

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission**  
**for Registration Requirements for Security-based Swap Dealers and Major Security-based**  
**Swap Participants**

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**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) added Section 15F to the Securities Exchange Act of 1934 (“Exchange Act”) to create a regulatory structure to allow the Securities and Exchange Commission (the “Commission”) to regulate security-based swap dealers and major security-based swap participants (collectively, “SBS Entities”).

New Section 15F(a) of the Exchange Act provides that it is unlawful for an SBS Entity to act as an SBS Entity unless it is registered as an SBS Entity with the Commission pursuant to Section 15F(b) of the Exchange Act. New Section 15F(b) of the Exchange Act authorizes the Commission to prescribe by rule an application form for registration that contains such information as the Commission considers necessary concerning the business in which it is or will be engaged. In addition, new Section 15F(d)(1) of the Exchange Act authorizes the Commission to adopt rules for persons registered as SBS Entities.

To implement these new sections of the Exchange Act and facilitate registration of SBS Entities, the Commission proposed to adopt a series of new rules and Forms on October 12, 2011.<sup>1</sup> On May 1, 2013, the Commission re-proposed Forms SBSE, SBSE-A, and SBSE-BD to allow those forms to collect information regarding substituted compliance during the registration process.<sup>2</sup> The Commission is adopting Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W to create a process to register SBS Entities.

On August 5, 2015, the Commission adopted the Rules pursuant to Sections 15F(a)-(d), 17(a), 23(a), and 30 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 USC 78o-10(a)-(d), 78q(a), 78w(a), and 78dd.<sup>3</sup>

Registration

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<sup>1</sup> *Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Securities Exchange Act Release No. 65543 (Oct. 12, 2011), 76 FR 65784 (Oct. 24, 2011) (the “SBS Entity Registration Proposing Release”).

<sup>2</sup> *Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Securities Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (the “Cross-Border Release”).

<sup>3</sup> *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants*, Securities Exchange Act Release No. 75611 (Aug. 5, 2013), 80 FR 48964 (Aug. 12, 2015). The OMB control number is 3235-0696.

Rule 15Fb2-1(a)<sup>4</sup> requires a firm to file an application for registration as an SBS Entity with the Commission on Form SBSE,<sup>5</sup> Form SBSE-A,<sup>6</sup> or Form SBSE-BD,<sup>7</sup> as applicable. These Forms were designed to elicit information concerning, among other things, the nature of an SBS Entity's business, the identity of its principals and controlling persons, and whether it has been sanctioned for investment-related violations. Paragraphs (a) and (b) of Rule 15Fb2-1 also require that each SBS Entity provide the Commission with a certification on Form SBSE-C to facilitate the Commission's review of each firm's application for ongoing registration.<sup>8</sup> Rule 15Fb2-3<sup>9</sup> requires a registered SBS Entity to promptly update its Form SBSE, SBSE-A, or SBSE-BD, as applicable, when information contained in those Forms changes or becomes materially inaccurate. Rule 15Fb2-4<sup>10</sup> requires nonresident SBS Entities to (1) file an additional schedule to Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, to inform the Commission of the identity and location of its U.S. agent for service of process and to certify that it can, as a matter of law, and will provide the Commission with access to its books and records and submit to onsite inspection and examination by the Commission, and (2) obtain an opinion of counsel stating that the nonresident SBS Entity can, as a matter of law, provide the Commission with access to its books and records submit to onsite inspection and examination by the Commission. Rule 15Fb6-2<sup>11</sup> requires SBS Entities to certify, on Form SBSE-C, that it neither knows, nor in the exercise of reasonable care should have known, that any person associated with it who effects or is involved in effecting security-based swaps on its behalf is subject to a statutory disqualification, unless otherwise specifically provided by rule, regulation or order of the Commission. That rule also requires that, to support this certification, an SBS Entity's CCO (or his or her designee) must review and sign the questionnaire or application for employment obtained in

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<sup>4</sup> 17 CFR 240.15Fb2-1(a).

<sup>5</sup> 17 C.F.R. 249.1600. The rules require SBS Entities that are not already registered as broker-dealers or registered or registering with the CFTC as a swap dealer or major swap participant to use Form SBSE to register with the Commission. Form SBSE elicits all the information the Commission needs to evaluate the applicant's request for registration.

<sup>6</sup> 17 C.F.R. 249.1600a. The rules allow SBS Entities that are registered or registering with the CFTC as a swap dealer or major swap participant to use Form SBSE-A instead of Form SBSE to register with the Commission to register with the Commission. Form SBSE-A is shorter than Form SBSE and was designed to elicit information the staff needs to evaluate an SBS Entity's registration that is not already elicited through the CFTC registration form, which these firms would also be required to provide to the Commission.

<sup>7</sup> 17 C.F.R. 249.1600b. The rules allow SBS Entities that are also registered broker-dealers to use Form SBSE-BD instead of Form SBSE to register with the Commission. Form SBSE-BD is a shorter form in recognition of the fact that the Commission already has, through Form BD, much of the information elicited through Form SBSE that the staff would need to evaluate the applicant's request for registration.

<sup>8</sup> 17 CFR 240.15Fb2-1(b).

<sup>9</sup> 17 CFR 240.15Fb2-3.

<sup>10</sup> 17 CFR 240.15Fb2-4.

<sup>11</sup> 17 CFR 240.15Fb6-2. Exchange Act Section 15F(b)(6) specifically prohibits SBS Entities from permitting any of their associated persons who are subject to a "statutory disqualification" (as described in paragraphs (A) through (F) of Exchange Act Section 3(a)(39)) to effect or be involved in effecting security-based swaps on behalf of the SBS Entity if the SBS Entity knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

compliance with other rules<sup>12</sup> executed by each associated person who is a natural person and who effects or is involved in effecting security based swaps on the SBS Entity's behalf. As these Forms are filed electronically, Rule 15Fb1-1<sup>13</sup> requires that an SBS Entity retain a copy of manually signed signature pages to assure that they are available for review by examiners.

The collections of information included in these rules and forms are necessary to allow the Commission to effectively determine whether the applicant meets the statutory requirements to engage in the security-based swap business. In addition, these collections of information are necessary to allow the Commission to adequately supervise the activities of these SBS Entities on an ongoing basis.

### Withdrawal

Rule 15Fb3-2<sup>14</sup> allows a registered SBS Entity to withdraw from registration with the Commission by filing Form SBSE-W.<sup>15</sup> The collection of information included in Rule 15Fb3-2 and Form SBSE-W is necessary to allow the Commission to determine whether it is in the public interest to allow the SBS Entity to withdraw from registration.

## **2. Purpose and Use of the Information Collection**

### Registration

The Commission would use the information disclosed by applicants through the SBS Entity registration rules and forms, including the re-proposed forms to: (1) determine whether an applicant meets the standards for registration set forth in the provisions of the Exchange Act; and (2) develop an information resource regarding SBS Entities where members of the public may obtain relevant, up-to-date information about SBS Entities, and where the Commission may obtain information for examination and enforcement purposes. Without the information provided through these SBS Entity registration rules and forms, including the re-proposed forms, the Commission could not effectively determine whether the applicant meets the standards for registration or implement policy objectives of the Exchange Act.

### Withdrawal

The information collected pursuant to Rule 15Fb3-2 and Form SBSE-W would allow the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal. Without this information, the Commission could not effectively determine whether it was appropriate to allow an SBS Entity to withdraw. In addition, it would be more difficult for the Commission to properly regulate SBS Entities if it were unable to quickly identify those that have withdrawn from the security-based swap business.

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<sup>12</sup> See e.g., Exchange Act Rule 17a-3(a)(12)(i) and proposed Rule 18a-5(a)(8)(i).

