns about commonly observed issues within the portfolio and our expectations for improvement. Where a significant issue is identified within a large firm, we would raise this directly with the firm.

In the majority of cases the FCA will seek to agree with a firm those steps the firm must take to address the FCA's concerns. However, where the FCA considers it appropriate to do so, it will exercise its formal powers under sections 55J or 55L of FSMA to vary a firm's permission or to impose a requirement to ensure such requirements are met.[520]

Please also see the responses set out in Question 8 and Section II (Enforcement Framework) below.

7. ***Does your jurisdiction use risk monitoring and assessment or surveillance as part of your supervisory framework? If so, how do you use this information and what actions do you take if potential violations are identified?***

See section 1) Approach to Supervision for more detail.

We use a variety of techniques to identify risk, all of which are relevant to our context and operating environment. Some of these techniques are quite structured (e.g. intelligence gathering, risk tolerance triggers and scenario analysis), others are unstructured (e.g. brainstorming, interviews and observations) and, therefore, applied more ad-hoc or informally. Examples of formal exercises in risk identification include the Sector View process for risks of harm.

8. ***Please describe how your jurisdiction reviews and evaluates corrective action undertaken by Regulated Entities.***

Remedy tools - In the first instance, it is the firm's responsibility to try to prevent breaches and to remedy them where they occur. When a mistake has been made, and the firm becomes aware of it, we expect it to notify us and to take prompt action to put things right.

We have 4 main objectives when harm is uncovered:

a. to stop actual harm as quickly and proportionately as possible, e.g. preventing firms selling inappropriate products to customers, especially if those customers are vulnerable
b. to ensure firms have put things right (including providing redress to affected customers)

[520] Paragraph 8.2.3 of the Enforcement Guide.

c. to address the root causes of potential harm, e.g. requiring firms to remedy poor anti-money laundering systems
d. to hold the firm and/or individuals in the firm to account, where there has been misconduct. This could involve enforcement action.

Our responses are tailored to the harm we see and we may respond with more than one remedy and act across several firms at once.

In instances where we have evidence that firms are not meeting our standards, we may invite firms to sign a voluntary requirement ('VREQ') which would prevent ongoing harm to consumers or markets.[521] For example, where we have evidence that a firm has inadequate systems and controls, we may invite the firm to sign a VREQ that they will not accept new business until the issue is addressed.

Where firms do not voluntarily agree to such a requirement, we may choose to impose an Own Initiative Requirement ('OIREQ') on the firm to stop harm.[522] In this regard, as noted above in the response to Question 6, where we identify that the behaviour of an individual firm is causing or may cause harm we can vary permissions granted (under part 4A of FSMA), impose requirements or change individuals' approvals on our own initiative. See our response to Question 1 of Section II (Enforcement Framework), for further detail in respect of these powers.

For solo-regulated firms which fall under a prudential regime with detailed standards (such as CRD IV firms), we have additional powers available to us. Where we identify a risk of harm from inadequate financial resources for the circumstances of a firm, we can set and enforce the minimum level of capital and/or liquidity that the firm requires.

When things go wrong, we expect firms to take prompt action to put things right and conduct a root-cause analysis and take steps to prevent it happening again. Where the issues that have gone wrong are significant we expect firms to tell us as soon as possible.

Where individual consumers suffer harm, they should first complain to the firm itself to have things put right. We monitor the adequacy of firms' complaints handling, to ensure the handling process is effective and transparent, and that complaints are dealt with reasonably, promptly and fairly.

Where the consumer does not receive a satisfactory response from the firm, they can bring the case to the Financial Ombudsman Service to adjudicate. The Financial Ombudsman Service is operationally independent of the FCA. Its decision is binding on the firm if it is accepted by the consumer, and it has the power to ensure the consumer gets redress where appropriate.

The Financial Services Compensation Scheme (FSCS) steps in for cases of financial loss because of a firm's misconduct, where the firm is unable, or is likely to be unable, to pay claims against it. This will generally be because a firm has stopped trading and has insufficient assets to meet claims. Both the Financial Ombudsman Service and the FSCS are free for consumers to use.

[521] See s 55L(5) of FSMA - http://www.legislation.gov.uk/ukpga/2000/8/section/55L
[522] See s 55L(3) of FSMA.

In line with our emphasis on individual, as well as firms' accountability, our responses to harm will focus on ensuring senior individuals are answerable for the remedial work firms undertake. Where appropriate we use attestations by senior managers to obtain a personal commitment that a specific action will be or has been taken. In some cases, following an enforcement investigation, we may act against individuals including prohibition or fines.

The FCA operates the Senior Managers and Certification Regime (SM&CR) to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. We view the SM&CR as an opportunity to establish healthy cultures and effective governance in firms by encouraging greater individual accountability and setting a new standard of personal conduct. As such, SM&CR aims to encourage a culture of staff at all levels taking personal responsibility for their actions and make sure firms and staff clearly understand and can demonstrate where responsibility lies.

