

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**External Business Conduct Standards**

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**

In 2010, Congress passed the Dodd-Frank Act, establishing a comprehensive framework for regulating the over-the-counter swaps markets. As required by Title VII of the Dodd-Frank Act, the new section 15F(h) of the Exchange Act will establish business conduct standards for security-based swap (“SBS”) dealers and major SBS participants (“collectively “SBS Entities”) in their dealings with counterparties, including special entities. The proposed rules<sup>1</sup> also establish regulations for the chief compliance officer functions within an SBS Entity. The Commission has also included certain other business conduct requirements for SBS dealers that we believe further the principles that underlie the Dodd-Frank Act.

The proposed rules (Rules 15Fh-1 through 15Fh-6 and 15Fk-1) (“Proposed Rules”) would require SBS dealers and major SBS participants to:

- Verify whether a counterparty is an eligible contract participant and whether it is a special entity;
- Disclose to the counterparty material information about the SBS, including material risks, characteristics, incentives and conflicts of interest;
- Provide the counterparty with information concerning the daily mark of the SBS;
- Provide the counterparty with information regarding the ability to require clearing of the SBS;
- Communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith;
- Establish a supervisory and compliance infrastructure; and
- Designate a chief compliance officer that is required to fulfill the described duties and provide an annual compliance report.

The proposed rules would also require SBS dealers to:

- Determine that recommendations they make regarding SBS that are suitable for their counterparties.
- Establish, maintain and enforce policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each known counterparty that are necessary to conduct business with such counterparty; and
- Comply with rules designed to prevent “pay-to-play.”

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<sup>1</sup> See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Swap Participants, Exchange Act Release No. 34-64766 (July 18, 2011), 76 FR 42396 available at <https://www.sec.gov/rules/proposed/2011/34-64766.pdf>.

The proposed rules also would define what it means to “act as an advisor” to a special entity, and would require that a SBS dealer who acts as an advisor to a special entity:

- Act in the “best interests” of the special entity; and
- Make reasonable efforts to obtain information that it needs to determine that the recommendation is in the “best interests” of the special entity.

In addition, the proposed rules would require SBS Entities acting as counterparties to special entities to reasonably believe that the counterparty has an independent representative who meets the following requirements:

- Has sufficient knowledge to evaluate the transaction and risks;
- Is not subject to a statutory disqualification;
- Is independent of the SBS Entity;
- Undertakes a duty to act in the best interests of the special entity;
- Makes appropriate disclosures of material information concerning the SBS; and
- Provides written representations to the special entity regarding fair pricing and appropriateness of the SBS.

The independent representative would also be subject to pay-to-play regulations, and if the special entity is an ERISA plan, the independent representative would be required to be a fiduciary under ERISA.

The information required is intended to increase accountability and transparency in the market. In so doing, the information collected will help establish a framework that protects investors and promotes efficiency, competition and capital formation.

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

### **i. Verification of Status**

Proposed Rule 15Fh-3(a) would require an SBS Entity to determine whether its counterparty is an ECP before the execution of a security-based swap other than on a registered national securities exchange or SEF. An SBS Entity would use this information to comply with Section 6(l) of the Exchange Act (15 U.S.C. 78(f)(l)), which prohibits a person from entering into a security-based swap with a counterparty that is not an ECP other than on a national securities exchange. We are not proposing to specify the means by which SBS Entities satisfy this requirement. The proposed rule also would require the SBS Entity to determine whether a counterparty is a special entity. An SBS Entity would use this information, in turn, to determine the need to comply with the requirements applicable to dealings with special entities under proposed Rules 15Fh-4(b) and 15Fh-5. In addition to assisting the CCO in determining compliance with the statute and proposed rules, this collection of information would be used by the Commission staff in its examination and oversight program.