<sup>13</sup> 17 CFR 240.15Fb1-1.

<sup>14</sup> 17 CFR 240.15Fb3-2.

<sup>15</sup> 17 CFR 249.1601.

### **3. Consideration Given to Information Technology**

SBS Entity applicants will file Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, and attachments thereto (including the appropriate Schedules, opinions of counsel, and Form SBSE-C) electronically. The Commission believes that this method of collecting information would reduce the regulatory burden upon SBS Entities.

### **4. Duplication**

There will be no duplication because SBS Entities are not currently required to register. An SBS Entity must register in one or more different capacities because it engages in multiple lines of business. Other registration requirements may elicit different information for different purposes from the information required by Rule 15Fb2-1 and Forms SBSE, SBSE-A, SBSE-BD,<sup>16</sup> and SBSE-C.

### **5. Effect on Small Entities**

Based on the Commission's existing information about the security-based swap market, the Commission believes that no entities that will qualify as SBS Entities will be "small entities."

### **6. Consequences of Not Conducting Collection**

Rule 15Fb2-1(a) and (b) and Form SBSE require that an SBS Entity file Form SBSE, Form SBSE-A, or Form SBSE-BD (including the additional schedules required to comply with Rules 15Fb2-4), as applicable, and Form SBSE-C only once to register. Rule 15Fb2-3 would require an SBS Entity to file amendments to Forms SBSE, SBSE-A, and SBSE-BD, as applicable, only when information contained therein becomes inaccurate. Less frequent collection of information pursuant to these rules and forms would impair the accuracy of the information available to the Commission, which could impede its decision-making and oversight of these entities.

Rule 15Fb3-2 requires that an SBS Entity file Form SBSE-W to withdraw from registration only once. Less frequent collection of this information would limit the Commission's understanding of whether registered SBS Entities continue to engage in business and could result in a misallocation of Commission resources to oversee SBS Entities that are no longer engaged in this business.

### **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).

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<sup>16</sup> An SBS Entity would only be required to file one application, on either Form SBSE, Form SBSE-A or Form SBSE-BD, whichever is applicable.

## **8. Consultations Outside the Agency**

The Commission solicited comment on the new “collection of information” requirements and associated paperwork burdens in its SBS Entity Registration Proposing Release. The Commission re-opened the comment period on the proposed rules and forms on May 1, 2013 to solicit additional comments.<sup>17</sup> Finally, the Commission solicited comments regarding the changes proposed to Forms SBSE, SBSE-A, and SBSE-BD in the Cross-Border Proposing Release. Copies of each of these releases are attached hereto. 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. Comments received on these proposed rulemakings have been posted on the Commission’s public website (see <http://www.sec.gov/comments/s7-40-11/s74011.shtml>). The Commission considered the comments received prior to publishing the final rule, and has explained 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 the information submitted to the Commission pursuant to Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE-C and SBSE-W, along with Forms SBSE, SBSE-A, SBSE-BD public. Information firms are required to create and maintain at their offices pursuant to Rules 15Fb1-1 through 15Fb6-2 would generally only be accessed by the Commission staff during examinations and, to the extent the Commission obtains copies of those records, they will be kept confidential (subject to applicable law).

## **11. Sensitive Questions**

Not applicable. The collections of information do not expressly include Personally Identifiable Information (“PII”). The Commission staff does not envision any circumstance in which a social security number would be provided pursuant to any of the collections of information. As such, we believe that the treatment of any PII with the collection of information associated with the adopted rules is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

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<sup>17</sup> *Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act*, Securities Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30800 (May 23, 2013).

## 12. Burden of Information Collection

### a. Respondents:

The Commission believes, based on data obtained from DTCC and conversations with market participants that approximately 50 entities may fit within the definition of SBS Dealer and up to five entities may fit within the definition of major security-based swap participant.<sup>18</sup> All of these entities will need to register within the first year.

Of the 55 entities likely to be either security-based swap dealers or major security-based swap participants, the Commission staff estimates that 22 entities will be registered foreign security-based swap dealers or foreign major security-based swap participants (collectively, “Nonresident SBS Entities”).<sup>19</sup> The Commission staff expects that most registered Nonresident SBS Entities will be based in one of a small number of non-U.S. jurisdictions; however, the Commission understands that approximately 19 jurisdictions are in the process of developing regulations and/or infrastructure for swaps, security-based swaps, and other OTC derivatives.<sup>20</sup> In addition, the Commission anticipates that a small number of security-based swap market participants could be based in other jurisdictions. As a result, the Commission staff estimate that cross-border issues may arise in connection with security-based swap market participants and transactions in and among up to 30 discrete jurisdictions.<sup>21</sup>

The staff further estimates, based on its experience and understanding of the unregulated swaps and security-based swaps markets, that the majority of firms that may register as SBS Entities (35) also will be engaged in the swaps business and will register with the CFTC as swap dealers or major swap participants. In addition, persons holding securities positions may find it beneficial to hedge those positions with security-based swaps, so it may be beneficial for a broker-dealer to become an SBS Entity so that it can provide this option to its customers. Thus, Commission staff estimate that approximately 16 broker-dealers will seek to register as SBS Entities. Finally, given the costs of registration it may be less likely for an entity that is not otherwise registered with the CFTC or the Commission to register as an SBS Entity. Consequently, the Commission staff estimate that only four firms not otherwise

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<sup>18</sup> The Commission solicited comment on the reasonableness and accuracy of these estimates in the SBS Entity Registration Proposing Release and the Cross-Border Proposing Release, but received no comments regarding its estimates.

<sup>19</sup> See *Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person’s Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent*, Exchange Act Release No. 74834 (Apr. 29, 2015), 80 FR 27444 (May 13, 2015), at 27452.

<sup>20</sup> See FSB Progress Report April 2013. These 19 jurisdictions are: Argentina, Australia, Brazil, Canada, China, the European Union, Hong Kong, India, Indonesia, Japan, Mexico, the Republic of Korea, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey, and the United States.

<sup>21</sup> The European Union is regulating OTC derivatives reporting, clearing, and bilateral risk management on a pan-European basis. Accordingly, the Commission may treat the European Union as a single jurisdiction for purposes of certain cross-border issues. However, the Commission notes that there may be variation between individual European countries even within this consolidated approach (e.g., privacy laws or supervisory oversight or enforcement may differ in various European countries).

registered with the CFTC or the Commission will seek to become an SBS Entity.<sup>22</sup>

b. Description of Burdens:

i. *Burden Associated with Filing Application Forms*

Rule 15Fb2-1 requires that each SBS Entity register with the Commission by filing an application. The Commission has attempted to reduce the burden associated with the application process by providing multiple forms for SBS Entities to use to register (Form SBSE, Form SBSE-A, or Form SBSE-BD). It is anticipated that each SBS Entity will only need to research, complete, and file one form.

While it is likely that the time necessary to complete these forms would vary depending on the nature and complexity of the entity's business, the Commission staff estimated in the SBS Entity Registration Proposing Release (based on its experience with Form BD) that the average time necessary for an SBS Entity to research the questions, and complete and file proposed Form SBSE (including the Schedules<sup>23</sup> and disclosure reporting pages ("DRPs")) would be approximately one work week or 40 hours.<sup>24</sup> In the Cross-Border Proposing Release the Commission staff estimated that the three new questions to Form SBSE included in the re-proposed Form SBSE could increase the amount of time for an SBS Entity to complete this form by about two hours.<sup>25</sup> The Commission received no comments on these estimates, and continues to believe they are appropriate. As discussed above, the Commission estimates that approximately four firms would need to register using Form SBSE. Consequently, we estimate that the total burden associated with filing Form SBSE is approximately 168 hours.<sup>26</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with Filing Form SBSE would be approximately 168 hours, or 56 hours per year<sup>27</sup> when annualized over three years. The average estimated burden per SBS Entity would be 42 hours, or 14 hours per year<sup>28</sup> when annualized over three years.**

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<sup>22</sup> The Commission solicited comment on the reasonableness and accuracy of these estimates in the SBS Entity Registration Proposing Release and the Cross-Border Proposing Release, but received no comments regarding its estimates.