Evaluation is a key stage of our decision-making framework that is outlined in the FCA Mission. Evaluation takes place at the key governance points in the regulatory cycle; either at the Portfolio Strategy Forum (PSF) or Firm Evaluation (FE) depending on the type of firm. As well as agreeing the forward looking supervisory strategy and work programme these meetings also evaluate the success of the previous strategy. We have recently introduced an Evaluation Toolkit to assist supervisors with this; the toolkit helps Supervisors to articulate the outcomes it seeks to achieve and helps identify the most appropriate evaluation tool.

9. ***Please describe any regulatory consequences for non-compliance with corrective actions, including the form and frequency of referrals to enforcement or other judicial authorities.***

Where we suspect serious misconduct, we will refer to our Enforcement Division for an enforcement investigation. Our approach to dealing with rule breaches is explained in our published 'Approach to Enforcement' document. We set out further details in response to this question in Section II – Enforcement Framework.

10. ***Please describe how your jurisdiction communicates with the industry and the public about best practices, common compliance issues or other areas of misconduct risk, including how Regulated Entities are informed about the consequences of misconduct or noncompliance.***

We use external communication channels to communicate broad messages to the industry, for example speeches, external events and our web pages. Following an analysis of a portfolio of firms, via a thematic review, we write to all firms in the portfolio to inform them of our findings and make this information public. This may include concerns about commonly observed issues within the portfolio and our expectations for improvement. Where a significant issue is identified within a large firm, we would raise this directly with the firm.

Where we aim to address a harm, the FCA's policymaking process typically starts with either a discussion paper or a consultation paper. We use discussion papers as a way of hearing the views of industry on a topic before progressing to consulting on our proposed remedy or remedies. Any rules the FCA makes or amends are included in a policy statement, which we publish after consultation. These documents are all publicly accessible and are useful methods of communicating the behaviours we expect to see in the market.

11. ***Please describe your jurisdiction's participation in international organizations of securities and other regulators, such as the IMF and IOSCO.***

The FCA is an active participant at IOSCO. The FCA is a Nominated Board member, by virtue of the size of its capital markets. The FCA has been a signatory to the IOSCO MMoU since 10 March 2003, and signatory to the IOSCO EMMOU since 4 May 2018. The FCA has recently signed a bilateral Administrative Arrangement with the SEC (with independent oversight provided by the IOSCO Administrative Arrangement Assessment Group). The FCA currently chairs or vice-chairs six of IOSCO's policy committees, Task Forces and Networks.

The UK is one of the jurisdictions with systemically important financial sectors that undergoes the IMF's Financial Sector Assessment Programme (FSAP) every five years. The FCA's work in relevant areas is included in this assessment. The UK was most recently assessed in 2015-16. The FCA is also subject to annual 'Article IV' assessments of the UK's wider financial services system and economy by the IMF.,

The FCA is an active member the Financial Stability Board (FSB). It attends the FSB Plenary and is on the Standing Committee on Supervisory and Regulatory Cooperation, and the Standing Committee on Assessment of Vulnerabilities, as well as taking part in various working groups, task forces and networks.

The FCA also engages with various other international standard setting bodies with relevance to securities markets, including the Financial Action Task Force (FATF) and the Organisation for Economic Cooperation and Development (OECD).

12. ***Please provide a copy of Principles 10 and 12 from your most recent self-assessment for the FSAP.***

The UK's most recent FSAP, published in 2016, did not include a Detailed Assessment Report on compliance with the IOSCO/securities principles. The assessment was conducted as a 'technical note' which focused on Principles 24-28 and 33-37. As such, no self-assessment of compliance with Principles 10 and 12 was completed.

Section II - Enforcement Framework

1. ***Please describe your jurisdiction's ability to investigate and bring administrative or judicial actions against domestic and foreign parties to enforce your regulatory framework. In responding, please address:***

   a. ***your jurisdiction's authority (statutory, regulatory or otherwise) to take enforcement action both domestically and in connection with cross-border activity, describing both judicial and non-judicial forms of action where applicable; and***
   b. ***the impact of any privacy laws or other related provisions that may impede your ability to conduct thorough investigations.***

The FCA's role and responsibilities – The FCA exercises regulatory and criminal enforcement powers given to it by the Financial Services and Markets Act 2000 ("FSMA") and by other legislation. Market integrity and consumer confidence is stronger when misconduct is identified and dealt with quickly and fairly through legal processes. Improved detection increases public confidence in the regulatory process.

The FCA is given powers under FSMA to obtain information and to conduct or order investigations. These powers include those conferred by Part XI sections 165 - 176 of FSMA. The FCA also has enforcement authority and investigative powers in relation to other statutes including competition law, under various EEA regulations and directives as implemented such as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (SI 2017/692). In addition to the authority to investigate and impose sanctions for regulatory misconduct, the FCA can prosecute certain criminal offences including those imposed by the Criminal Justice Act 1993 for insider dealing and breaches of Section 19 and Section 21 of FSMA for unauthorised business and promotion. Following almost every FCA prosecution, convicted defendants are subject to confiscation proceedings.

