

SUPPORTING STATEMENT

Rule 13Aa-2T – Interim Rule for Reporting Security-Based Swap Transactions

This submission pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq., consists of this supporting statement and the following exhibits:

- A. Statutory Authority
- B. Written Statement Supporting Need for Emergency Consideration

A. JUSTIFICATION

1. Necessity for the Information Collection

On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ Section 13A(a)(2) of the Exchange Act, as amended by the Dodd-Frank Act requires that the Commission to promulgate an interim final rule providing for the reporting of security-based swap transactions entered into before July 21, 2010, the terms of which had not expired as of that date (“pre-enactment security-based swap transactions”), be reported to a registered security-based swap data repository or the Commission by a date that is not later than: (i) 30 days after issuance of the interim final rule; or (ii) such other period as the Commission determines to be appropriate within 90 days of the enactment of the Dodd-Frank Act.

The Commission staff expects that the Commission will adopt on October 13, 2010 Rule 13Aa-2T under the Exchange Act to specify the reporting requirements applicable to pre-enactment security-based swap transactions. Rule 13Aa-2T requires specified counterparties to a pre-enactment security-based swap transaction to: (1) report certain information relating to pre-enactment security-based swaps to a registered security-based swap data repository or to the Commission by the compliance date established in the security-based swap reporting rules required by Section 3C(e) and 13A(a)(1) of the Exchange Act, or within 60 days after a registered security-based swap data repository commences operations to receive and maintain data concerning such security-based swaps, whichever occurs first; and (2) report information relating to pre-enactment security-based swaps to the Commission upon request during an interim period. The rule will expire on the effective date of the permanent recordkeeping and reporting rules for security-based swap transactions to be adopted by the Commission or January 12, 2012, whichever occurs first.

The Commission is also issuing an Interpretive Note to Rule 13Aa2-T requiring a counterparty to a pre-enactment security-based swap transaction that may be required to report such transaction to retain in its existing format all information and documents, to the extent and in such form as they currently exist relating to the terms of the security-based swap transaction,

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 11-203, H.R. 4173).

including but not limited to: (i) any information necessary to identify and value the transaction; (ii) the date and time of execution of the transaction; (iii) information relevant to the price of the transaction; (iv) whether the transaction was accepted for clearing by any clearing agency or derivatives clearing organization, and, if so, the identity of such clearing agency or derivatives clearing organization; (v) any modification(s) to the terms of the transaction; and (vi) the final confirmation of the transaction.

2. Purpose of the Information Collection

The information collection pursuant to Rule 13Aa-2T will: fulfill the Congressional mandate for the Commission to promulgate an interim final rule “providing for the reporting” of pre-enactment security-based swap; provide insight about the size and operation of the OTC derivatives market and a benchmark against which to assess the development of the security-based swap market over time; provide the Commission information to assist with its analysis of the permanent reporting and other rules required by the Dodd-Frank Act; be used to assess activities and risks in the security-based swap markets or securities markets more generally; facilitate general market oversight; facilitate the reports the Commission is required to provide to Congress on security-based swaps and the security-based swaps marketplace.²

3. Role of Improved Information Technology

Under Rule 13Aa-2T, specified counterparties will be required to report certain information relating to pre-enactment security-based swaps to the Commission in a form and manner prescribed by the Commission, which could include electronic submission.

4. Efforts to Identify Duplication

To the extent that information is reported to the Commission, the Commission believes that any counterparty to a pre-enactment security-based swap transaction that may be required to report such transaction, as part of its regular business operations, would already maintain records of any such transaction, and that such records likely include the minimum information.

5. Effect on Small Entities

Not applicable. The interim final temporary rules apply only to counterparties that may engage in security-based swap transactions. Prior to the effective date of the Dodd-Frank Act, only an eligible contract participant (as defined in Section 1(a)(12) of the Commodity Exchange Act) may enter into security-based swap transactions. For this reason, the Commission has certified that the rule would not have a significant economic impact on a substantial number of small entities.

6. Consequences of Less Frequent Collection

² See Section 719 of the Dodd-Frank Act.