<sup>23</sup> Except Schedule F, which is dealt with separately below.

<sup>24</sup> The staff has previously estimated that the average time necessary for a broker-dealer to complete and file Form BD, the Form upon which Form SBSE was based, would be approximately three hours (and that estimate was subject to notice and comment. *Broker-Dealer Registration and Reporting*, Exchange Act Release No. 41594 (Jul. 2, 1999), 64 FR 37586 (Jul. 12, 1999)). However, some SBS Entities may not previously have been subject to regulation and thus may need more time to research the answers to complete Form SBSE and its schedules and DRPs.

<sup>25</sup> See *Cross-Border Proposing Release*, 78 FR at 31104.

<sup>26</sup> 42 hours x 4 SBS Entities = 168 hours.

<sup>27</sup> 168 hours ÷ 3 = 56 hours per year.

<sup>28</sup> 168 hours ÷ 4 (estimated number of SBS Entities) = 42 ÷ 3 = 14 hours per respondent.

The Commission staff estimated in the SBS Entity Registration Proposing Release that, as Form SBSE-A is shorter than the Form SBSE, it should take an SBS Entity approximately 80% of the time that it would take to research, complete, and file a Form SBSE (including the Schedules and DRPs), or 32 hours.<sup>29</sup> In the Cross-Border Proposing Release the Commission staff estimated that the three new questions to Form SBSE-A included in the re-proposed Form SBSE-A could increase the amount of time for an SBS Entity to complete this form by about two hours.<sup>30</sup> The Commission received no comments on these estimates, and continues to believe they are appropriate. As discussed above, the Commission estimates that approximately 35 firms would also be registered with the CFTC and therefore would need to register using Form SBSE-A. Consequently, we estimate the total burden associated with filing Form SBSE-A to be approximately 1,190 hours.<sup>31</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with Filing Form SBSE-A would be approximately 1,190 hours, or 396.67 hours per year<sup>32</sup> when annualized over three years. The average estimated burden per SBS Entity would be 34 hours, or 11.3333 hours per year<sup>33</sup> when annualized over three years.**

The Commission staff estimated in the SBS Entity Registration Proposing Release that, as Form SBSE-BD is shorter than either Form SBSE or Form SBSE-A and broker-dealers who would be filing Form SBSE-BD are familiar with Commission terminology and forms, researching, completing, and filing a Form SBSE-BD should take an SBS Entity approximately 25% of the time that it would take to research, complete, and file a Form SBSE (including the Schedules), or 10 hours.<sup>34</sup> In the Cross-Border Proposing Release the Commission staff estimated that the addition of one new question to Form SBSE-BD included in the re-proposed Form SBSE-BD could increase the amount of time for an SBS Entity to complete this form by about a half an hour.<sup>35</sup> The Commission received no comments on these estimates, and continues to believe they are appropriate. As discussed above, the Commission estimates that approximately 16 SBS Entities would need to register using Form SBSE-BD. Consequently, we estimate that the total burden associated with filing Forms SBSE-BD is approximately 168 hours.<sup>36</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with Filing Form SBSE-BD would be approximately 168 hours, or 56 per year<sup>37</sup> when annualized over three years. The average estimated burden**

<sup>29</sup> 40 hours x 80% = 32 hours.

<sup>30</sup> See *Cross-Border Proposing Release*, 78 FR at 31104.

<sup>31</sup> 34 hours x 35 SBS Entities = 1,190 hours.

<sup>32</sup> 1,190 hours ÷ 3 = 396.67 hours per year.

<sup>33</sup> 1,190 hours ÷ 35 (estimated number of SBS Entities) = 34 ÷ 3 = 11.3333 hours per respondent.

<sup>34</sup> 40 hours x 25% = 10 hours.

<sup>35</sup> See *Cross-Border Proposing Release*, 78 FR at 31104.

<sup>36</sup> 10.5 hours x 16 SBS Entities = 168 hours.

<sup>37</sup> 168 hours ÷ 3 = 56 hours per year.



**per SBS Entity would be 10.5 hours, or 3.5 hours per year<sup>38</sup> when annualized over three years.**

*ii. Burden Associated with Amending Application Forms*

Rule 15Fb2-3 requires that each SBS Entity amend its Form SBSE, SBSE-A, or SBSE-BD, as applicable, if it finds that the information contained therein has become inaccurate. While Rule 15Fb2-3 would requires SBS Entities to update their Forms periodically, each firm will only need to amend that aspect of the Form that has become inaccurate. Consequently, it likely will not take a significant amount of time to make such changes. Based on the number of amendments the Commission receives annually on Form BD,<sup>39</sup> the Commission estimates that each SBS Entity will file approximately three amendments annually, and that it likely would take an SBS Entity approximately one hour to amend its application each time it files an amendment.<sup>40</sup> Consequently, the total burden associated with amending Forms SBSE, SBSE-A, and SBSE-BD, as applicable, is approximately 165 hours.<sup>41</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden associated with amending Forms SBSE, SBSE-A, or SBSE-BD, as appropriate, would be approximately 495 hours, or 165 per year<sup>42</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be 9 hours, or 3 hours per year<sup>43</sup> when annualized over three years.**

*iii. Burden Associated with Certifications*

Paragraph (a) of Rule 15Fb2-1 requires that each SBS Entity file Form SBSE-C, which includes two separate certifications, as part of its application to register as an SBS Entity. One of the certifications, required by Rule 15Fb2-1(b), requires a senior officer of the applicant to certify that, after due inquiry, the senior officer has reasonably determined that the applicant has developed and implemented written policies and procedures reasonably designed to prevent violations of the federal securities laws and the rules thereunder. The other certification, required by Rule 15Fb6-2, requires that the SBS Entity's CCO certify that none of its associated persons that effects or is involved in effecting security-based swaps on its behalf is subject to

<sup>38</sup>  $168 \div 16$  (estimated number of SBS Entities) =  $10.5 \div 3 = 3.5$  hours per respondent.

<sup>39</sup> On March 1, 2015 there were 4,253 broker-dealers registered with the Commission (based on Form BD data). The Commission received 15,638, 15,491, 13,271, 12,902, and 14,330 amended Forms BD during the fiscal years ending 9/30/2010, 9/30/2011, 9/30/2012, 9/30/2013 and 9/30/2014, respectively.  $((15,638 + 15,491 + 13,271 + 12,902 + 14,330) \div 5 \text{ years}) \div 4,253$  broker-dealers = 3.4 amendments per broker-dealer per year.

<sup>40</sup> The time necessary to file an amendment to Form SBSE, Form SBSE-A, or Form SBSE-BD, as applicable may vary depending on the nature and complexity of the information to be amended.

<sup>41</sup>  $1 \text{ hour} \times \text{three amendments per year} \times 55 \text{ SBS Entities} = 165 \text{ hours}$ .

<sup>42</sup>  $(165 \text{ hours Y1 burden for } 55 \text{ SBS Entities to file Form SBSE, SBSE-A, or SBSE-BD}) + (165 \text{ hours Y2 burden for } 55 \text{ SBS Entities to file Form SBSE, SBSE-A, or SBSE-BD}) + (165 \text{ hours Y3 burden for } 55 \text{ SBS Entities to file Form SBSE, SBSE-A, or SBSE-BD}) = 495 \text{ hours} \div 3 = 165 \text{ hours per year}$ .