As set out in *'Section I – Supervision Framework'*, where it appears that firms may be in contravention or are not meeting our standards, we may use our powers under Part 4A of FSMA to vary permission, impose requirements or change individuals' approvals on our own initiative. These powers may be used to prevent or to stop harm from becoming serious. We can require firms to examine their conduct and address harm. In many cases, we will ask firms to voluntarily accept a variation of permission or the imposition of a requirement (VREQ). If firms refuse we may impose the variation or requirement under our own-initiative powers (OIREQ). Further details on what a VREQ and OIREQ are can be found in our 'Approach to Enforcement' document.

The FCA's authority to issue disciplinary action against an approved individual includes powers from Part V, Section 66 of FSMA, which give the FCA the authority to act against an approved person for misconduct.

In 2018/19, we issued 265 Final Notices (243 against firms and individuals trading as firms and 22 against individuals), secured 288 outcomes using our enforcement powers (276 regulatory/civil and 12 criminal) and imposed 16 financial penalties totalling £227.3m.

The types of cases brought included Retail conduct, Retail lending, Client money/assets, Financial crime, Mis-selling, Culture/governance, Financial promotions, Wholesale conduct, Insider dealing, Market manipulation, Listing rules/Prospectus rules/, Disclosure & transparency breaches, Misleading statements, Benchmarks, Unauthorised business, and Applications to revoke/vary permission or approval.

The FCA's approach to enforcement – Our approach to tackling serious misconduct is to not pre-judge the outcome of an investigation, but instead focus on gaining an understanding of the facts. The FCA will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except in specific circumstances described in the Enforcement Guide (please see below). In addition, there is a restriction imposed by Section 348 of FSMA on disclosure of confidential information received by the FCA in discharging its functions except in limited circumstances. The overriding principle in our approach to enforcement is a commitment to achieve fair and just outcomes in response to misconduct. Wrongdoers must be held to account and our rules and requirements must be obeyed.

The FCA Handbook contains the complete record of FCA Legal Instruments. It sets out FCA rules and guidance for firms and individuals under FSMA. The Handbook includes specific sections on the FCA's enforcement function. Most notably, the Decision Procedure and Penalties Manual (DEPP) contains sections on the FCA's policy and procedures regarding its enforcement and penal powers, statutory notices and the FCA's decision-making process. Also contained within the FCA Handbook is the Enforcement Guide (EG). It contains general guidance on the FCA's approach to the exercise of its enforcement powers under FSMA and other statutory provisions. It includes an overview of enforcement policy and process and an explanation of the FCA's policy about specific enforcement powers such as its powers to impose penalties on firms, sponsors and primary information providers, to make prohibition orders and to prosecute criminal offences.

The FCA resolves many enforcement cases by settlement. Early settlement offers potential advantages as it can result, for example, in consumers obtaining compensation earlier than would otherwise be the case, saving of FCA and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. The FCA therefore considers it is in the public interest for matters to settle, and settle early, if possible.

If the subject of an enforcement case does not agree with some or all of our case, the subject can make representations to the Regulatory Decisions Committee (RDC). The RDC is part of the FCA, but is separate from our executive management structure. Apart from the Chair, none of the members of the RDC are employed by the FCA. None of the members of the RDC will have been involved in the investigation. Firms and individuals who wish to challenge decisions taken by the FCA against them may refer their case to the Tax and Chancery Chamber of the Upper Tribunal (Upper Tribunal).

The FCA is required under FSMA to publish various notices in respect of enforcement action. In some instances, a person who receives a statutory notice from us has the right to make a reference to the Tribunal. It is independent of the FCA and will consider the case afresh. References can be made for both disciplinary matters such as market abuse, and non-disciplinary matters, eg applications for Part 4A permission by firms seeking authorisation. In disciplinary cases, once the RDC has issued a Decision Notice, the subject may choose either to accept the outcome, in which case a Final Notice will be issued, or refer it to the Tribunal.

Final Notices are part of our publication scheme under the Freedom of Information Act 2000 (FoIA) (more information can be found here). Additionally, to maximise exposure and transparency, we will often publish a press release accompanying an enforcement outcome, including in criminal cases. See the latest FCA press releases.

Sanctions and remedies – The FCA can impose formal disciplinary sanctions such as financial penalties, suspensions, restrictions, conditions, limitations, disciplinary prohibitions, and public censures. It may also obtain injunctive relief and redress. DEPP and the Enforcement Guide provide detailed information on the available sanctions and remedies.