ii. Disclosures by SBS Entities

The disclosures required to be provided by SBS Entities to a counterparty (other than an SBS Entity or a swap dealer or major swap participant) would help the counterparty understand the material risks and characteristics of a particular security-based swap, as well as the material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap. As a result, these disclosures would assist the counterparty in assessing the transaction. The disclosures would provide counterparties with a better understanding of the expected performance of the security-based swap under various market conditions. They would also give counterparties additional transparency and insight into the pricing and collateral requirements of security-based swaps. Proposed Rule 15Fh-3(d) would require SBS Entities to notify counterparties of the clearing alternatives available to them. In addition to assisting the SBS Entity with its internal supervision and the CCO to determine compliance with the statute and proposed rules, this collection of information would be used by the Commission staff in its examination and oversight program.

iii. Know Your Counterparty and Recommendations

These collections of information would help an SBS Dealer to comply with applicable laws, regulations and rules. They would also assist an SBS Dealer in effectively dealing with the counterparty, including by making recommendations that are appropriate for the counterparty, and by collecting information from the counterparty necessary for the SBS Dealer's credit and risk management purposes. These collections of information would also assist an SBS Dealer in determining whether it would be reasonable to rely on various representations from a counterparty and evaluating the risks of trading with that counterparty. The information would also assist the CCO in determining that the SBS Entity had policies and procedures reasonably designed to obtain and retain essential facts concerning each known counterparty and to make suitable recommendations to its counterparties. The Commission staff would also use these collections of information in its examination and oversight program.

iv. Fair and Balanced Communications

This collection of information concerning the risks of a security-based swap would assist an SBS Entity in communicating with counterparties in a fair and balanced manner. It would also assist an SBS Dealer in making suitable recommendations to counterparties, and assist the CCO in ensuring that the SBS Entity is communicating with counterparties in a fair and balanced manner based on principles of fair dealing and good faith. The receipt of information in a fair and balanced manner would assist the counterparty in making more informed investment decisions. The Commission staff would also use this collection of information in its examination and oversight program.

v. Supervision

The collection of information in connection with the establishment, maintenance and enforcement of a supervisory system would assist an SBS Entity in achieving compliance with all applicable securities laws, rules and regulations. The CCO may use these collections of information in discharging his or her duties under proposed Rule 15Fk-1 and determining whether remediation efforts are required. The collection of information would also be useful to supervisors in understanding and carrying out their supervisory responsibilities. The Commission staff would also use this collection of information in its examination and oversight program.

vi. SBS Dealers Acting as Advisors to Special Entities

Certain information that would be collected under proposed Rule 15Fh-4(b) would assist an SBS Dealer that is acting as an advisor to a special entity to act in the best interests of the special entity. Other information collected under proposed Rule 15Fh-2(a) could assist an SBS Dealer seeking to establish that it is not acting as an advisor to a special entity. The collections of information would assist a CCO in determining compliance with the provisions of the Exchange Act by the SBS Dealer. The Commission staff would also use this collection of information in its examination and oversight program.

vii. SBS Entities Acting as Counterparties to Special Entities

The information that would be collected under Proposed Rule 15Fh-5(a) would assist an SBS Entity in forming a reasonable basis that the special entity has an independent representative that meets the requirements of the rule. Disclosures under proposed Rule 15Fh-5(b) regarding the capacity in which an SBS Dealer is operating would reduce confusion by a special entity as to whether an SBS Dealer would be acting in the interests of the special entity or as a counterparty or principal on the other side of a transaction to the special entity with potentially adverse interests. These collections of information would also assist the CCO in determining compliance with the provisions of the Exchange Act by the SBS Entity. The Commission staff would also use this collection of information in its examination and oversight program.

viii. Political Contributions

Proposed Rule 15Fh-6 is intended to deter SBS Dealers from participating, even indirectly, in pay to play practices. The information that would be collected under this proposed rule would assist the SBS Dealer and the Commission in verifying this deterrence. The proposed rule would also assist the chief compliance officer in determining compliance with the provisions of the Exchange Act by an SBS Dealer. The Commission staff would use this collection of information in its examination and oversight program.

ix. Chief Compliance Officer

The information that would be collected under proposed Rule 15Fk-1 would assist the CCO in overseeing and administering compliance by the SBS Entity with the provisions of the Exchange Act and the rules and regulations thereunder relating to its business as an SBS Entity. The Commission staff would also use this collection of information in its examination and oversight program.