<sup>43</sup>  $495 \text{ hours (total burden to file Forms SBSE, SBSE-A, and SBSE-BD, collectively)} \div 55$  (estimated number of SBS Entities) =  $9 \text{ hours} \div 3 = 3 \text{ hours per respondent}$ .

statutory disqualification, unless otherwise specifically provided by rule, regulation or order of the Commission.<sup>44</sup> Each SBS Entity would need to file Form SBSE-C only once.

With respect to the burdens associated with the first certification, the Commission has previously estimated that it would take a senior officer approximately 20 hours to review, document, and update compliance procedures, which the staff believes would be analogous to reviewing an SBS Entity's written policies and procedures and or taking whatever other actions he or she deems necessary to gain comfort to sign the Senior Officer Certification. In the Registration Proposing Release, we stated that our belief is that the burden associated with having a senior officer sign a certification likely would be approximately five hours. Consequently, we estimate that the total burden associated with having a senior officer review an SBS Entity's written policies and procedures and or taking whatever other actions he or she deems necessary to gain comfort necessary to sign the Senior Officer Certification and to then sign the certification on Form SBSE-C would be approximately 1,375 hours for all entities.<sup>45</sup>

In the Registration Proposing Release the Commission estimated that it would take a CCO approximately one hour to certify on Schedule G that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification.<sup>46</sup> While we received no comments on this estimate of the time it would take for the CCO to certify, we did receive one comment alleging that our estimates as to the number of associated persons was too low and failed to include associated persons that were not natural persons.<sup>47</sup> Our prior estimate was based on the assumption that the CCO would already have the knowledge necessary to sign the certification because he or she (or his or her designee) would have reviewed and signed each associated persons' employment applications or questionnaires and conducted background checks on those persons. To the extent this certification requires a CCO to also consider whether associated persons that are not natural persons are subject to statutory disqualification, and the CCO (or his or her designee) would not have already reviewed employment questionnaires or applications or conducted background checks on those persons, we modified our original estimate to accommodate such a review.

We now estimate that each SBS Entity may have, on average 10 associated persons that are not natural persons effecting or involved in effecting security-based swaps on their behalf.<sup>48</sup> Further, we believe it would likely take, on average, approximately five hours for a CCO to

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<sup>44</sup> The CCO Certification Regarding Associated Persons was previously included as Schedule G to Forms SBSE, SBSE-A, and SBSE-BD. We moved it into Form SBSE-C to clarify that it is a one-time certification and need not be updated.

<sup>45</sup> (5 hours + 20 hours) x 55 SBS Entities = 1,375 hours. The Commission has separately proposed to require that each SBS Entity establish, maintain, enforce and promptly update written policies and procedures addressing the supervision of the types of security-based swap business in which the SBS Entity is engaged that are reasonably designed to achieve compliance with applicable securities laws and the rules and regulations thereunder. See *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, Exchange Act Release No. 64766 (Jun. 29, 2011), 76 FR 42396 (Jul. 18, 2011), at 42419 through 42421. That rulemaking accounted for the burden associated with establishing written procedures.

<sup>46</sup> Registration Proposing Release at 65811.

<sup>47</sup> See SIFMA Letter at 7-8.

collect information from its legal or other internal departments or its holding company to determine whether each of its associated persons that is not a natural person is subject to statutory disqualification. Thus, we estimate that it would take a CCO approximately 50 hours to obtain sufficient information that none of its associated persons is subject to statutory disqualification to gain sufficient comfort that none of these associated persons that effects or is involved in effecting security-based swaps is subject to statutory disqualification to allow them to sign the certification. As a result of this change, the Commission staff now estimates that the total burden to all SBS Entities to complete the CCO Certification Regarding Associated Persons on Form SBSE-C would be approximately 2,805 hours.<sup>49</sup>

**In summary, the Commission estimates that the total reporting burden associated with filing Form SBSE-C would be approximately 4,180 hours, or 1,393.33 per year<sup>50</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be 76 hours, or 25.3333 hours per year<sup>51</sup> when annualized over three years.**

*iv. Burden Relating to Associated Persons*

Rule 15Fb6-2 requires an SBS Entity's CCO certify, on Form SBSE-C, that no associated person that effects or is involved in effecting security-based swaps on behalf of the SBS Entity is subject to a statutory disqualification, except as otherwise provided by rule, regulation or order of the Commission.<sup>52</sup> The rule further provides that to support this

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<sup>48</sup> The rules, as adopted, include new rule 15Fb6-1, which limits the scope of the prohibition in Exchange Act Section 15F(b)(6) so that unless otherwise ordered by the Commission, an SBS Entity that files an application with the Commission to register as an SBS Entity on or before [180 days after the compliance date for this rule] may permit a person associated with it that is not a natural person and that is subject to statutory disqualification to effect or be involved in effecting security-based swaps on its behalf, provided that the statutory disqualification(s), described in Sections 3(a)(39)(A) through (F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(A) – (F)), occurred prior to [the compliance date of this rule]. In addition, we clarified in Rule 15Fb6-2(b) that an SBS Entity's CCO is only required to review and sign questionnaires and applications of natural persons, because those are the only types of persons that would generally submit such a questionnaire or application. Based on the fact that the statutory prohibition is limited to persons who effect or are involved in effecting security-based swaps on an SBS Entity's behalf (and not all associated persons), as well as staff experience and observations, we estimate that each SBS Entity could have approximately 10 affected associated persons that are entities.

<sup>49</sup> (10 associated persons that are not natural persons x 5 hours to gain comfort that the entity is not subject to statutory disqualification x 55 SBS Entities) + (1 hour for CCO to sign certification x 55 SBS Entities) = 2,805 hours.

<sup>50</sup> 1,375 hours + 2,805 hours = 4,180 hours ÷ 3 = 1,393.33 hours per year.

<sup>51</sup> 4,180 (total burden associated with Form SBSE-C) ÷ 55 (estimated number of SBS Entities) = 76 hours ÷ 3 = 25.3333 hours per respondent per year.

<sup>52</sup> Rule 15Fb6-2 was proposed as Rule 15Fb6-1. As proposed, the SBS Entity would also have been required to obtain the questionnaire or application. However, SBS Entities also would have been required to obtain this information pursuant to the proposed changes to Rule 17a-3(a)(12)(i) and proposed Rule 18a-5(a)(8)(i) and we believe it is more appropriate to include that requirement in the books and records rules. Consequently, Rule 15Fb6-2, as adopted, requires that an SBS Entity's CCO, or his or her designee, review and sign the questionnaire or application for employment obtained in compliance with the applicable recordkeeping rule.

certification the CCO, or his or her designee, must review and sign a questionnaire or application for employment executed by each of its associated persons who is a natural person and who effects or is involved in effecting security based swaps on the SBS Entity's behalf. SBS Entities would only need to fulfill these obligations for associated persons that effect or are involved in effecting security based swaps on behalf of the SBS Entity.<sup>53</sup> In addition, this is a one-time certification provided as part of the registration process.