We are mindful that we have other tools available to us. Before deciding whether to appoint enforcement investigators, we carefully consider what is the most efficient and effective way of achieving our statutory objectives of protecting consumers, enhancing market integrity and promoting competition and whether enforcement action is the right course of action to take in all the circumstances. We also consider what the purpose of any enforcement action

would be. For example, to deter wrongdoers from repeating behaviours (specific deterrence) or to change behaviour in the industry (general deterrence).

Data privacy laws and their interaction with the FCA – When processing personal data, the FCA is subject to the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA) 2018. We process personal data under Article 6(1)(e) of the GDPR (it is necessary for the performance of a task carried out in the public interest) and Section 8(c) of the DPA 2018. The Law Enforcement Directive ("LED") as implemented in Part 3 DPA 2018 applies where we process personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties". The FCA has policies and procedures in place as required by the legislation. The data protection law applies to authorised firms regulated by the FCA. Where the FCA or the Information Commissioner's Office (ICO) identify breaches of the relevant data protection legislation firms can expect appropriate action to be taken.

2. ***Please describe the tools your jurisdiction can utilize to conduct investigations, including the ability to obtain detailed records to reconstruct transactions and identify parties to a transaction. For example, please address the ability to:***
    c. ***obtain electronic communication and other records from internet service providers or other third-parties;***
    d. ***compel statements and information from witnesses; and***
    e. ***receive tips, complaints and referrals from corporate insiders (such as whistleblowers) and the public.***

Investigatory tools - As stated in the Enforcement Guide, the FCA has various powers under sections 97, 122A, 122B, 122C, 131E, 131FA, 165 to 169 and 284 of FSMA and Schedule 5 to the Consumer Rights Act 2015 to gather information and appoint investigators, and to require the production of a report by a skilled person. In each case, the FCA will decide which powers, or combination of powers, are most appropriate to use having regard to all the circumstances.

Information may also be provided to the FCA voluntarily. For example, firms may at times commission an internal investigation or a report from an external law firm or other professional adviser and decide to pass a copy of this report to the FCA. Such reports can be very helpful for the FCA in circumstances where enforcement action is anticipated or underway.

The FCA may use its section 165 power to require information and documents from firms to support both its supervisory and its enforcement functions. An officer with authorisation from the FCA may exercise the section 165 power to require information and documents from firms.

Where the FCA has decided that an investigation is appropriate and it appears to it that there are circumstances suggesting that contraventions or offences may have occurred or where the FCA has concerns eg, about a firm or individual, the FCA will normally appoint investigators. Investigators have various powers under FSMA to require subjects and witnesses to produce information and documents and/or attend and answer questions in an interview.

The FCA's standard practice is generally to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. However, for suspects or possible suspects in criminal or market abuse investigations, the FCA may prefer to question that person on a voluntary basis, possibly under caution. In such a case, the interviewee does not have to answer but if they do, those answers may be used against them in subsequent proceedings, including criminal or market abuse proceedings. Under FSMA, compelled testimony may not be used as evidence in a criminal or market abuse proceeding in which the individual is charged.

In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the FCA will usually seek information voluntarily.

Authorised firms and approved persons have an obligation under the FCA's rules to be open and co-operative with the FCA (because of Principle 11 for Businesses in PRIN, Statement of Principle 4 for Approved Persons in APER and Rule 3 of COCON 2.1). The FCA will make it clear to the person concerned whether it requires them to produce information or answer questions under FSMA or whether the provision of answers is purely voluntary. The fact that the person concerned may be a regulated person does not affect the person's obligations under a notice of requirement.

The power to compel production of documents and information includes communications data from firms if the communications data is related to FCA regulated activities. To obtain communications data from an internet service provider or other third-party not related to regulated activities, the FCA would be subject to the provisions on obtaining communications data under the Investigatory Powers Act 2016.

The FCA may use the powers to compel information, documents and require a person to attend and answer questions in an interview upon the request of an overseas regulatory authority under section 169 of FSMA. In cases where the FCA is requested by an overseas regulator to obtain documents or conduct interviews on their behalf, the FCA will not necessarily adopt its standard approach. We will consider with the overseas authority the most appropriate method for obtaining evidence for use in their country.

If a person does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The FCA may also choose to bring proceedings for breach of Principle 11, Statement of Principle 4 or COCON 2.1.3R as this is a serious form of non-cooperation. Providing a false or misleading response to a statutory requirement can be a criminal offence punishable by a fine and/or imprisonment.

Whistleblowing - Under FCA rules a firm must implement and maintain appropriate and effective arrangements for the disclosure of reportable concerns by whistleblowers. The FCA has a whistleblowing team in the Enforcement and Market Oversight Division. Through the FCA's website the public is invited to contact the FCA's whistleblowing team to report information if a firm or individual is thought to be possibly involved in wrongdoing within an area regulated by the FCA. The FCA is a *prescribed person* under the Public Interest Disclosure (Prescribed Persons) Order 2014 for concerns about the conduct of funds, markets, firms and individuals subject to FSMA (including banks, building societies, investment or insurance businesses), the operation of mutual societies that we register under relevant legislation as well concerns regarding payment systems and services .