The Commission preliminarily believes, based on data obtained from DTCC and conversations with market participants, that approximately 50 entities may fit within the definition of security-based swap dealer,<sup>2</sup> and as many as 10 entities may need to determine whether they come within the definition of major security-based swap participant.<sup>3</sup> The Commission does not expect that more than five entities will be major security-based swap participants. Accordingly, we are using this estimate for the purposes of calculating the reporting burdens. Further, because prior to the Dodd-Frank Act, market participants have not had to distinguish between swaps and security-based swaps for regulatory purposes, the Commission preliminarily believes that the majority of firms that may register as SBS Entities (approximately 35) also will be engaged in the swaps business, and will register with the CFTC as swap dealers or major swap participants. As a result, these entities would also be subject to the business conduct standards applicable to swap dealers and major swap participants. In addition, a broker-dealer may seek to register as an SBS Dealer so that it can enter into security-based swaps as a principal with customers who, among other things, may be holding securities positions and may wish to hedge those positions with security-based swaps. The Commission estimates that approximately 16 registered broker-dealers will also register as SBS Dealers.<sup>4</sup> Finally, the costs of registration and associated regulation may cause an entity that is not otherwise registered with the CFTC or the Commission to structure its business so as to not have to register as an SBS Entity. Consequently, the Commission estimates that fewer than eight firms not otherwise registered with the CFTC or the Commission will register as SBS Entities.

The Commission preliminarily believes, based on information currently available to it, that there are and would continue to be approximately 8,500 market participants, of which approximately 1,200 are special entities.<sup>5</sup> Based upon the number of municipal advisors that have registered with the Commission, we estimate there will be approximately 325 third-party

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<sup>2</sup> Depending on capital and other requirements for SBS Dealers and how businesses choose to respond to such requirements, the actual number of SBS Dealers may be significantly fewer. See also Definitions Release.

<sup>3</sup> See Definitions Release.

<sup>4</sup> Id.

<sup>5</sup> The estimate is based on available market data for November 2006 – September 2010 provided by DTCC. Commission staff has identified approximately 8,567 market participants and approximately 1,200 special entities during this time period, but we are using 8,500 market participants and 1,200 special entities as estimates for these purposes to allow for market participants and special entities that trade less frequently, no longer trade or trade under multiple designations. For the purposes of these estimates, we have included foreign pension plans and 501(c)(3) organizations generally within the category of special entity.

independent representatives for special entities.<sup>6</sup> The Commission also estimates that approximately 95% of special entities would use a third-party independent representative in their security-based swap transactions.<sup>7</sup> As a result, for the purposes of calculating reporting burdens, the Commission estimates that the remaining 5% of special entities, or 60 special entities, have employees who currently negotiate on behalf of, and advise, the special entity regarding security-based swap transactions and could likely fulfill the obligations of the independent representative.<sup>8</sup> Consequently, the Commission estimates a total of 385 potential independent representatives.<sup>9</sup> The Commission seeks comment on its estimates as to the number of participants in the security-based swap market that would be required to comply with the business conduct standards pursuant to proposed Rules 15Fh-1 through 15Fh-6 and proposed Rule 15Fk-1.

### **3. Consideration of Information Technology**

The proposed rules do not prescribe particular forms or methods of compliance for SBS Entities so as to allow the flexibility to new technologies as they develop.

### **4. Duplication**

Because SBS were previously largely unregulated, the information was not generally otherwise filed with the Commission. The staff expects that many SBS dealers and major SBS participants will be dually registered with the CFTC as swap dealers and major swap participants. As the rules being adopted are largely similar to those adopted by the CFTC, dually registered entities will already have procedures and systems in place to collect the information. However, the information provided to the CFTC will address swaps while the information provided to the Commission will address SBS. With respect to mixed swaps, duplicative information may be provided to both the CFTC and the Commission, depending on the facts and circumstances.

