

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
“Rule 3a71-5”

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. JUSTIFICATION

1. Necessity of Information Collection

Various requirements contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”) apply to cross-border security based swap transactions. The Commission acknowledges the potential that, in a market as global as the security-based swap market, market participants who engage in cross-border security-based swap activity could be subject to conflicting or duplicative compliance obligations across multiple jurisdictions. Therefore, the Commission has developed a policy and procedural framework under which the Commission will consider permitting compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with certain Title VII requirements relating to security-based swaps (*i.e.*, “substituted compliance”). Under Rule 3a71-5, foreign security-based swap dealers, or a group of foreign security-based swap dealers of the same class, may request a substituted compliance determination with respect to the requirements applicable to registered foreign security-based swap dealers under Section 15F of the Securities Exchange Act of 1934 (the “Exchange Act”) and the rules and regulations thereunder.

Rule 3a71-5 requires submission of certain information to the Commission to the extent entities elect to request a substituted compliance determination. Pursuant to proposed Rule 0-13, which sets forth the procedural requirements for filing applications to request a substituted compliance order under Rule 3a71-5, an entity applying for a substituted compliance determination would be required to submit an application, in the form of a letter, to the Office of the Secretary of the Commission. Rule 3a71-5 would require this application to include any supporting documentation as the Commission may request, in addition to information that the entity believes is necessary for the Commission to make a determination, such as information demonstrating that the requirements applied in the foreign jurisdiction are comparable to the Commission’s requirements and describing the methods used by relevant foreign regulatory authorities to monitor compliance with such requirements. An application for a substituted compliance determination may be submitted electronically or in paper format. A foreign security-based swap dealer (or a group of foreign security-based swap dealers of the same class) requesting a substituted compliance determination with respect to one or more Title VII requirements also must demonstrate that it is directly supervised by the foreign financial regulatory authority with respect to certain Title VII requirements and provide the certification and opinion of counsel. All filings and submissions must be in the English language, and include an English translation of any foreign language document.

2. Purpose and Use of the Information Collection

The Commission would use the information collected pursuant to proposed Rule 3a71-5 to evaluate requests for substituted compliance with respect to requirements applicable to registered security-based swap dealers (or classes thereof) under Section 15F of the Exchange Act and the rules and regulations thereunder. The information collected pursuant to proposed Rule 3a71-5 may be submitted electronically or in paper format, and the Commission intends to make public the information submitted to it pursuant to any such request, though requestors may seek confidential treatment of their applications to the extent permitted under Commission rules.

3. Consideration Given to Information Technology

Applications for a substituted compliance determination under proposed Rule 3a71-5 may be submitted in paper format or electronically. Applications submitted electronically must be submitted to the electronic mailbox described on the Commission's web site. Proposed Rule 3a71-5 permits electronic submission of applications in order to reduce the burden on applicants and streamline the submission process, while also permitting submission of paper applications in order to give applicants flexibility in their form of submission.

4. Duplication

Rule 3a71-5 is a new rule. There are no existing rules governing substituted compliance for foreign security-based swap dealers and, therefore, Rule 3a71-5 would not duplicate any existing information collection.

5. Effect on Small Entities

Not applicable. None of the respondents subject to the information collection will be a small entity.

6. Consequences of Not Conducting Collection

The information collection under Rule 3a71-5 is designed to enable the Commission to permit compliance with comparable regulatory requirements in a foreign jurisdiction to substitute for compliance with certain Title VII requirements relating to security-based swaps, and thereby mitigate the threat that a market participant who engages in cross-border security-based swap transactions could be subject to conflicting or duplicative compliance obligations across multiple jurisdictions. If the information collection under Rule 3a71-5 is not completed with respect to a given foreign jurisdiction, the Commission may be unable to make a substituted compliance determination with respect such foreign jurisdiction.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/comments/s7-02-13/s70213.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

9. Payment or Gift

Not applicable.

10. Confidentiality

The Commission intends to make public the information submitted to it pursuant to any request for a substituted compliance determination under proposed Rules 3a71-5, including supporting documentation provided by the requesting party, though requestors may seek confidential treatment of their applications to the extent permitted under Commission rules. If confidential treatment is granted, such information would be kept confidential, subject to the provisions of applicable law (e.g., Freedom of Information Act, 5 U.S.C. 552).

11. Sensitive Questions

The collection of information contained in Rule 3a71-5 may include Personally Identifiable Information (“PII”)¹ in that applicants submitting substituted compliance requests to the Commission pursuant to 3a71-5 are required to follow the procedures set forth in Rule 0-13. Specifically, Rule 0-13(e) states that “[e]very application (electronic or paper) must contain the name, address, telephone number, and email address of each applicant and the name, address, telephone number, and email address of a person to whom any questions regarding the application should be directed.” This information collection does not include social security numbers.