3. ***Please describe the investigative capacities your jurisdiction has under relevant law, including methods and technology used for market surveillance. Please also describe the role of experts, self-regulatory organizations and exchanges in assisting or performing enforcement functions.***

We work closely with the financial services industry to identify and prevent market abuse. We also undertake our own surveillance of financial markets and have systems for identifying insider dealing and market manipulation in various financial markets. This includes analysing transaction reporting data, order book data, benchmark submission and other market data, which significantly helps us in detecting market abuse. Also, our market monitoring department is in regular contact with trading firms, market operators and investors to identify suspicious trading.

In the most recent FCA Annual Report it was noted that we have continued to actively monitor financial markets and have taken a range of actions to help address market abuse. It was reported that we received a total of 5,604 Suspicious Transaction and Order Reports (STORs) from the industry and 578 other external notifications about potential market abuse. As a result, we opened 484 preliminary market abuse reviews resulting in various outcomes. Since the reporting regime was first introduced in 2005, there has been a continued increase in reporting of suspicious behaviours in wholesale markets. The number of STORs sent to us for the most recent year available is around 18 times higher than in 2007. The market abuse reporting regime was expanded in 2016 with the introduction of MAR. This led to a sharp increase in regulatory reporting.

We recently introduced the Abnormal Trading Volume (ATV) metric. It looks for abnormal increases in trading volumes ahead of potentially price sensitive announcements, covering equity instruments and some equity derivatives. We have published details of its scope and methodology on our website.

We take enforcement action against market abuse and can impose significant penalties. For breaches of the Market Abuse Regulation we can impose unlimited fines, order injunctions, or prohibit regulated firms or approved persons. Criminal sanctions for insider dealing and market manipulation can incur custodial sentences of up to 7 years and unlimited fines. The published Final Notices and press releases provide details of our enforcement action for market abuse.

The FCA has many tools to monitor the markets. These include the Market Data Processor (MDP) System to manage the range of data that entities are obligated to submit to us under MiFID II.

The types of data that need to be submitted include transaction reports, instrument reference data, transparency reports, double volume cap reports, commodity derivative position reports.

The reporting requirement applies to approved reporting mechanisms (ARMs), consolidated tape providers (CTPs), approved publication arrangement (APAs), regulated markets (RMs), operators of multilateral trading facilities (MTFs), operators of organised trading facilities (OTFs), systematic internalisers (SIs), other UK MiFID investment firms (IFs), UK branch of third country investment firms, EEA data reporting service providers (DRSPs) / trading venues / investment firms.

The MDP system will also provide the interface to ESMA's Financial Instrument Reference Data System (FIRDS), including Transparency Calculations and Double Volume Cap, and the Transaction Reporting Exchange Mechanism (TREM).

Through Part 1A of FSMA, the FCA has a single strategic objective – to ensure that relevant markets function well – and three operational objectives. In pursuit of these objectives, the RIE is required to perform its own supervisory function, for example market surveillance in accordance with the EU Market Abuse Regulation (MAR). RIEs (and various other regulated firms and persons – 'notifiers') are required to detect and report any suspicious behaviour or activity which is in scope of MAR to the FCA via a Suspicious Transaction and Order Report. This covers a wide range of instruments and includes RIE surveillance and monitoring of its market for suspicious orders, suspicious transactions, attempted manipulation and attempted insider dealing. RIEs must ensure its systems and controls are effective at preventing market abuse.

In the UK, an Exchange is defined as a Recognised Investment Exchange ("RIE") recognised by the FCA to operate a regulated market. RIEs must satisfy recognition requirements prescribed by the Treasury in the Recognition Requirements Regulations. UK RIEs must also satisfy the MIFID/MiFIR requirements. Guidance on the FCA's approach to the supervision of RIEs is provided in the Specialist Source Book REC, specifically REC 4. The RIE, as a market operator, is responsible for the operation of its market in accordance with clear, transparent and non-discriminatory rules and procedures. FCA supervision is responsible for ensuring this activity is undertaken in accordance with REC.

In addition, issuers of financial instruments, emission allowance market participants (EAMPs) and parties involved in the relevant auctions that fall within the scope of the Market Abuse Regulation are required to transmit their insider lists to us on request. We have a secure system for transmission that will enable issuers or their nominees, EAMPs and parties involved in the relevant auctions to respond to requests for insider lists using a secure electronic system.

MIFID II provides us better tools to deal with potential harms from algorithmic High-Frequency Trading (HFT). Our report on Algorithmic Trading Compliance in Wholesale Markets, published in February 2018, looked at good and poor practice in firms that undertake this trading activity. Since then, we have continued our supervisory work across many firms to ensure that they have suitable systems and controls to identify and manage resilience issues and conduct risks.