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<sup>6</sup> As of April 15, 2011, approximately 307 entities that are registered as municipal advisors with the Commission indicated that they expected to provide advice with respect to swaps. We expect that many of these municipal advisors will also act as independent representatives for other special entities. We also expect that some number of these municipal swap advisors will limit their services to swaps and not security-based swaps. The Commission therefore estimates that approximately 325 municipal swap advisors will act as independent representatives to special entities with respect to security-based swaps, we solicit comments as to the accuracy of this information.

<sup>7</sup> The estimate is based on available market data for November 2006 – September 2010 provided by DTCC that indicates approximately 95% of special entities used third-party investment advisers in connection with security-based swap transactions.

<sup>8</sup> *Id.*

<sup>9</sup> The estimate is based on the following calculation: 325 third-party independent representatives + 60 in-house independent representatives.

## 5. Effect on Small Entities

Based on the Commission's existing information about the SBS market, the Commission preliminarily believes that the SBS market, while broad in scope, is largely dominated by large entities and their large institutional customers. Under current law, all SBS participants are required to be "eligible contract participants."<sup>10</sup> The basic thresholds under the definition of "eligible contract participant" are currently \$10 million in total assets for natural persons and \$25 million in total assets for corporations and other legal entities.<sup>11</sup> Thus, the Commission believes it is unlikely that the collection of information will have an impact on small entities.

## 6. Consequences of Not Conducting Collection

The information is collected as each transaction warrants, and there is no way to reduce the frequency of collection without undermining the statutory provisions or its intended purposes.

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

Not applicable. The Rule is not inconsistent with 5 CFR 1320.5(d)(2).

## 8. Consultations Outside the Agency

The Commission has issued a release titled "Business Conduct Standards for Security-Based Swap Dealers and Major Security-Swap Participants"<sup>12</sup> 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 potential registrants, investors, and other market participants. In addition, the Commission and staff participated in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this rulemaking have been posted on the Commission's public website, and made available through <http://www.sec.gov/rules/proposed.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).

<sup>10</sup> Otherwise, the SBS would either be a security subject to the federal securities laws, including a registration requirement under the Securities Act, or an illegal future, depending on its economic terms and the security.

<sup>11</sup> Note that the definition of "eligible contract participant" has been amended by Congress in Section 721(a)(9) of the Dodd-Frank Act. *See* Pub. L. 111-203, 124 Stat. 1376, 1660, §721(a)(9) (to be codified at 7 U.S.C. 1a(18)). *See also* Definitions Release at 42 (explaining that this amendment has the effect of "(1) raising a threshold that governmental entities may use to qualify as [eligible contract participants], in certain situations, from \$25 million in discretionary investments to \$50 million in such investments; and (2) replacing the 'total asset' standard for individuals to qualify as [eligible contract participants] with a discretionary investment standard," but noting that for individuals, while the threshold remains \$10 million, under the amended definition this amount would be based on discretionary investments rather than total assets).

<sup>12</sup> *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Swap Participants, Exchange Act Release No. 34-64766 (July 18, 2011), 76 FR 42396.

## 9. Payment of Gift

Not applicable.

## 10. Confidentiality

The Commission preliminarily believes the collection of information pursuant to proposed Rules 15Fh-3 to 15Fh-6 and 15Fk-1 would not be publicly available. To the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of the Freedom of Information Act (“FOIA”).

## 11. Sensitive Questions

As discussed above in Item 10, the collection of information will not include publicly available information. Furthermore, the Commission does not believe that the collection of information will contain Personally Identifiable Information (“PII”).<sup>13</sup>

## 12. Burden of Information Collection

The staff estimates, based on data obtained from the CFTC, DTCC and conversations with market participants, that approximately 50 entities may fit within the definition of security-based swap dealer, and as many as 10 entities may need to determine whether they come within the definition of major security-based swap participant.<sup>14</sup> The staff does not expect that more than five will be major security-based swap participants.<sup>15</sup> Accordingly, we are using this estimate for the purposes of calculating the reporting burdens.