Collecting the information on a less frequent basis would frustrate the purpose of the emergency action.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

This rule does not dictate a specific frequency. However, the Commission could request data pursuant to Rule 13Aa-2T(b)(2) more often than quarterly, which would conflict with 5 CFR 1320.5(d)(2)(i). Nonetheless, the Commission believes that this requirement is necessary to satisfy the statutory requirement set forth in the Dodd-Frank Act that the Commission to promulgate an interim final rule providing for the reporting of these pre-enactment security-based swaps within 90 days of the enactment of the Dodd-Frank Act³ as well as the statutory mandate in that security-based swap counterparties shall upon written request from the Commission, provide reports regarding the security-based swaps in such form and in such manner as the Commission may request.⁴ Moreover, the data collected under this provision could facilitate the reports the Commission is required to provide to Congress on security-based swaps and the security-based swaps marketplace.⁵

8. Consultation Outside the Agency

The Commission has been coordinating extensively with the CFTC as well as various participants in the swaps industry in formulating the interim final temporary rule. Due to the short time between the enactment of the statute and the deadline for adopting final rules, the Commission is unable to solicit public comment on the collection and the estimated burden before collecting the information, although the Commission is soliciting comment on the PRA in the release.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Other than information for which a reporting entity requests confidential treatment and that may be withheld from the public in accordance with the provisions of FOIA, the collection of information pursuant to Rule 13Aa-2T will not be kept confidential and will be publicly available.

11. Sensitive Questions

Not applicable.

³ See 15 U.S.C. 78m-1(a)(2)(B).

⁴ See 15 U.S.C. 78m-1(C)(1).

⁵ See Section 719 of the Dodd-Frank Act.

12. Estimate of Reporting Burden

The Commission preliminarily estimates that the requirement to retain information and documents pursuant to the Note to paragraphs (b)(1) and (2) of Rule 13Aa-2T would impose a one-time burden on each respondent of approximately 38 burden hours for a one-time aggregate burden of approximately 38,000 hours, which includes an estimate of the number of potential burden hours required to amend internal procedures, reprogram systems, and implement compliance processes to ensure that security-based swap transaction data is preserved.⁶

Rule 13Aa-2T(b)(1) requires reporting entities to report pre-enactment security-based swap transactions to a registered security-based swap data repository or the Commission by the compliance date established in the reporting rules required under Sections 3C(e) and 13A(a)(1) of the Exchange Act, or within 60 days after a registered security-based swap data repository commences operations to receive and maintain data concerning such security-based swaps, whichever occurs first. The Commission preliminarily estimates that complying with Rule 13Aa-2T(b)(1) would impose a burden on each respondent of approximately 480 hours, for an aggregate burden of approximately 480,000 burden hours.⁷

⁶ This figure is based on discussions with various market participants. It is based on the following: $[(\text{Sr. Programmer at 2 hours}) + (\text{Sr. Systems Analyst at 4 hours}) + (\text{Compliance Manager at 5 hours}) + (\text{Compliance Clerk at 20 hours}) + (\text{Director of Compliance at 2 hours}) + (\text{Compliance Attorney at 5 hours})] \times (1000 \text{ reporting entities})] = 38,000 \text{ burden hours}$, which is 38 hours per reporting entity. Based on this estimate, the total labor cost for all respondents to retain information and documents pursuant to the Note to paragraphs (b)(1) and (2) of Rule 13Aa-2T would be approximately \$6,236,000. This figure is based on the following: $[(\text{Sr. Programmer (2 hours) at } \$292 \text{ per hour}) + (\text{Sr. Systems Analyst (4 hours) at } \$244 \text{ per hour}) + (\text{Compliance Manager (5 hours) at } \$258 \text{ per hour}) + (\text{Compliance Clerk (20 hours) at } \$63 \text{ per hour}) + (\text{Director of Compliance (2 hours) at } \$388 \text{ per hour}) + (\text{Compliance Attorney (5 hours) at } \$270 \text{ per hour})] \times (1000 \text{ reporting entities}) = \$6,236,000$. Hourly figures cited in this memorandum are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008* and SIFMA's *Office Salaries in the Securities Industry 2008*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 or 2.93, as appropriate, to account for bonuses, firm size, employee benefits, and overhead.