Our Market Watch newsletter looks at market abuse risks, transaction reporting, suspicious transaction and order reporting, and other market conduct issues. It can help regulated firms and other non-regulated market users understand more about these areas and relevant practices to consider.

4. ***Please describe the legal proceedings, remedies, and sanctions available in your jurisdiction to support your enforcement mechanism, including, for example, available tribunals, types of penalties or other monetary sanctions, and the ability to seek prospective relief, temporary restraining orders, asset freezes or make criminal referrals.***

The FCA exercises regulatory and criminal enforcement powers given to it by the Financial Services and Markets Act 2000 ("FSMA") and by other legislation. Using our enforcement

powers effectively and proportionately plays an important role when pursuing our statutory objectives, including our operational objectives of:

- securing an appropriate degree of protection for consumers
- protecting and enhancing the integrity of the UK financial system
- promoting effective competition in the interests of consumers

When deciding whether to appoint enforcement investigators, we are mindful that we have other tools available to us and that enforcement action is relatively expensive and resource-intensive both for us and the subject of investigation.

Enforcement has dedicated referral teams whose members liaise with staff in each area of the FCA that refers cases to Enforcement for investigation. Through this liaison the referring areas provide updates on developments and specific issues in each area. The referring areas also bring issues to the Enforcement referral teams' attention as and when they arise so that the Enforcement teams can assess with the relevant area the appropriate regulatory responses to any suspected misconduct. This includes identifying cases that could be referred to Enforcement for investigation and which should be escalated to the relevant senior staff.

If Enforcement, Supervision and Market Oversight senior staff consider referral to Enforcement is the appropriate regulatory response, Enforcement will work with Supervision and Market Oversight to test the basis for the referral. This includes:

- gathering necessary information and documents
- assessing and testing existing evidence
- identifying the scope of the investigation
- recording the reasons for referring the matter to Enforcement

If the appointment of enforcement investigators remains appropriate, a formal enforcement referral decision will be taken by the relevant senior staff from Enforcement, Supervision and Market deter misconduct by making the consequences of misconduct clear.

The FCA is given investigative powers under FSMA to obtain information and to conduct or order investigations. These powers include those conferred by Part XI sections 165 et seq. of FSMA. The FCA also has enforcement authority and investigative powers in relation to other statutes including competition law, under various EEA regulations and directives as implemented such as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (SI 2017/692). As noted above, in addition to the authority to investigate and impose sanctions for regulatory misconduct, the FCA can prosecute certain criminal offences including those imposed by the Criminal Justice Act 1993 for insider dealing and breaches of Sections 19 and 21 of FSMA for unauthorised business and promotion.

We can take several routes to each an appropriate outcome. The route taken will depend on whether we decide to take disciplinary action, or criminal or civil proceedings through the courts. Our approach in making decisions is set out in our Decision Procedure and Penalties Manual (DEPP).

Sanctions, remediation, redress and restitution - When we assess the nature of the sanction, we consider all relevant circumstances. This includes what steps the firm or individual has taken to address the harm and to cooperate with us, including, where relevant, in cooperating with any variation of permission or with the imposition of a requirement under Part 4A of FSMA. If firms and individuals fully account for any harm caused, including putting

it right where there are reasonable grounds to do so, we will consider this when applying sanctions.

If a firm or individual fails to take steps to address harm or refuses to cooperate fully with us, this will be considered and may justify heavier sanctions.

Where we take disciplinary action against a firm or an individual we will consider all our sanction and redress and restitution powers, including public censure, financial penalty, prohibition, suspension or restriction orders, as they may apply. If appropriate steps have not been taken or more work is required to address the harm we will seek restitution orders or redress schemes. Redress is important for many reasons. Fines do not benefit the victims of wrongdoing, whereas redress directly compensates them. We aim to make sure the sanction is sufficient to deter the firm or individual from re-offending and deter others from offending.

We will not put our case to a firm or individual unless we have completed an investigation, we think there is sufficient evidence of serious misconduct and we are prepared to act. If we decide to take disciplinary action, we will put our case to the firm or individual first to see if they wish to agree or contest the case. If they do not agree with some or all of our case, they can make representations to the Regulatory Decisions Committee (RDC).

We can prosecute firms and individuals who commit financial crime (for example, market manipulation or insider dealing). We can also prosecute firms and individuals who undertake regulated activities without authorisation. When deciding whether to prosecute, we apply the basic principles set out in the Code for Crown Prosecutors.

Following almost every FCA prosecution, convicted defendants are subject to confiscation proceedings. This is when the Crown Court decides how much the defendant has benefitted from their criminal conduct. In certain circumstances, a defendant's benefit can extend beyond the amount obtained from their offence(s) if they are deemed to have a criminal lifestyle. Once it has quantified a defendant's benefit, the Court must then decide whether the value of the defendant's interest in assets is equal to or less than the benefit from their criminal conduct. The source of the funds used to acquire those assets is irrelevant. The Court can take legitimately acquired assets into account. The Court will then decide on the amount and order the defendant to pay that sum within a specified period. This is called making a confiscation order.