The staff estimates that:

- 15Fh-3(a) – Verification of Status: To verify whether a counterparty is an ECP or special entity, SBS entities would take initially 1 hour per transaction to collect the information for an initial aggregate burden of approximately 47,000 hours<sup>16</sup>, or an average of approximately 855 hours per SBS Entity.<sup>17</sup>

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<sup>13</sup> 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.

<sup>14</sup> See Definitions Release.

<sup>15</sup> In the Products Definitions Release, the Commission had estimated based on available data regarding the single-name credit default swap market, which the Commission believed comprised the majority of security-based swaps, that the number of major security based-swap participants would likely be fewer than five, and in actuality, could be zero.

<sup>16</sup> The estimate is based on the following calculation: (55 SBS Entities) x (855 hours).



- 15Fh-3(b), (c), and (d) – Disclosure by SBS Entities: SBS Entities would initially require 12 persons to analyze for 100 hours each the changes necessary to comply with new disclosure requirements, as well as to create any functional requirements and/or system specifications to automate the disclosure process. This would amount to an initial hour burden of 66,000 hours.<sup>18</sup> Following the initial analysis and specifications development effort, the staff estimates that six persons would be required to spend 20 hours annually to re-evaluate and modify the disclosures and systems requirements as necessary, amounting to an ongoing annual burden of 6,600 hours.<sup>19</sup> The Commission also estimates that to create and maintain an information technology infrastructure to the specifications identified by the team above, each SBS Entity would require, on average, eight full-time persons for six months of systems development, programming and testing, amounting to a total initial burden of 440,000 hours.<sup>20</sup> The Commission further estimates that maintenance of the system will require two full-time persons for a total of ongoing burden of 220,000 hours annually.<sup>21</sup>
- 15Fh-3(e) and (f) – Know Your Counterparty and Recommendations: SBS dealers would have to spend approximately three to five hours initially to review existing policies and procedures, and document the collection of information necessary to comply with its “know your counterparty” obligations for a total initial burden of 250 hours.<sup>22</sup> The staff also estimates that SBS Dealers would spend an average of approximately 30 additional minutes each year per unique non-SBS Dealer counterparty to assess whether the SBS Dealer is in compliance with the requirements to make suitable recommendations, a total ongoing burden of approximately 23,500<sup>23</sup> hours annually, or an average of 470 hours annually per SBS Dealer.<sup>24</sup>

<sup>17</sup> The estimate is based on the number of unique SBS Dealer to non-SBS Dealer trading relationships identified in the market data for November 2006 – September 2010 provided by the DTCC. This estimate includes each SBS Dealer affiliate with the same non-SBS Dealer entity as a separate trading relationship. As a result, this number may overestimate the actual number of trading relationships with non-SBS Dealers. For the purposes of Form 83-I, the annualized burden is 285 hours per SBS Entity.

<sup>18</sup> The estimate is based on the following calculation: (55 SBS Entities) x (12 persons) x (100 hours). For the purposes of Form 83-I, the annualized burden is 400 hours per SBS Entity.

<sup>19</sup> The estimate is based on the following calculation: (55 SBS Entities) x (6 persons) x (20 hours).

<sup>20</sup> The estimate is based on the following calculation: (55 SBS Entities) x (4 persons) x (2,000 hours). For the purposes of Form 83-I, the annualized burden is 2,666.67 hours per SBS Entity.

<sup>21</sup> The estimate is based on the following calculation: (55 SBS Entities) x (2 persons) x (2,000 hours).

<sup>22</sup> The estimate is based on the following calculation: (50 SBS Dealers) x (5 hours). For the purposes of Form 83-I, the annualized burden is 471.67 hours per SBS Dealer. The Commission is conservatively using the high end of the range for the purposes of estimating these reporting burdens.