In the Registration Proposing Release the Commission estimated that SBS Entities would each have, on average, 25 associated persons that effect or are involved in effecting security-based swaps on behalf of the SBS Entity. The Commission received a comment on our estimate of the number of associated persons each SBS Entity may have effect or be involved in effecting security based swaps on its behalf.<sup>54</sup> Specifically, this commenter stated that it believed "the Commission significantly underestimates the burden the Proposal's associated person investigation requirement will impose on prospective" SBS Entities, and that SBS Entities "could have hundreds, if not thousands, of associated natural persons that will effect or will be involved in effecting security-based swaps" and more if the definition of "associated person" is read to extend not just to natural persons but also to entities.<sup>55</sup>

In light of this comment the Commission has reviewed its estimates with respect to associated persons who are natural persons.<sup>56</sup> While not exactly analogous to SBS Dealers,<sup>57</sup> we reviewed available data regarding the number of persons associated with broker-dealers. As of December 31, 2014 there were 447 clearing broker-dealers<sup>58</sup> which, on average, each employed

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<sup>53</sup> 15 U.S.C. 78c(a)(70) generally defines the term "person associated with" an SBS Entity to include: (i) any partner, officer, director, or branch manager of an SBS Entity (or any person occupying a similar status or performing similar functions); (ii) any person directly or indirectly controlling, controlled by, or under common control with an SBS Entity; or (iii) any employee of an SBS Entity. However, it generally excludes persons whose functions are solely clerical or ministerial.

The Commission believes that associated persons "involved in effecting" security-based swaps would include, but not be limited to, persons involved in drafting and negotiating master agreements and confirmations, persons recommending security-based swap transactions to counterparties, persons involved in executing security-based swap transactions, persons pricing security-based swap positions and managing collateral for the SBS Entity, and persons directly supervising persons engaged in these activities. In short, the term would encompass persons engaged in functions necessary to facilitate the SBS Entity's security-based swap business.

<sup>54</sup> See SIFMA Letter at 7-8.

<sup>55</sup> *Id.*

<sup>56</sup> As discussed above in Section 12.b.iii. regarding Form SBSE-C, this comment also caused us to consider how many entity associated persons an SBS Entity may have, and the potential burdens associated with them. See *supra*, footnote 48 and accompanying text.

<sup>57</sup> Security-based swap dealers will be limited to sales of security-based swaps, whereas broker-dealers are generally engaged in the sale of a broader range of financial instruments. Thus, it is likely that fewer people would be needed to facilitate this business.

<sup>58</sup> This information was drawn from FOCUS Report filings submitted by broker-dealers as of December 31, 2014. While there are far more broker-dealers registered with the Commission, we believe clearing broker-dealers are more analogous to SBS dealers. Many introducing broker-dealers are quite small, and focus their business on particular types of instruments (*e.g.*, mutual funds or limited partnership shares). Clearing broker-dealers extend margin, hold customer collateral, and engage in a range of activities that we

423 persons who were registered.<sup>59</sup> Consequently, we now estimate that each SBS Dealer will have 423 associated persons that are natural persons who effect or are involved in effecting security-based swaps on their behalf.<sup>60</sup> Since Major SBS Participant registration requirements are triggered by position thresholds (as opposed to activity and volume thresholds for dealer registration),<sup>61</sup> we anticipate that entities which may seek to register with the Commission as Major SBS Participants are more likely to resemble hedge funds and investment advisors. To estimate the number of natural persons associated with Major SBS Participants, we used regulatory filings by registered investment advisers on Form ADV. As of January 2, 2015 there were 11,506 registered investment advisers with an average of 63 employees per adviser. Using this average as the basis, we thus estimate that each Major SBS Participant will have of 63 associated persons that are natural persons who effect or are involved in effecting security-based swaps on their behalf.

The Commission estimated in the Registration Proposing Release that it would take a CCO (or the CCO's designee) approximately one hour to review and sign a relevant employee's employment record to determine that associated persons who effect or are involved in effecting security-based swaps on their behalf are not subject to statutory disqualification.<sup>62</sup> If the SBS Entity has not already performed a background check of the employee, we estimate that it may take the CCO (or the CCO's designee) an additional hour to conduct whatever additional review may be necessary.<sup>63</sup> Consequently, the Commission estimates that the hourly burden for each SBS Dealer that is registered or registering with the Commission or the CFTC would be 423

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believe SBS Entities would perform as part of their business. However, clearing broker-dealers also generally service a large number of customer accounts, which likely would differ from the security-based swap business. We believe that SBS Entities likely would effect transactions with a more limited number of investors and counterparties and, thus, would generally employ fewer associated persons.

<sup>59</sup> In estimating the number of associated persons that effect or are involved in effecting security-based swaps on behalf of SBS dealers, we believe that it is more appropriate to use the number of registered persons of broker-dealers rather than the number of persons associated with a broker-dealer. In the brokerage business, persons who are engaged in the securities business of a broker-dealer must register, while associated persons of a broker-dealers include individuals performing a broader range of functions, including those that may do require registration. Exchange Act Section 15Fb(6) and Rule 15Fb6-2 capture only associated persons who effect or are involved in effecting security-based swaps on behalf of SBS Entities, not all associated persons of an SBS Entity. We believe that the type of activities captured by this category of associated persons is more akin to the types of activities performed by persons that engage in the securities business of a broker-dealer, and thus must register, than to associated persons of a broker-dealer in general.

<sup>60</sup> We recognize that SBS Entities will be limited to sales of security-based swaps, whereas broker-dealers are generally engaged in the sale of a broader range of financial instruments; thus less staff may be needed to facilitate this business.

<sup>61</sup> See Intermediary Definitions Adopting Release at 30748.

<sup>62</sup> Registration Proposing Release at 65810. We received no comments on this estimate, and continue to believe it is appropriate.

<sup>63</sup> The Commission continues to believe that SBS Entities that are registered with the Commission or the CFTC must already conduct a review to determine if their associated persons are statutorily disqualified persons in the CEA and the Exchange Act. See 15 U.S.C. 78f(c)(2), 78o-3(g)(2), and 78q(f)(2), and 7 U.S.C. 6k(5) and 12a(1).

hours,<sup>64</sup> and the burden for each other SBS Dealer would be 846 hours.<sup>65</sup> We have no basis to determine whether Major SBS Participants would already be registered or registering with the Commission or the CFTC, but we assume that all five will be dually-registered. Thus, the hourly burden for each Major SBS Participant would be approximately 63 hours.<sup>66</sup> We therefore estimate that the total initial burden to all SBS Entities to have their CCOs (or designees) review and sign the employment application or questionnaire for each associated person who is a natural person and who effects or is involved in effecting security-based swaps on their behalf and/or conduct whatever review may be necessary to assure that each such associated person is not subject to statutory disqualification would be approximately 23,157 hours.<sup>67</sup>

**In summary, the Commission estimates that the total recordkeeping burden for SBS dealers that are registered or registering with the CFTC or the Commission associated with the requirement in Rule 15Fb6-2 to review and sign employment questionnaires or applications, would be approximately 19,458 hours, or 6,486 per year<sup>68</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be 423 hours, or 141 hours per year<sup>69</sup> when annualized over three years.**

**In summary, the Commission estimates that the total recordkeeping burden for SBS dealers that are not otherwise registered or registering with the Commission or the CFTC associated with the requirement in Rule 15Fb6-2 to review and sign employment questionnaires or applications, would be approximately 3,384 hours, or 1,128 per year<sup>70</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be 846 hours, or 282 hours per year<sup>71</sup> when annualized over three years.**

**In summary, the Commission estimates that the total recordkeeping burden for Major SBS Participants associated with the requirement in Rule 15Fb6-2 to review and sign employment questionnaires or applications, would be approximately 315 hours, or**

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<sup>64</sup> 423 associated persons x 1 hour = 423 hours.

<sup>65</sup> 423 associated persons x 2 hours = 846 hours.

<sup>66</sup> 63 associated persons x 1 hour = 63 hours.