5. ***Please describe how your jurisdiction publishes information about enforcement initiatives, including disclosure of enforcement matters and violations and public disclosure of enforcement objectives***.

The FCA is required under FSMA to publish various notices in respect of enforcement action. In some instances, a person who receives a statutory notice from us has the right to make a reference to the Tribunal. It is independent of the FCA and will consider the case afresh. References can be made for both disciplinary matters such as market abuse, and non-disciplinary matters. eg applications for Part 4A permission by firms seeking authorisation. In disciplinary cases, once the Regulatory Decisions Committee (RDC) has issued a Decision Notice, the subject may choose either to accept the outcome, in which case a Final Notice will be issued, or refer it to the Upper Tribunal (Tax and Chancery Chamber).

We will publish the results of our decisions, whether agreed or contested, in a Final Notice in accordance with sections 391 and 391A of FSMA. The Final Notice will make clear the basis for our findings, including the facts and our reasons for concluding there has been serious misconduct. This includes: whether the person(s) responsible has acknowledged responsibility; if voluntary redress, remediation or restorative steps have been taken in a timely and effective manner; the extent of cooperation with us and the extent to which any of the above have reduced the sanction.

Notices are part of our publication scheme under the Freedom of Information Act 2000 (more information on the FoIA here). Additionally, to maximise exposure and transparency, we will often publish a press release accompanying an enforcement outcome, including in criminal cases. See the latest FCA press releases.

6. ***Please provide information regarding your jurisdiction's track record of enforcement activity for the last [three] years and the use of civil or criminal enforcement authority against individuals and entities, including***
    - *f.* ***information about the number of actions taken;***
    - *g.* ***the types of violations subject to action, including in connection with requirements for which substituted compliance is sought (e.g., capital and margin, business conduct, etc.); and***
    - h. ***the outcomes of such actions, including whether money was returned to harmed investors. In responding, please provide information about the types of penalties assessed and length of time from initiation of an investigation to the date of charge or closure.***

Details of the FCA's enforcement outcomes including information about the types of penalties assessed, money returned and length of time involved are published in the FCA's Enforcement Annual Performance Account.

In summary

In 2018/19, we issued 265 Final Notices (243 against firms and individuals trading as firms and 22 against individuals), secured 288 outcomes using our enforcement powers (276 regulatory/civil and 12 criminal) and imposed 16 financial penalties totalling £227.3m. The types of cases (in addition to threshold condition cases) included retail conduct, retail lending, client money/assets, financial crime, mis-selling, culture/governance, financial promotions, wholesale conduct, insider dealing, market manipulation, listing rules/prospectus rules/, disclosure & transparency breaches, misleading statements, benchmarks, unauthorised business, and applications to revoke/vary permission or approval.

In 2017/18, we issued 269 Final Notices (248 against firms and individuals trading as firms and 21 against individuals), secured 317 outcomes using our enforcement powers (303 regulatory/civil and 14 criminal) and imposed 16 financial penalties totalling £69.9m. The types of cases (in addition to threshold condition cases) included retail conduct, retail lending, client money/assets, financial crime, mis-selling, culture/governance, financial promotions, wholesale conduct, insider dealing, market manipulation, listing rules/prospectus rules/, disclosure & transparency breaches, misleading statements, benchmarks, unauthorised business, and applications to revoke/vary permission or approval.

In 2016/17, we issued 180 final notices (155 against firms and 25 against individuals), secured 209 outcomes using our enforcement powers (198 regulatory/civil and 11 criminal) and imposed 15 financial penalties totalling £181m. The types of cases (in addition to threshold condition cases) included retail conduct, client money/assets, financial crime, mis-selling, culture/governance, financial promotions, wholesale conduct, insider dealing, market manipulation, listing rules/prospectus rules/, disclosure & transparency breaches, misleading statements, benchmarks, unauthorised business, and applications to revoke/vary permission or approval.

7. ***Please describe whether the enforcement authorities in your jurisdiction have readily accessible mechanisms to obtain documents and other forms of assistance from a foreign enforcement authority. In responding, please address:***
    - *i.* ***whether your jurisdiction has ratified international conventions, treaties and agreements relevant to cooperation in enforcement matters,***
    - *j.* ***whether the relevant authorities in your jurisdiction have signed the IOSCO MMoU or IOSCO EMMoU, and***
    - k. ***whether your jurisdiction has any legal requirements to preserve records obtained in the course of investigative matters such that those records would be available upon request from another enforcement authority.***

The UK is a signatory to several bilateral agreements on mutual legal assistance in criminal including matters including the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters. The FCA as the competent authority under EEA/EU directives and regulations has reciprocal obligations to cooperate with other competent authorities. Other law enforcement authorities in the UK will have specified statutory authority to obtain overseas assistance. The FCA has a general duty as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions which are similar to those of the FCA, or in relation to the prevention or detection of financial crime.