<sup>23</sup> The estimate is based on the following calculation: (47,000 transactions with non-SBS Dealer counterparties) x 30 minutes / 60 minutes. See notes 15 and 16 regarding the number of transactions with non-SBS Dealer counterparties.

<sup>24</sup> To the extent that the SBS Dealer is unfamiliar with the counterparty, the Commission would expect a greater time burden and as an SBS Dealer becomes more familiar with the particular counterparty, the Commission would expect a lesser time burden. As a result, we use 30 minutes as an average estimate.

- 15Fh-3(h) – Supervision: SBS Entities would require an average of 210 hours per respondent per policy and procedure to implement<sup>25</sup>, or an average of 1,890 burden hours<sup>26</sup> per SBS Entity, resulting in an aggregate initial burden of 103,950 hours.<sup>27</sup> Once the policies and procedures are established, the Commission estimates that on average, each SBS Entity would spend approximately 540 hours (approximately 60 hours per policy and procedure<sup>28</sup>) each year to maintain these policies and procedures, yielding a total ongoing annual burden of approximately 29,700 hours.<sup>29</sup>
- 15Fh-4 and 15Fh-2(a) – SBS Dealers Acting as Advisors to Special Entities: 50 SBS Entities would each require approximately five hours to revise existing representations to comply with the requirement to have a reasonable basis to believe that a special entity has a qualified independent representative.<sup>30</sup> For transactions in which the SBS Dealer is not the counterparty and chooses to act as an advisor, SBS Entities would require approximately 20 hours each to collect the requisite information from each special entity for an aggregate initial burden of approximately 4,000 hours.<sup>31</sup>
- 15Fh-5 – SBS Dealers Acting as Counterparties to Special Entities: SBS Entities would initially require 15 hours per independent representative to collect the information necessary to determine the independence of the representative from the SBS Entity. Assuming each SBS Entity interacts with 180 independent representatives<sup>32</sup>, the aggregate initial burden would be approximately 148,500 hours.<sup>33</sup> In addition, staff estimates that subsequent transactions with third-party non-employee independent representatives would likely require an average of approximately 10 hours annually to

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<sup>25</sup> See SDR Registration Release.

<sup>26</sup> The estimate is based on the following calculation: (9 policies and procedures) x (210 hours). For the purposes of Form 83-I, the annualized burden is 1,170 hours per SBS Entity.

<sup>27</sup> The estimate is based on the following calculation: (55 SBS Entities) x (9 policies and procedures) x (210 hours).

<sup>28</sup> See SDR Registration Release.

<sup>29</sup> The estimate is based on the following calculation: (55 SBS Entities) x (540 hours).

<sup>30</sup> For the purposes of Form 83-I, the annualized burden is 1.67 hours.

<sup>31</sup> The estimate is based on available market data for November 2006 – September 2010 provided by DTCC that indicates 201 trading relationships between SBS Dealers and special entities that do not have a third-party investment adviser. For the purposes of estimating these reporting burdens, we approximate the number of trading relationships between SBS Dealers and special entities at 200. This estimate includes the following calculation: (20 hours) x (200 trading relationships). For the purposes of Form 83-I, the annualized burden is 6.67 hours.

<sup>32</sup> The Commission currently does not have data regarding the number of independent representatives with which each SBS Entity interacts. For the purposes of these estimates, the Commission has assumed that each SBS Entity would interact with approximately 150 third-party independent representatives and 30 in-house independent representatives.