⁷ This figure is based on discussions of Commission staff with various market participants, as well as the Commission's experience regarding connectivity between securities market participants, including alternative trading systems and self-regulatory organizations for data reporting purposes. The Commission derived the total estimated one-time burden from the following: $[(2,400,000 \text{ estimated total pre-enactment securities-based swap transactions}) \times (75 \text{ percent automated, electronic reporting}) \times (0.1 \text{ hours/transaction})] + [2,400,000 \text{ estimated total pre-enactment securities-based swap transactions}) \times (25 \text{ percent manual, electronic reporting}) \times (\text{Compliance Clerk } 0.5 \text{ hours/transaction})] = 480,000 \text{ burden hours}$, which is 480 burden hours per respondent. Based on this estimate, the total annual labor cost for all respondents to report pre-enactment security-based swap

Rule 13Aa-2T(b)(2) requires reporting entities to report to the Commission upon request any information relating to security-based swap transactions. Because the Note to paragraphs (b)(1) and (2) of Rule 13Aa-2T(d) requires reporting entities to retain their documents and information relating to the terms of pre-enactment security-based swap transactions, the Commission preliminarily believes that responding to a Commission request for such information should not impose a significant additional burden on reporting entities. A reporting entity would need to review the request and gather responsive transaction data and documents. Assuming the Commission requested one report from each reporting entity, the Commission preliminarily estimates that responding to Commission requests for information and documents pursuant to Rule 13Aa-2T(b)(2) would impose a burden on each respondent of approximately 34 hours, for an aggregate burden of approximately 34,000 burden hours.⁸

13. Estimate of Total Annual Cost Burden

The Commission preliminarily estimates that reporting entities may have initial one-time costs to establish connectivity with and report the pre-enactment security-based swaps to a registered security-based swap data repository or the Commission. The Commission preliminarily estimates that the cost to establish connectivity to a security-based swap data repository to facilitate the reporting required by Rule 13Aa-2T(b)(1) would impose a burden an aggregate burden of approximately \$25,000,000 for hardware- and software-related expenses and other costs associated with establishing connectivity.⁹

transactions to a registered security-based swap data repository or the Commission as required under Rule 13Aa-2T(b)(1) would be approximately \$30,240,000. This figure is based on the following: [(2,400,000 estimated total pre-enactment securities-based swap transactions) x (75 percent automated, electronic reporting) x (Compliance Clerk (0.1 hours/transaction) at \$63 per hour)] + [(2,400,000 estimated total pre-enactment securities-based swap transactions) x (25 percent manual, electronic reporting) x (Compliance Clerk (0.5 hours/transaction) at \$63 per hour)] = \$30,240,000.

⁸ This figure is based on discussions with various market participants. It is based on the following: [(Compliance Manager at 5 hours) + (Compliance Attorney at 5 hours) + (Programmer Analyst at 1 hour) + (Compliance Clerk at 15 hours) + (Director of Compliance at 3 hours) + (Sr. Database Administrator at 5 hours)] x (1000 reporting entities) = 34,000 burden hours, which is 34 hours per reporting entity. Based on this estimate, we believe the total labor cost for all respondents to respond to Commission requests for information and documents will be approximately \$6,352,000. This figure is based on the following: [((Compliance Manager (5 hours) at \$258 per hour) + (Compliance Attorney (5 hours) at \$271 per hour) + (Programmer Analyst (1 hour) at \$193) + (Compliance Clerk (15 hours) at \$63 per hour) + (Director of Compliance (3 hours) at \$388 per hour) + (Sr. Database Administrator (5 hours) at \$281 per hour)) x (1 Commission request per reporting entity) x (1000 reporting entities)] = \$6,352,000

⁹ This figure is based on the following: (\$25,000 relating to hardware- and software-

14. Estimate of Cost to the Federal Government

The recordkeeping requirements contained in the Interim Final Rule should not result in any expenditures for the Commission. To the extent that market participants may be required in the future, pursuant to the Interim Final Rule, to report certain data to the Commission, the Commission may incur costs related to the request, receipt, analysis and storage of this data, but these costs should not be significant.

15. Explanation of Changes in Burden

Not applicable. Rule 13Aa-2T is a new rule.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

related expenses per reporting entity) x (1,000 reporting entities) = \$25,000,000.