Further, Commission staff does not expect to be able to search and retrieve a substituted compliance request using PII. As such, we believe that the treatment of any PII provided with

¹ The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

the collection of information associated with this proposed rule, once it is ultimately adopted, is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

12. Burden of Information Collection

A request for a substituted compliance determination under Rule 3a71-5 may come only from a registered foreign security-based swap dealer (or a group of such dealers). However, the Commission will make any determinations with respect to particular requirements on a class or jurisdiction basis, depending on the specific characteristics of the foreign regulatory regime, rather than on a firm-by-firm basis. Once the Commission has made an affirmative substituted compliance determination with respect to a particular jurisdiction, other similarly situated foreign security-based swap dealers within such jurisdiction would be able to rely on that determination to the extent applicable and subject to any corresponding conditions. Similarly, if the Commission makes a determination to reject a request for a substituted compliance determination with respect to a particular jurisdiction, such determination would apply to other similarly situated foreign security-based swap dealers within such jurisdiction. Therefore, a registered foreign security-based swap dealer would not be required to make a request with respect to rules and regulations of a foreign jurisdiction that have previously been the subject of a substituted compliance determination. Accordingly, the Commission expects that requests for a substituted compliance determination would be made only where an entity seeks to rely on particular requirements of a foreign jurisdiction that have not previously been the subject of a substituted compliance request. The Commission believes that this approach substantially reduces the burden associated with requesting substituted compliance determinations for an entity that relies on a previously issued determination, and, therefore, complying with the Commission's rules and regulations more generally.

Additionally, the Commission understands that approximately 19 jurisdictions are in the process of developing regulations for swaps, security-based swaps and other OTC derivatives. Given that only a relatively small number of jurisdictions have substantial OTC derivatives markets and are implementing OTC derivatives reforms, the Commission estimates that it will receive no more than 50 requests for substituted compliance determinations pursuant to Rule 3a71-5. This estimate accounts for the fact that the Commission may receive multiple requests from a given jurisdiction (e.g., separate requests from bank and nonbank entities in that jurisdiction). Because the Commission expects that registered foreign security-based swap dealers will seek to rely on substituted compliance upon registration with the Commission, the Commission believes that these requests will be made during the first year.

The Commission staff estimates that the one-time reporting burden associated with making each substituted compliance request pursuant to Rule 3a71-5 would occur in the first year and be approximately 80 hours of in-house counsel time. Thus, the Commission staff estimates that the aggregate burden associated with preparing and submitting requests for a substituted compliance determination pursuant to Rule 3a71-5 would be approximately 4,000²

² 50 (estimated number of requests for substituted compliance determinations pursuant to

hours across all applicable respondents. Based on these calculations, the annualized three-year estimate of the hourly burden across all respondents is 1,333.33 hours.³ Thus, the annualized three year estimate is 26.667⁴ hours per respondent on an annual basis.

These total costs include all collection burdens associated with Rule 3a71-5, including burdens associated with analyzing and comparing the regulatory requirements of the foreign jurisdiction with the requirements in Section 15F of the Exchange Act and the rules and regulations thereunder.

Rule 3a71-5) * 80 hours = 4,000 hours.

³ 4,000 hours across all respondents for three years (first year: 4,000 hours; second year: 0 hours; third year: 0 hours) ÷ 3 years = 1,333.33.

⁴ 1,333.33 hours ÷ 50 respondents = \$26.667.

13. Costs to Respondents

The Commission believes that a registered foreign security-based swap dealer (or a group of such dealers) requesting a substituted compliance determination will seek outside legal services in the preparation of such requests. For PRA purposes, the Commission assumes that all 50 respondents would seek outside legal services for the first year only and would, on average, consult with outside counsel for 200 hours, which would cost \$4,000,000.⁵ The Commission also assumes that none of the 50 respondents would seek outside legal services for year two or year three. Thus, the cost over the three-year period would be \$4,000,000⁶ or \$1,333,333.33⁷ per year when annualized over three years. The total labor cost per respondent would be approximately \$80,000,⁸ or approximately \$26,666.67⁹ when annualized over three years.

14. Cost to Federal Government

Not applicable. The Commission does not anticipate any contracting, IT, or development costs, and does not anticipate hiring new employees in connection with the information collection.

15. Changes in Burden

Not applicable. The Commission is proposing 3a71-5 for the first time.

16. Information Collections Planned for Statistical Purposes

Not applicable. The information collections above are not planned for statistical purposes.

17. Approval to Omit OMB Expiration Date

⁵ 50 (estimated number of entities that would seek outside counsel to help request a substituted compliance determination) × 200 hours (average estimated time spent by outside counsel to help request a substituted compliance determination) × \$400 (hourly rate for an outside attorney) = \$4,000,000. The hourly cost estimate of \$400 on average for an attorney is based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters. See Proposal, 78 FR 30967.

⁶ 10,000 hours across all respondents for three years ((first year: 200 hours; second year: 0 hours; third year: 0 hours) * 50 respondents) * \$400 = \$4,000,000.

⁷ \$4,000,000 (cost over three years) ÷ 3 years = \$1,333,333.33.

⁸ \$4,000,000 (total labor cost to seek outside counsel, over three years) ÷ 50 (estimated number of entities that would seek outside counsel to help request a substituted compliance determination) = \$80,000.

⁹ \$80,000 (cost per respondent, over three years) ÷ 3 years = \$26,666.67.

The Commission is not seeking approval to omit the OMB expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.