<sup>33</sup> The estimate is based on the following calculation: (55 SBS Entities) x (180 independent representatives) x (15 hours). For the purposes of Form 83-I, the annualized burden is 2,400 hours.

update the representations and verifications collected, or an aggregate burden of 82,500 hours.<sup>34</sup>

- **15Fh-5 – SBS Dealers Acting as Counterparties to Special Entities:** To provide the representations and verifications on which SBS Entities can rely, independent representatives would require approximately 1 hour for each transaction of an annual average of 8,300 transactions<sup>35</sup> for the estimated 60 in-house independent representatives, equivalent to an average burden of approximately 138 hours per year per in-house independent representative. Third-party independent representatives would require approximately 20 hours for each of the approximately 1,000 unique trading relationships between SBS Entities and special entities using a third-party independent representative. This would amount to an aggregate burden of 20,000 hours or an average of approximately 62 hours for each of the estimated 325 third party independent representatives.<sup>36</sup>
- **15Fh-6 – Political Contributions:** SBS Dealers would take, on average, approximately 185 hours each and a total initial burden of 9,250 hours<sup>37</sup> to collection information regarding the political contributions of the SBS Dealers and their covered associates.
- **15Fk-1 – Chief Compliance Officer:** SBS Entities would require 630 hours to create the policies and procedures required under Rule 15Fk-1, and a subsequent 180 hours to administer them, per year per respondent. This would result in a total burden of 34,650 hours<sup>38</sup> initially, and 9,900 hours<sup>39</sup> per year on average, on an ongoing basis. SBS Entities would also require on average 92 hours per respondent per year to prepare and submit annual compliance reports to the Commission and the SBS Entity's board of directors.

### 13. Costs to Respondents

The staff estimates that:

- **15Fh-3(a) – Verification of Status:** SBS Entities would need to engage outside counsel to review existing processes and develop new processes, if necessary, at a cost of \$400 per

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<sup>34</sup> The estimate is based on the following calculation: (55 SBS Entities) x (150 third-party independent representatives) x (10 hours).

<sup>35</sup> The estimate is based on available market data for November 2006 – September 2010 provided by DTCC that indicates 32,521 transactions during that time that involved special entities trading without an investment adviser. To obtain an approximate annual average number of transactions based on this data, we divided 32,521 transactions by 47 months and multiplied by 12 months and rounded to 8,300.

<sup>36</sup> The estimate is based on available market data for November 2006 – September 2010 provided by DTCC that indicates approximately 1,000 unique trading relationships between SBS Entities and special entities using a third-party investment adviser during that time. For the purposes of Form 83-I, the annualized burden is 20.67 hours.

<sup>37</sup> The estimate is based on the following calculation: (50 SBS Dealers) x (185 hours). For the purposes of Form 83-I, the annualized burden is 61.67 hours.

<sup>38</sup> The estimate is based on the following calculation: (55 SBS Entities) x (630 hours). For the purposes of Form 83-I, the annualized burden is 390 hours.

<sup>39</sup> The estimate is based on the following calculation: (55 SBS Entities) x (180 hours).

hour for an average of 15 hours per respondent. This would result in a total outside initial cost burden of \$6,000 for each of these entities.<sup>40</sup>

- **15Fh-3(g) – Fair and Balanced Communications:** SBS Entities would likely incur \$6,000 in legal costs, or \$234,000 in the aggregate initial burden, to draft or review statements of potential opportunities and corresponding risks in the marketing materials for equity swaps, credit default swaps and total return swaps.<sup>41</sup>
- **15Fh-3(h) – Supervision:** SBS Entities would engage outside counsel to assist in the collection of information for the maintenance of supervisory systems at a rate of \$450 hours per respondent for a minimum of nine policies and procedures, resulting in an outside initial burden cost of \$180,000 per respondent, or an aggregate initial cost of \$9,900,000.<sup>42</sup>
- **15Fh-6 – Political Contributions:** SBS Dealers may incur one-time costs to establish or enhance current systems to assist with the compliance with the proposed rules to prevent “pay-to-play” practices. These costs could vary widely among firms, and the cost of system changes could range from the tens of thousands of dollars for simple reporting systems, to hundreds of thousands of dollars for complex systems.<sup>43</sup>
- **15Fk-1 – Chief Compliance Officer:** SBS Entities would also engage outside counsel to assist their Chief Compliance Officers in establishing policies and procedures to ensure compliance with the Exchange Act and the rules and regulations thereunder at a cost of \$60,000 in legal costs per respondent, or a total initial outside cost burden of \$3,300,000.<sup>44</sup>