<sup>67</sup> (One hour x 423 associated persons that are natural persons x (30 SBS Dealers that are registered or registering with the CFTC + 16 SBS Dealers that are registered or registering with the Commission as broker-dealers)) = 19,458 hours for SBS Dealers already registered or registering with the Commission or CFTC) + ((Two hours x 423 associated persons x 4 SBS dealers that are not otherwise registered or registering with the Commission or the CFTC) = 3,384 hours) + ((One hour x 63 associated persons x 5 Major SBS Participants) = 315 hours for Major SBS Participants) = 23,157 hours.

<sup>68</sup> One hour x 423 associated persons that are natural persons x (30 SBS Dealers that are registered or registering with the CFTC + 16 SBS Dealers that are registered or registering with the Commission as broker-dealers)) = 19,458 hours ÷ 3 = 6,486 hours per year.

<sup>69</sup> 19,458 hours ÷ 46 SBS Entities = 423 hours per respondent ÷ 3 = 141 hours annually per respondent.

<sup>70</sup> Two hours x 423 associated persons x 4 SBS dealers that are not otherwise registered or registering with the Commission or the CFTC = 3,384 hours ÷ 3 = 1,128 hours per year.

<sup>71</sup> 3,384 hours ÷ 4 SBS Entities = 846 hours per respondent ÷ 3 = 282 hours annually per respondent.

**105 per year<sup>72</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be 63 hours, or 21 hours per year<sup>73</sup> when annualized over three years.**

v. *Burdens on Nonresident SBS Entities*

As indicated previously, the Commission staff estimates that 22 entities will be Nonresident SBS Entities.<sup>74</sup> Rule 15Fb2-4 requires that each nonresident SBS Entity file an additional schedule (Schedule F) with their Form SBSE, Form SBSE-A, or Form SBSE-BD, as appropriate, to identify its U.S. agent for service of process and to certify that the firm can, as a matter of law, and will provide the Commission with access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission. While the Commission did not propose to amend Rule 15Fb2-4 in the Cross-border Proposing release, it did propose to amend Schedule F. More specifically, the Commission proposed to partition all the items included on proposed Schedule F, without change, into Section I, and add a Section II designed to elicit additional information regarding foreign regulators with which the applicant may be registered or that otherwise have jurisdiction over the applicant.

Commission staff estimated in the SBSE Registration Proposing Release that the average time necessary for a nonresident SBS Entity to complete and file Schedule F would be approximately one hour. In the Cross-border Proposing release, we estimated that adding the new section to Schedule F would increase the amount of time necessary for an SBS Entity to complete and file this schedule by about one-half hour. Thus, the Commission estimates that the total burden for all nonresident SBS Entities to complete and file re-proposed Schedule F would be approximately 33 hours.<sup>75</sup>

**In summary, the Commission estimates that the total reporting burden associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to complete and file Schedule F would be approximately 33 hours, or 11 hours per year<sup>76</sup> when annualized over three years. The average estimated burden per nonresident SBS Entity over a three-year period would be 1.5 hours, or .5 hours (or 30 minutes) per year<sup>77</sup> when annualized over three years.**

Non-resident entities must also amend Schedule F to inform the Commission if they replace their agent for service of process or if information regarding their existing agent for service of process changes. We do not believe this would occur frequently, and therefore estimate that ten percent of the non-residents may need to amend their Schedule F to reflect these types of changes annually. Consequently, we estimate that the total annual burden for

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<sup>72</sup> One hour x 63 associated persons x 5 Major SBS Participants = 315 hours ÷ 3 = 105 hours per year.

<sup>73</sup> 315 hours ÷ 5 SBS Entities = 63 hours per respondent ÷ 3 = 21 hours annually per respondent.

<sup>74</sup> See text accompanying footnote 19.

<sup>75</sup> 1.5 hours x 22 nonresident SBS Entities = 33 hours.

<sup>76</sup> (Y1 initial burden 33 hours) + (Y2 initial burden 0 hours) + (Y3 initial burden 0 hours) = 33 hours ÷ 3 years = 11 hours per year.

<sup>77</sup> 33 hours ÷ 22 SBS Entities = 1.5 hours per respondent ÷ 3 = .5 hours annually per respondent.

SBS Entities to amend Schedule F to reflect changes in information regarding their agent for service of process would be 3 hours.<sup>78</sup>

**In summary, the Commission estimates that the total reporting burden associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to amend Schedule F for changes to the agent for service of process would be approximately 9 hours, or 3 hours per year<sup>79</sup> when annualized over three years. The average estimated burden per nonresident SBS Entity over a three-year period would be 4.5 hours, or 1.5 hours (or 90 minutes) per year<sup>80</sup> when annualized over three years.**

An SBS Entity must also re-certify on Schedule F of such Forms within 90-days after any changes in the legal or regulatory framework that would impact the SBS Entity's ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission's ability to inspect and examine the SBS Entity. We do not believe this would occur frequently, and therefore estimate that one non-resident entity may need to recertify annually. Thus, the total ongoing burden associated with this requirement would be approximately 1½ hours annually.

**In summary, the Commission estimates that the total reporting burden associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to amend Schedule F for changes to foreign law would be approximately 4.5 hours, or 1.5 hours per year<sup>81</sup> when annualized over three years. The average estimated burden per nonresident SBS Entity over a three-year period would be 4.5 hours, or 1.5 hours (or 90 minutes) per year<sup>82</sup> when annualized over three years.**

*vi. Burden Related to Retention of Manually Signed Signature Pages*

Pursuant to Rule 15Fb1-1, SBS Entities must create manually signed signature pages and retain them until at least three years after the form or certification has been replaced or is no longer effective. It is likely that each SBS Entity would need to maintain at least three pages with manually signed signatures (the execution page of Form SBSE, SBSE-A, or SBSE- BD, as applicable, Schedule G, and the Form SBSE-C certification). In addition, nonresident SBS Entities also would need to retain a manually signed copy of Schedule F. The Commission did not propose to amend Rule 15Fb1-1 in the Cross-Border Proposing Release. As so few pages would need to be retained, the staff believes the burden associated with retaining them would not be significant. Thus, the Commission estimates that it would take each SBS Entity

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<sup>78</sup> 22 non-resident SBS Entities x 10% = approximately 2 SBS Entities. 2 SBS Entities x 1.5 hours = 3 hours.

<sup>79</sup> (Y1 ongoing burden 3 hours) + (Y2 ongoing burden 3 hours) + (Y3 ongoing burden 3 hours) = 9 hours ÷ 3 years = 3 hours per year.

<sup>80</sup> 9 hours ÷ 2 SBS Entities = 4.5 hours per respondent ÷ 3 = 1.5 hours annually per respondent.

<sup>81</sup> (Y1 ongoing burden 1.5 hours) + (Y2 ongoing burden 1.5 hours) + (Y3 ongoing burden 1.5 hours) = 4.5 hours ÷ 3 years = 1.5 hours per year.

<sup>82</sup> 4.5 hours ÷ 1 SBS Entity = 4.5 hours per respondent ÷ 3 = 1.5 hours annually per respondent.



approximately 10 minutes annually to assure that these pages are retained, or a total of approximately 9.17 hours annually for all SBS Entities.<sup>83</sup>

**In summary, the Commission estimates that the total recordkeeping burden associated with the requirement, in Rule 15Fb1-1, for SBS Entities to retain manually signed signature pages would be approximately 27.51 hours, or 9.17 hours per year<sup>84</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be .50 hours, or .1667 hours (10 minutes) per year<sup>85</sup> when annualized over three years.**

*vii. Burden Associated with Filing Withdrawal Form*

Given that the cost and effort to register as an SBS Entity will be significant, the Commission believes that entities will not enter and exit this business regularly. As the Form SBSE-W is only one page and consists of information readily available to SBS Entities, the staff estimates (based on experience relative to Form BD-W) that it likely would take an SBS Entity, on average, approximately one hour to complete and file a Form SBSE-W.<sup>86</sup> While the Commission believes it is unlikely that any SBS Entity will withdraw from registration often or within the first year, solely for purposes of this PRA the Commission estimates that one SBS Entity may file Form SBSE-W to withdraw from registration annually and the total burden associated with completing and filing Form SBSE-W would be approximately one hour each year.<sup>87</sup>

**In summary, the Commission estimates that the total reporting burden associated with the requirement, in Rule 15Fb3-2 and Form SBSE-W, for SBS Entities to file Form SBSE-W to withdraw from registration would be approximately 3 hours, or 1 hour per year<sup>88</sup> when annualized over three years. The average estimated burden per SBS Entity over a three-year period would be 3 hours, or 1 hour per year<sup>89</sup> when annualized over three years.**

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<sup>83</sup> (10 minutes x 55 SBS Entities) ÷ 60 minutes = 9.17 hours.