The FCA is an active participant at IOSCO. The FCA is a Nominated Board member, by virtue of the size of its capital markets. The FCA has been a signatory to the IOSCO MMoU since 10 March 2003, and signatory to the IOSCO EMMOU since 4 May 2018. The FCA has recently signed a bilateral Administrative Arrangement with the SEC (with independent oversight provided by the IOSCO Administrative Arrangement Assessment Group). The FCA currently chairs or vice-chairs six of IOSCO's policy committees, Task Forces and Networks.

Our retention policy sets out how long we hold all information including any personal data used for each of the areas mentioned in the FCA's privacy notice. Retention requirements for information that is created or received during the FCA discharging its regulatory duties are driven predominantly by FSMA. The retention period varies depending on the subject. For evidence seized in support of enforcement cases and actions the general retention period is 10 years from case closure (other than that seized under MAR which have a retention period of 5 years).

Section III – Supervisory and Enforcement Cooperation

1. ***Please describe your jurisdiction's ability to share, and the process for sharing, non-public information with (or obtain it for) authorities such as the SEC. In responding, please address any limitations for sharing (a) information from Regulated Entities and (b) internal work product. Please address whether any blocking statutes, privacy or secrecy laws, or other legal or regulatory requirements impede sharing information, including customer or employee information, by authorities or firms located in your jurisdiction.***

(a) Ability to share non-public information from Regulated Entities, process, and limitations:

Section 354A (FCA's duty to co-operate with others) of FSMA imposes a duty on the FCA to take such steps as it considers appropriate to cooperate with others who exercise functions similar to its own. This duty extends to authorities in the UK and overseas. The FCA routinely handles international exchanges of personal and non-personal data, treating this data in line with the requirements of FSMA and the relevant legislation summarised below.

The FCA is subject to duties of professional secrecy with respect to confidential information received by it in performing its functions (under s 348 FSMA). There are relevant exceptions which permit the sharing of information for specified purposes (under s 349 FSMA and the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001). These exceptions include disclosure of confidential information to a third country regulatory authority for the purpose of assisting it to discharge its functions as such.

However, if the information has been received from another third country authority the consent of that authority may be required.

Also, a disclosure of *personal* data must not be made in contravention of the General Data Protection Regulation (GDPR) or the Data Protection Act 2018 (Part 3 of which implements the EU's Law Enforcement Directive). Accordingly, personal data processed for general purposes in the UK will be processed under the GDPR, and personal data processed by competent authorities for the purposes of law enforcement will be processed under Part 3 of the Data Protection Act 2018.

The provisions of the UK GDPR will apply immediately following the end of the transition period with the EU (provided for in art 126 of the Withdrawal Agreement). They will reflect the EU GDPR, subject only to the conforming changes made by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.[523] The GDPR permits the transfer of personal data to non-EU jurisdictions under certain conditions. Article 46(3)(b) provides for the transfer of personal data to a third country under relevant administrative arrangements in respect of sharing between public authorities such as the FCA and the SEC. Such administrative arrangements have been made between the SEC and authorities including the FCA in October 2019 – see here. In respect of transferring personal data from the Regulated Entities or other firms located in the UK to the SEC, such

[523] See https://www.legislation.gov.uk/uksi/2019/419/contents/made

firms/Regulated Entities may be able to rely on a public interest derogation under Article 49(1)(d).

(b) Ability to share internal work product, process, and limitations:

There are no specific statutory restrictions on sharing our internal product where this does not include any confidential information or personal data. Such internal product would include 'Regulatory Change Information' as defined in Article I(12) of the draft MoU In Connection with the Use of Substituted Compliance ('the MoU'). The FCA will deal with this information in accordance with the general law, its Information Classification and Media Handling Standard, and the provisions of the MoU.

2. ***Under your jurisdiction's relevant laws, regulations, and policies, would the SEC, (a) have prompt access to the books and records of a Regulated Entity located in your jurisdiction, and (b) be able to conduct onsite inspections or examinations of a Regulated Entity located in your jurisdiction? Please describe any applicable limitations or conditions on such access.***

We refer to your guidance in respect of adequate assurances for the purposes of Exchange Act Rule 3a71-6(c)(3).

In respect of books and records that do not contain personal data, no specific statutory restrictions would impede the ability of a Regulated Entity (a) to provide prompt, direct access to the Commission to its books and records or (b) to submit to onsite inspection or examination by the Commission.

Regulated Entities are subject to restrictions under the GDPR in relation to transfers of personal data. Please see our answer in Q1(a) in relation to how they may be able to make transfers to the SEC.