Summary of Hour and Cost Burdens - 83-I Calculations											
Section	Type of Burden	Respondents	Initial Burden		Ongoing Annual Burden		Annualized Burden Per Respondent [Initial burden / 3] + Ongoing Annual burden		Industry Wide Annualized Burden		
			Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	
15Fh-3(a)	Verification of Status	Reporting	55	855	\$6,000.00	0	\$0.00	285.00	\$2,000.00	15,675.00	\$110,000.00
15Fh-3(b), (c), (d)	Disclosures by SBS Entities	Reporting	55	9,200	\$0.00	4120	\$0.00	7,186.67	\$0.00	395,266.67	\$0.00

<sup>40</sup> For the purposes of Form 83-I, the annualized burden is \$2,000.

<sup>41</sup> These comprise the vast majority of SBS. For the purposes of Form 83-I, the annualized burden is \$2,000.

<sup>42</sup> The estimate is based on the following calculation: (55 SBS Entities) x (\$400) x (450 hours). For the purposes of Form 83-I, the annualized burden is \$60,000.

<sup>43</sup> See Political Contributions by Certain Investment Advisers, note 33, *supra* (adopting Advisers Act Rule 206(4)-5). For the purposes of Form 83-I, the annualized burden is \$33,333.33. The Commission is conservatively using the high end of the range of \$100,000 for the purposes of estimating these cost burdens.

<sup>44</sup> The estimate is based on the following calculation: (55 SBS Entities) x (\$60,000). For the purposes of Form 83-I, the annualized burden is \$20,000.

15Fh-3(e), (f)	Know Your Counterparty and Recommendations	Reporting	50	5	\$0.00	470	\$0.0 0	471.67	\$0.00	23,583.33	\$0.00
15Fh-3(g)	Fair and Balanced Communications	Reporting	39	0	\$6,000.00	0	\$0.0 0	0.00	\$2,000.00	0.00	\$78,000.00
15Fh-3(h)	Supervision	Reporting	55	1,890	\$180,000.00	540	\$0.0 0	1,170.00	\$60,000.00	64,350.00	\$3,300,000.00
15Fh-2(a) and 15Fh-4	SBS Dealers Acting as Advisors to Special Entities	Reporting	50	5	\$0.00	0	\$0.0 0	1.67	\$0.00	83.33	\$0.00
15Fh-2(a) and 15Fh-4	SBS Dealers Acting as Advisors to Special Entities	Reporting	200	20	\$0.00	0	\$0.0 0	6.67	\$0.00	1,333.33	\$0.00
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Reporting	55	4200	\$0.00	1500	\$0.0 0	2,900.00	\$0.00	159,500.00	\$0.00
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Third-Party Disclosure	60	0	\$0.00	138	\$0.0 0	138.00	\$0.00	8,280.00	\$0.00
15Fh-5	SBS Entities Acting as Counterparties to Special Entities	Third-Party Disclosure	325	62	\$0.00	0	\$0.0 0	20.67	\$0.00	6,716.67	\$0.00
15Fh-6	Political Contributions	Reporting	50	185	\$100,000.00	0	\$0.0 0	61.67	\$33,333.33	3,083.33	\$1,666,666.67
15Fk-1	Chief Compliance Officer	Reporting	55	630	\$60,000.00	272	\$0.0 0	482.00	\$20,000.00	26,510.00	\$1,100,000.00
	<b>Total</b>							<b>12,724.00</b>	<b>\$117,333.33</b>	<b>704,381.67</b>	<b>\$6,254,666.67</b>

#### 14. Cost to Federal Government

Commission staff estimates that there is no annual cost associated with information submitted to the Commission under the new rules, other than the cost of full-time employee labor costs.

#### 15. Explanation of Changes in Burden

N/A

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

Not applicable. The Commission does not publish information collected pursuant to the Rules.

**17. OMB Expiration Date Display Approval**

The Commission is not seeking approval to not display the OMB approval 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.