<sup>84</sup> (Y1 ongoing burden 9.17 hours) + (Y2 ongoing burden 9.17 hours) + (Y3 ongoing burden 9.17 hours) = 27.51 hours ÷ 3 years = 9.17 hours per year.

<sup>85</sup> 27.51 hours ÷ 55 = .50 hours per respondent ÷ 3 = .1667 hours annually per respondent.

<sup>86</sup> The Commission included this estimate in the Registration Proposing Release, and received no comment on it. Consequently, we continue to believe this is a good estimate.

<sup>87</sup> (1 hour x 1 SBS Entity) = 1 hour.

<sup>88</sup> (Y1 ongoing burden 1 hour) + (Y2 ongoing burden 1 hour) + (Y3 ongoing burden 1 hour) = 3 hours ÷ 3 years = 1 hour per year.

<sup>89</sup> 3 hours ÷ 1 = 3 hours per respondent ÷ 3 = 1 hour annually per respondent.

## Summary of Hourly Burdens

<b>SBS Entity Registration Hourly Burdens</b>									
	<b>Nature of Information Collection Burden</b>	<b>Type of Burden</b>	<b>Number of Respondents</b>	<b>Number of Responses Per Year</b>	<b>Initial Burden Per Response Per Year Per Respondent</b>	<b>Ongoing Burden Per Response Per Year Per Respondent</b>	<b>Annualized Burden Estimate Per Respondent</b>	<b>Annualized Hourly Burden Estimate Industry-Wide</b>	<b>Small Business Entities Affected</b>
i.	<u>Burden Associated with Filing Application Forms</u>								
	Rule 15Fb2-1 and Form SBSE: Complete and File Application Form	Reporting	4	1	14		14	56	0
	Rule 15Fb2-1 and Form SBSE-A: Complete and File Application Form	Reporting	35	1	11.3333	-	11.3333	396.67	0
	Rule 15Fb2-1 and Form SBSE-BD: Complete and File Application Form	Reporting	16	1	3.5	-	3.5	56	0
ii.	Rule 15Fb2-3: Complete and File Amendments to Application Forms	Reporting	55	3	-	1	3	165	0
iii.	Rule 15Fb2-1 and Form SBSE-C: Complete and File Certifications	Reporting	55	1	25.3333	-	25.3333	1,393.33	0
iv.	<u>Burdens Relating to Associated Persons</u>								
	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers registered or registering with the SEC or the CFTC	Recordkeeping	46	1	141	-	141	6,486	0
	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers not registered or registering with the SEC or the CFTC	Recordkeeping	4	1	282	-	282	1128	0
	Rule 15Fb6-2: Review and Sign Employment Questionnaires - Major SBS Participants registered or registering with the SEC or the CFTC	Recordkeeping	5	1	21	-	21	105	0
v.	<u>Burdens on Non-Resident SBS Entities</u>								
	Rule 15Fb2-4 and Schedule F: Complete and File by Nonresident SBS Entities	Reporting	22	1	0.5	0	0.5	11	0
	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities to change Agent for Service of Process	Reporting	2	1	-	1.5	1.5	3	0
	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities for changes to Foreign Law	Reporting	1	1	-	1.5	1.5	1.5	0
vi.	<u>Rule 15Fb1-1: Retain Manually Signed Signature Pages</u>	Recordkeeping	55	1	-	0.1667	0.1667	9.17	0
vii.	<u>15Fb3-2 and Form SBSE-W: Complete and File Withdrawal Form</u>	Reporting	1	1	-	1	1	1	0
								<b>9,811.67</b>	

### 13. Costs to Respondents

There may be some costs associated with these rules, including the cost to nonresident SBS Entities to establish and maintain a relationship with a U.S. agent for service of process, and for nonresident SBS Entities to obtain an opinion of counsel indicating that it can, as a matter of law, provide the Commission with access to its books and records and submit to Commission examinations.

The Commission estimates, based on internet research,<sup>90</sup> that it would cost each nonresident SBS Entity approximately \$179 annually to appoint and maintain a relationship with a U.S. agent for service of process. Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately \$3,938 per year.<sup>91</sup>

Non-resident SBS Entities also would incur outside legal costs associated with obtaining an opinion of counsel. In previous releases, the Commission estimated that firms with a similar requirement would incur, on average, approximately \$900 in outside legal costs to obtain an opinion of counsel.<sup>92</sup> This estimate originally related to the cost a foreign bank issuer would incur to obtain a legal opinion to provide to the Commission when seeking an exemption from the requirement to make certain additional disclosures.<sup>93</sup> Although the legal opinion for foreign bank issuers also would address privacy laws in the issuer's home jurisdiction that may preclude certain disclosures, upon further reflection, we believe that the legal opinion required for non-resident SBS Entities pursuant to the rule would likely require additional research and analysis to prepare. Based on staff experience, the Commission estimates that each nonresident SBS Entity would incur, on average, approximately \$25,000 in outside legal costs to obtain the necessary opinion of counsel, and that the total cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately \$550,000.<sup>94</sup>

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<sup>90</sup> See, e.g., <http://www.incorp.com/registered-agent-resident-agent-services.aspx> (as of June 23, 2015, \$99 per state per year), [https://ct.wolterskluwer.com/registered-agent-services?mm\\_campaign=Enter\\_Campaign\\_Code\\_Here&keyword=registered%20agent&utm\\_source=Google&utm\\_medium=CPC&utm\\_campaign=RegisteredAgent&jadid=69563123457&jap=1t3&jk=registered%20agent&jklid=gc:a8a8ae4cd4a6542cf014a97541e8d183e:t1\\_p:k\\_registered%20agent:pl\\_&jp=&jjs=1&jsid=35672&jt=1](https://ct.wolterskluwer.com/registered-agent-services?mm_campaign=Enter_Campaign_Code_Here&keyword=registered%20agent&utm_source=Google&utm_medium=CPC&utm_campaign=RegisteredAgent&jadid=69563123457&jap=1t3&jk=registered%20agent&jklid=gc:a8a8ae4cd4a6542cf014a97541e8d183e:t1_p:k_registered%20agent:pl_&jp=&jjs=1&jsid=35672&jt=1) (as of June 23, 2015, \$289 per year), and <https://www.ailcorp.com/services/registered-agent> (as of June 23, 2015, \$149 per year). The staff sought websites that provided pricing information and a comprehensive description of their registered agent services. We calculated our estimate by averaging the costs provided on these three websites – (\$99 + \$289 + \$149) ÷ 3 = \$179.

<sup>91</sup> \$179 per nonresident SBS Entity x 22 nonresident SBS Entities = \$3,938.

<sup>92</sup> *Registration and Regulation of Security-Based Swap Execution Facilities*, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011); *Security-Based Swap Data Repository Registration, Duties, and Core Principles*, Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010); *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k)*, Exchange Act Release No. 49616 (Apr. 26, 2004), 69 FR 24016 (Apr. 30, 2004). The \$900 figure is based on an estimate of \$400 an hour for legal services.

<sup>93</sup> *Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k)*, Exchange Act Release No. 49616 (Apr. 26, 2004); 69 FR 24016 (Apr. 30, 2004).

<sup>94</sup> \$25,000 x 22 SBS Entities = \$550,000.

**In summary, the Commission estimates that the total reporting cost associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to establish a relationship with an agent for service of process and obtain an opinion of counsel would be approximately \$561,814 or \$187,271 when annualized over three years.<sup>95</sup> The average estimated cost per nonresident SBS Entity over a three-year period would be \$25,537 or \$8,512 per year.<sup>96</sup>**

An SBS Entity must also re-certify on Schedule F of such Forms within 90-days after any changes in the legal or regulatory framework that would impact the SBS Entity's ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission's ability to inspect and examine the SBS Entity. The SBS Entity's re-certification must be accompanied by a revised opinion of counsel regarding the new regulatory regime. We do not believe this would occur frequently, and therefore estimate that one non-resident entity may need to recertify annually. Thus, the total ongoing cost associated with obtaining a revised opinion of counsel regarding the new regulatory regime would be approximately \$25,000 annually.<sup>97</sup>

**In summary, the Commission estimates that the total reporting cost associated with the requirements for nonresident SBS Entities in Rule 15Fb2-4 to re-certify on Schedule F for changes to foreign law would be approximately \$75,000 or \$25,000 when annualized over three years.<sup>98</sup> The average estimated cost per nonresident SBS Entity over a three-year period would be \$75,000 or \$25,000 per year.<sup>99</sup>**

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<sup>95</sup> (Y1 initial cost of \$550,000 + Y1 ongoing cost of \$3,938) + (Y2 initial cost of \$0 + Y2 ongoing cost of \$3,938) + (Y3 initial cost of \$0 + Y3 ongoing cost of \$3,938) = \$561,814 ÷ 3 years = \$187,271 per year.

<sup>96</sup> \$561,814 ÷ 22 non-resident SBS Entities = \$25,537 ÷ 3 = \$8,512 annually per respondent.

<sup>97</sup> \$25,000 x 1 SBS Entity = \$25,000.

<sup>98</sup> (Y1 ongoing cost of \$25,000) + (Y2 ongoing cost of \$25,000) + (Y3 ongoing cost of \$25,000) = \$75,000 ÷ 3 years = \$25,000 per year.

<sup>99</sup> \$75,000 ÷ 1 non-resident SBS Entity = \$75,000 ÷ 3 = \$25,000 annually per respondent.

## Summary of Hourly Costs

<b>SBS Entity Registration Cost Burdens</b>									
	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Responses Per Year</u>	<u>Initial Cost Per Response Per Year Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Annualized Cost Estimate Per Respondent</u>	<u>Annualized Hourly Cost Estimate Industry-Wide</u>	<u>Small Business Entities Affected</u>
i.	<u>Burden Associated with Filing Application Forms</u>								
	Rule 15Fb2-1 and Form SBSE: Complete and File Application Form	Reporting	4	1	-	-	-	-	0
	Rule 15Fb2-1 and Form SBSE-A: Complete and File Application Form	Reporting	35	1	-	-	-	-	0
	Rule 15Fb2-1 and Form SBSE-BD: Complete and File Application Form	Reporting	16	1	-	-	-	-	0
ii.	Rule 15Fb2-3: Complete and File Amendments to Application Forms	Reporting	55	3	-	-	-	-	0
iii.	Rule 15Fb2-1 and Form SBSE-C: Complete and File Certifications	Reporting	55	1	-	-	-	-	0
iv.	<u>Burdens Relating to Associated Persons</u>								
	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers registered or registering with the SEC or the CFTC	Recordkeeping	46	1	-	-	-	-	0
	Rule 15Fb6-2: Review and Sign Employment Questionnaires - SBS Dealers not registered or registering with the SEC or the CFTC	Recordkeeping	4	1	-	-	-	-	0
	Rule 15Fb6-2: Review and Sign Employment Questionnaires - Major SBS Participants registered or registering with the SEC or the CFTC	Recordkeeping	5	1	-	-	-	-	0
v.	<u>Burdens on Non-Resident SBS Entities</u>								
	Rule 15Fb2-4 and Schedule F: Complete and File by Nonresident SBS Entities	Reporting	22	1	\$8,333.33	\$179	\$8,512.33	\$187,271	0
	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities to change Agent for Service of Process	Reporting	2	1	-	-	-	-	0
	Rule 15Fb2-4 and Schedule F: Amendments by Nonresident Entities for changes to Foreign Law	Reporting	1	1	-	\$25,000	\$25,000	\$25,000	0
vi.	<u>Rule 15Fb1-1: Retain Manually Signed Signature Pages</u>	Recordkeeping	55	1	-	-	-	-	0
vii.	<u>15Fb3-2 and Form SBSE-W: Complete and File Withdrawal Form</u>	Reporting	1	1	-	-	-	-	0
								<b>\$212,271</b>	

### **14. Costs to the Federal Government**

Commission staff estimates that this rulemaking will require the hiring of additional staff. The review and processing of a broker-dealer application filed on Form BD requires approximately 2 hours of staff time. As Forms SBSE, SBSE-A, and SBSE-BD are drafted based on Form BD, the Commission believes that review of these documents likely would take approximately the same amount of staff time. We do not believe that the addition of three questions to Forms SBSE and Form SBSE-A, the addition of one question to Form SBSE-BD, and the amendments proposed to Schedule F would have a significant impact on this review or the time it would take to process an application. Thus, estimating staff time and related overhead at \$75 per hour, the cost to the Federal government in connection with review and processing of SBS Entity applications filed on Forms SBSE, SBSE-A, and SBSE-BD, as applicable would be

approximately \$8,250.<sup>100</sup> With respect to amended Forms BD, the staff estimates that it requires approximately 1 hour of staff time to review and process the filings. As Forms SBSE, SBSE-A, and SBSE-BD are drafted based on Form BD, the Commission believes that review of these documents likely would take approximately the same amount of staff time. Thus, the cost to the Federal government related to the review and processing of amended Forms BD is approximately \$12,375.<sup>101</sup> In sum, the total cost to the government for reviewing and processing broker-dealer applications and amendments filed on Form BD is approximately \$20,625.<sup>102</sup>

**15. Reason for Changes in Burden**

Not applicable. The rules and forms being adopted are new.

**16. Information Collections Planned for Statistical Purposes**

Not applicable.

**17. Display of OMB Approval Date**

We request authorization to omit the expiration date on the electronic version of the forms, although the OMB control number will be displayed. Including the expiration date on the electronic version of the forms will result in increased costs, because the need to make changes to the forms may not follow the application's scheduled version release dates.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection of information complies with the requirements in 5 CFR 1320.9.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable. The collections of information in Rule 15Fb2-1 through 15Fb6-2 and through Forms SBSE, SBSE-A, SBSE-BD, SBSE-C, and SBSE-W do not employ statistical methods.

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<sup>100</sup> 55 SBS Entities x 2 hours x \$75 = \$8,250.

<sup>101</sup> 3 amendments x 55 SBS Entities x 1 hour x \$75 = \$12,375.

<sup>102</sup> \$8,250 + \$12,375 = \$20,625. The cost burden estimates in this submission have been computed according to the guidelines set forth in *GSA, Guide to Estimating Reporting Costs* (1973). Accordingly, the Commission staff has valued related overhead at 35 percent of the value of the combined salaries of the aforementioned participants.